

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Worksession of the City Council of the City of Benson held on the 14th day of March, 2011. I further certify that the meeting was duly called and held and that a quorum was present.

Date 3-30-11

City Clerk Vicki St. Vivas

**THE WORKSESSION
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD MARCH 14, 2011 AT 6:00 P.M.
AT CITY HALL, 120 W. 6TH STREET, BENSON, ARIZONA**

CALL TO ORDER:

Mayor Fenn thanked the Planning & Zoning Commission for attending and then called the meeting to order at 6:03 p.m. with the pledge of allegiance.

ROLL CALL:

Present were: Mayor Mark M. Fenn, Vice Mayor John Lodzinski, Councilmembers Jo Deen Boncquet, David Lambert, Nick Maldonado, Lori McGoffin and Al Sacco.

Planning & Zoning Commission: Chairman Cliff Deane, Richard Busselle, Randy Robichaud, Jane Scholer and James Thelander. Absent were: Commissioner James Crawford and Luanne Posegate.

NEW BUSINESS:

1. Discussion and direction on Proposition 203, Medical Marijuana Act as it applies to Land Use

Building Official Luis Garcia addressed Council stating the worksession is being held for Land Use direction in the City of Benson, then turned the item over to Michelle Johnson, Planning & Zoning, to give a presentation and staff recommendation.

Michelle Johnson then welcomed the Council and Commission to the "joint" worksession, stating Prop. 203 was passed in November, 2010 and the Arizona Department of Health Services (ADHS) had 120 days to get a program up and running, noting that time runs out in March. Ms. Johnson stated ADHS will begin accepting applications for qualified patients and dispensaries starting in April and will have between 15 and 45 days to approve or deny different types of applications, which means medical marijuana use will be coming up in May. Ms. Johnson then stated a qualifying patient can grow up to 12 plants at home if they are not within 25 miles of a dispensary. Ms. Johnson then explained the way a dispensary is set up right now, is it was supposed to be 1 for every 10 registered pharmacies in the state, or approximately 124 dispensaries. Ms. Johnson then stated ADHS currently has 126 Community Health Analysis Areas (CHAA), set up back in 2005, which are smaller health units of approximately 25,000 people, adding Benson is in a CHAA including Benson, creeping into St. David, Pomerene and Cascabel all the way up to the County lines on the north and west, adding it's a fairly large area. Ms. Johnson then stated ADHS is assuming there will be 1 dispensary per CHAA which means Benson does have the possibility of getting a dispensary in town and that is what staff is preparing for.

Ms. Johnson stated according to ADHS, as far as the actual growing of the plant, it can be via the dispensary, the caregiver or the patient themselves. The dispensaries, in addition to the dispensing of or selling the marijuana, can get their product from a cultivation site. Ms. Johnson then stated a cultivation site has to be affiliated with a dispensary, there can not be what is called "third party farming." Ms. Johnson then stated caregivers and the patients, if they are not within 25 miles of a dispensary, can grow their own product, up to 12 plants, but regardless of whether it's an off-site cultivation site that provides the dispensary, or is a patient or caregiver, it must be in an enclosed, locked facility such as a room, a closet or a greenhouse. Ms. Johnson then stated there is a question of what "locked and secured" is going to mean, which will all be determined at a later date.

Ms. Johnson then stated the City can adopt reasonable regulations to limit land use, to address growing and dispensing, which is what the main discussion will be. Ms. Johnson then stated, according to State law, the dispensary is to have no on-site use or consumption and can not be within 500' of a school, adding some of the discussions tonight can be what other facilities, if any, would they like to keep some sort of distance from, stating other entities have decided or talked about requiring setbacks from churches, places of worship, rehab facilities and hospitals.

Ms. Johnson then spoke about caregivers, stating it has not been made clear at this point if the caregiver is within the 25 mile radius, but the qualifying party is not, if the caregiver can grow plants, adding by law, the patient can not grow if they live within a 25 mile radius of the dispensary, but it's still unclear whether a caregiver within the 25 mile radius can or can not grow regardless of patient location.

Ms. Johnson then stated almost all jurisdictions also have approved a requirement equivalent to the City's conditional use permit, adding only 2 allow it as a permitted use.

Ms. Johnson then stated not addressed by the State of Arizona either in statute or by ADHS, are the site development standards, adding the City could look at addressing these such as hours of operation, the size of the building, the footprint, the type of building construction to begin with (permanent as opposed to a trailer or a cargo container of sorts), drive-thrus, deliveries, dust, fumes, odors and vapors and outdoor seating.

