



AGENDA STAYTON CITY COUNCIL MEETING

Monday, April 7, 2014

Stayton Community Center
400 W. Virginia Street
Stayton, Oregon 97383

6:30 p.m. Executive Session (Community Center Meeting Room) to discuss Real Estate Transactions pursuant to ORS 192.660.1(2)(e).

7:00 p.m. Regular Meeting (Community Center – North End)

CALL TO ORDER

7:00 PM

Mayor Vigil

FLAG SALUTE

ROLL CALL/STAFF INTRODUCTIONS

PRESENTATIONS/COMMENTS FROM THE PUBLIC

a. Presentation and Proclamation for Child Abuse Prevention Month

Request for Recognition: If you wish to address the Council, please fill out a green “Request for Recognition” form. Forms are on the table at the back of the room.

Recommended time for presentation is 10 minutes.

Recommended time for comments from the public is 3 minutes.

ANNOUNCEMENTS – PLEASE READ CAREFULLY

Items not on the agenda but relevant to City business may be discussed at this meeting. Citizens are encouraged to attend all meetings of the City Council to insure that they stay informed. Agenda items may be moved forward if a Public Hearing is scheduled.

a. Additions to the agenda

b. Declaration of Ex Parte Contacts, Conflict of Interest, Bias, etc.

CONSENT AGENDA

a. March 17, 2014 City Council Action Minutes

b. Senior Services Meal Site Agreement Renewal

c. OLCC New Outlet – La Esperanza

Purpose of the Consent Agenda:

In order to make more efficient