Ms. Johnson then stated the direction staff is seeking from the City Council and the Planning & Zoning Commission are what zoning district would they like to allow this in, adding most entities chose Business or Industrial and no one allowed it in Residential. How they want to allow it, adding almost everyone required the equivalent of our conditional use vs. a permitted land use and site standards, those she just mentioned along with setbacks from other facilities, other than the 500' setback required from schools. Ms. Johnson then stated another issue they could address is security such as lights, cameras and armed guards. Ms. Johnson then stated parking spaces, to some extent, will be determined by the size of the building through the building code, but any other issues with parking could also be discussed.

Ms. Johnson then stated staff is suggesting RT (Rural Transitional) zoning and as a conditional use, adding the conditional use process requires a hearing by the Planning & Zoning Commission and if we do not go through that process, if it's a permitted use, then as long as they're in the correct zoning district, it would be allowed automatically by right. Ms. Johnson then stated our doing nothing would let anybody who comes in to grow be under the State statutes only and right now the only regulations for the State statutes is the 500' setback from schools.

Ms. Johnson then asked if there were any questions the Council or the Commission had.

Commissioner Thelander stated there was no mention about certifications that the users get or a certificate from their doctor with Ms. Johnson stating that is all handled directly through the State, adding the City has no right to request who, where or when in regards to using medical marijuana, that is between the patient, their doctor and ADHS. Building Official Luis Garcia then stated there is nothing in the statute that mandates a patient to report to anyone, to the police department or to the City. Commissioner Thelander then stated we have no control over how much may be sold, because we can't prove whether they do it or not. Ms. Johnson then stated concerning the sale, the draft rules, are currently not requiring the jurisdiction to sign off on the location of a dispensary, adding all it currently requires, is for the applicant simply to sign off that they are following the zoning of the jurisdiction, adding right now, we don't have any zoning for such an issue, so the applicant would not have to inform the City. Ms. Johnson then stated that is one of the reasons they recommend the conditional use process, that it requires an applicant to come to the City and go through the process of getting the approval to locate there, adding otherwise, if it's a permitted use, the applicant doesn't have to come to the City, they can build their facility or if there's an existing building, they can open it up.

Commissioner Scholer spoke about an existing building for a dispensary and then stated she agreed with staff the cultivation should be in the RT zoning. Mr. Garcia stated it's outside the City's jurisdiction to be proposing individual structures for a dispensary. Ms. Johnson then agreed stating the main issues for the Council and the Commission were the zoning, whether or not it was required to be a conditional use or allowed to be a permitted use and if they chose to impose a setback requirement for facilities in addition to the State required 500' setback from schools.

Mayor Fenn asked about Rural Transitional zoning and how it compared to the County's zoning with Ms. Johnson stated the City's RT zoning was similar to the County's RU4 zoning. Mayor Fenn then asked about the locations of the City's current RT zoning with staff and other members present locating land in the corner

going down the hill between I10, the top of Ocotillo where the church is, along the river and about 60 acres at the end of Prickly Pear. Mr. Garcia then stated the recommendation of RT zoning is also in anticipation of future annexations that have more land and limited densities, adding the higher density areas are identified in the Business and Industrial Areas, with RT identifying a low density area where this might be applicable.

Commissioner Robichaud stated he felt the dispensary should be in the middle of town, or close by where everyone can keep an eye on it and expressed concern about the setbacks Ms. Johnson had brought up earlier. Ms. Johnson then stated the setbacks she was referring to were not lot setbacks but were a setback from a neighboring land use, such as a hospital, a residential zone, a school, a rehab center or a daycare.

Planning & Zoning Chairman Cliff Deane stated he felt this should be kept strictly to a conditional use permit, citing there are so many ifs and unknowns at the moment, and if the City establishes the zoning, even a brand new one, then all the applicant has to do is apply for a license and go into business, but if we require a conditional use permit, all citizens get involved, and most important, the Chief of Police will be able to be involved. Chairman Deane then stated he doesn't want anything coming to the Planning & Zoning Commission without the Police Chief's involvement. Ms. Johnson then stated unless the City requires a conditional use permit process, all the applicant has to do is submit their application and sign an affidavit that they are in compliance with the zoning regulations. Ms. Johnson then stated almost every other entity is requiring a conditional use, with only 2 allowing it as a permitted use.

Commissioner Thelander asked about agriculture and is the City allowed agriculture in any zoning with Mr. Garcia stating our zoning regulations actually don't have the definitions for agriculture use, but the State statute does have a definition for agriculture use classification and if they meet that, which he believes is 5 continuous acres, then they would be protected by that agriculture use for the cultivation site, adding, they would have to meet that State definition. Commissioner Thelander then asked about sales tax with City Attorney Mike Masee stating this is a live issue right now and under the current definitions that are contained in the Model City Tax Code, which is a part of the City's Tax Code, there is a definition for prosthetics and they are exempt from sales tax, adding prosthetics include drugs and medicines and the definition of "drug" would be broad enough to include marijuana, so we would not get a sales tax from a dispensary at this point. Mr. Masee then stated there is a movement under way, right now, for the Model City Tax Code Commission to modify that definition of prosthetics and once they adopt it, it will be part of the current version of the Uniform Model City Tax Code and would be brought to the City Council as an update to the Model City Tax Code adding if it were to happen, it would happen in a matter of a few weeks.

Mayor Fenn asked if a dispensary could have an on-site cultivation and how many plants they could grow with Ms. Johnson stating the cultivation site needs to be a separate site and right now there's no limit to the cultivation for the dispensary, adding the only requirement is that it must be affiliated with a dispensary and they have to sell directly to a dispensary. Ms. Johnson then stated as far as she knew, there is not a limit on the number of dispensaries a cultivation site can sell to so they may be able to supply many dispensaries.

Commissioner Busselle stated one of the things they have not discussed yet is the security that is going to be needed by the people that are growing and dispensing, mentioning Oakland, California and the problems that exist there, with the dispensaries being constantly robbed. Ms. Johnson stated as far as security, the laws and the State require some security but they don't define what that is, adding if the City wants to address it, we have the authority to do so.

Mayor Fenn then stated Benson is the largest jurisdiction within the CHAA Ms. Johnson described but if an applicant was approved at the State for a facility outside the City limits, this would all be moot and then asked what Cochise County was looking at requiring or what restrictions were they going to put in place with Ms. Johnson stating they are looking at the same things staff is recommending: zoning, a conditional use and various setbacks from other land uses. Ms. Johnson then stated Cochise County has different zonings, with a lot more agricultural land, providing a lot more possibilities for a cultivation area. Ms. Johnson then stated the County would like to get any dispensaries in a pocket of civilization or a greater population area, as compared to having it 8 or 12 miles out towards Cascabel. Councilmember Lodzinski stated we could also end up with a dispensary in Benson with the cultivation site in the County, such as in Cascabel. Councilmember Lodzinski then confirmed that a cultivation site can supply several dispensaries, so it could be possible for them to supply

Cochise County and Graham and Greenlee counties with both Ms. Johnson and Mr. Garcia confirming as long as the cultivation site is affiliated with the dispensary, it could supply them.

Ms. Johnson then stated the 2 separate issues to consider are the dispensary and the cultivation site, with staff recommending a conditional use for both, so the applicant's would have to come to the City and staff could comment on the application, noting it was very important the Police Chief be able to comment since there are concerns about crime.

Councilmember McGoffin asked Chief of Police Paul Moncada to address the Council with his points of view on the matter.

Chief of Police Paul Moncada then addressed the Council stating there were several issues here; security, the conditional use, setbacks and where a dispensary would be put, if we got one. Chief Moncada then stated the information he received was somewhat contradictory to what Ms. Johnson had been given as far as the possibility of Benson getting a dispensary, adding the information he was given was Sierra Vista would probably get one and maybe there would be another close to the Douglas area. Chief Moncada then stated if Benson doesn't have a dispensary within 25 miles, then of course, we have the issues with the home growers, adding they do not have to report to the Police Department so if home growers are discovered, it will be treated as illegal growth with the Police Department serving search warrants, kicking in doors and confiscating until such time as the home grower can prove it's a legal growth.

Chief Moncada then stated his other concern is the commercial growth, adding the information he has is the cultivation site has to have walls that are secure and must be secured overhead secured so people can't go over the walls. Chief Moncada stated he would like to see a conditional use permit required so we can be involved in the process, adding he would not like to see it downtown, but would like to see it in Industrial zoning, adding his initial recommendation to Mr. Garcia was to put it in an Industrial area, because they are more isolated, he can keep an eye on it and it won't blend in. Chief Moncada then that would also be his recommendation for a dispensary as well as certain types of security, such as controlled access and video security, adding controlled access will let them know who is coming and going and videotaping, including the parking lot, because it's a guarantee there will be robberies. Chief Moncada then stated 1 dispensary in Oakland, California as mentioned, in one year, brought in \$11 million dollars, or at least that's what they reported, adding there is going to be a lot of cash business, so who knows how much money is going to be coming through a dispensary. Chief Moncada then stated there will be robberies, break-ins and attempted break-ins, so the more security we require them to have, the better it's going to be for the general public.

Mayor Fenn then asked if in the normal course of business, one of the officers came across 12 plants in a house, or was tipped off somebody had 12 plants, given now that we know this law exists, would they still operate the same way with Chief Moncada stating they may do what's called a "knock and talk", and if the person comes to the door and the officer asks them if they are growing marijuana, and they say no, yet the police have reasonable or relevant information, then they will seek a search warrant and serve it, but if the person tells the officer they are, the officer will ask them for their card, either their caregiver card or their patient card, then the officer will leave them alone and tell them to have a nice day. Chief Moncada stated the same thing will happen in traffic stops if someone has marijuana in their car, one of the first questions the officer will ask is if they have a medical marijuana card, if they say they do, but do not have it on them, then the officer will treat it as an illegal possession and take the appropriate action.

Ms. Johnson then stated a person should have their card to get the plant, and assumingly, they would carry their card with them as they were transporting their plants or product, but there is nothing in State law that requires you to do that, adding again, it makes no sense that you wouldn't have your card, but it could be possible. Chief Moncada then stated law enforcement will have the capability to run a card and verify if it's valid or if the card has been suspended due to a violation of certain provisions in the law, but that is all the information they will be able to obtain.

Commissioner Scholer asked about the criteria for having a card issued by the State with Chief Moncada stating the criteria is such that a person can have a supply, can visit a health practitioner who is not required to be a licensed physician, who can then write a recommendation to the State. Mayor Fenn then stated a

possibility of corruption exists there, just like with other drugs. Chief Moncada then stated this is how medical marijuana started in California, with this process and now it's evolved basically to marijuana being legal, period.

Mayor Fenn asked City Attorney Mike Massee if he would like to address the Council with Mr. Massee stating he would like to touch on a couple of topics. Mr. Massee then stated as Ms. Johnson said earlier, there are issues regarding the 25 mile radius and caregivers. Mr. Massee stated right now the statute says either a patient or caregiver can do home growing, stipulating a patient who lives within 25 miles of a dispensary can't do home growing, but it doesn't say if the caregiver who is providing care to a patient who is outside of the 25 miles, can't do growing, with the caregiver being inside the 25 miles radius, or in other words, there is no prohibition for the caregiver. Mr. Massee then stated some cities have taken the position that the cities can go ahead and fill that gap with an ordinance to say neither caregiver nor patient can grow within 25 miles of a dispensary and he thinks that passes the reasonable regulation test, because why would a caregiver need to grow if the dispensary is located within 25 miles of where the caregiver is living, regardless of where the patient is living. Mr. Massee then stated that is one regulation some municipalities in the Valley have already adopted. Mr. Massee then stated the other issue, is he just wanted to slightly modify what Ms. Johnson was saying about not having any zoning regulations affecting this issue right now, stating the City doesn't have any specific zoning regulations, but we do have our general zoning regulations we can rely on. Mr. Massee then stated a dispensary is a business and we can require a dispensary to comply with current zoning regulations as to business, giving for example, the City doesn't allow a business to locate in residential zonings, but as far as locating in Business or Industrial zonings, a business can locate in either one right now, adding if the feeling of the Council is to restrict it, making land use restrictions narrower than what is currently applicable to businesses, then we would have to go ahead and adopt those ordinances (regulations) which are currently not on the books. Mr. Massee then added he had discussed briefly with Ms. Johnson and Mr. Garcia that there are two different ways of regulating this business right now, by land use regulations and the ability to enact safety and health regulations because the Council has legitimate police power to enact reasonable safety and health regulations that really are focused on the business aspect of a dispensary, such as setting minimum security requirements, hours of operation, those sorts of things you would want to enact as business regulations and to some extent those types of regulations can reach or touch on business growers that are designed to grow for the dispensaries. Mr. Massee then stated staff will probably bring some regulations to Council very quickly in that regard; the idea of just looking at health and safety aspects of the business, adding there may be some internal security arrangements inside the dispensary to help eliminate a "stop and rob" type of situation where people can go in, grab something and run out and other similar aspects that focus on the business. Mr. Massee then stated if the business didn't locate in Benson, then obviously those regulations wouldn't apply outside our jurisdiction and the City would not be the police entity in that regard, so he will be working with Britt Hanson, of Cochise County to see what kind of business regulations they will have, stating the City will want to make sure we have at least the same level of scrutiny inside the City, and hopefully, the regulations would be complimentary.

Commissioner Busselle asked if the City had the right to assess a fee for an applicant to be able to establish a dispensary, other than a business license fee, citing in Mohave County, \$130,000 is what you put up to be able to open a dispensary. Mr. Massee then stated that question is related to the tax issue discussed earlier because generally speaking businesses that are subject to sales taxes really shouldn't be subject to something like this, which could be called an occupational tax. Mr. Massee then stated an occupational tax is basically a substantial business license and Benson doesn't have occupational taxes right now. Mr. Massee then stated, as it is structured right now, a dispensary would not charge sales tax and at the same time, our code doesn't have an occupational tax, but the City could enact something similar to it, something specific for that business because the justification for that sort of tax is this is a business that is going to create a need for services in a lot of ways, but especially police services and we can create such a regulation up front. Commissioner Busselle asked if this is something the City should investigate with Mr. Massee agreeing. Mayor Fenn asked if this would be specific to this type of business with Mike Massee stating it would.

Mayor Fenn asked about the timeframe and what the process would be from here with Ms. Johnson stating ADHS will have their final ruling on March 28 and in April, they will start accepting applications for both patients and dispensaries, with 30 days to approve the applications, so it's moving very quickly. Mr. Garcia then added staff is looking for pretty solidified direction tonight. Mayor Fenn asked if it needed to go back to

the Planning & Zoning Commission for a recommendation with staff indicating if those present agreed on direction, something would be presented to Council for action. Ms. Johnson then stated the items staff was seeking direction on was whether or not to require a conditional use, specific site standards and setbacks from certain types of facilities as well as zoning. Mayor Fenn indicated he agreed with all of those and other Councilmembers and Commissioners agreed. Ms. Johnson asked if that was the consensus and those present agreed. Councilmember McGoffin stated for zoning recommendations, she agreed with RT and Industrial. Vice Mayor Lodzinski and the Mayor stated they also agreed with RT and Industrial. Ms. Johnson again asked if that the consensus was RT and Industrial, not Business, and asked if that was for both growing and dispensing with agreement from those present.

Vice Mayor Lodzinski stated with 120 dispensary sites, there would probably be a concentration of 60 sites in Maricopa County, 30 in Pima County and the remaining 30 would probably be scattered throughout the remainder of the State. Chief Moncada agreed stating there may be one in Sierra Vista and another near Bisbee or Douglas. Ms. Johnson then stated the little pieces of the puzzle are those CHAA, so if a complete application is submitted within one, they are almost assured to get it. Councilmember McGoffin stated we'd rather be safe than sorry, and would rather have it in place and not get anything, than get one and not have anything in place.

Councilmember Maldonado stated we should, as mentioned, set some kind of occupational tax or business license or fee with Chairman Deane agreeing stating the City will have a lot of expenses for a business like this, that we may not be looking at right now, adding the largest expense will be with the Police Department, but there are other expenses also.

Commissioner Scholer stated other things to think about are ADA requirements and requiring someone to travel to industrial areas to get their medicine. Ms. Johnson then stated that is why staff thinks an applicant looking to open a dispensary near Benson may want to locate in town where they will have more patients. Commissioner Busselle asked about people from out of State that have cards, with Mr. Garcia stating the statute doesn't allow outside card holders to be recognized with the Arizona medical marijuana act.

Mayor Fenn asked if there were any further comments and then asked if something would be forthcoming to Council by the next meeting in March with Mr. Garcia confirming something would be brought to Council in two weeks at the March 28, 2011 meeting. Mr. Garcia then asked if he could get clarification on the direction of staff recommendations with a yes to everything with Mayor Fenn stating that is what he heard and asked Chairman Deane what his opinion was. Chairman Deane questioned if the Planning & Zoning Commission needed to make a formal recommendation to the Council with staff indicating the consensus was a recommendation. Chairman Deane agreed. Mayor Fenn thanked the Council, the Planning & Zoning Commission, staff and those present for their work and participation.

ADJOURNMENT:

Councilmember McGoffin moved to adjourn at 6:54 p.m. Seconded by Vice Mayor Lodzinski. Motion passed 7-0.



Mark M. Fenn, Mayor

ATTEST:



Vicki L. Vivian, CMC, City Clerk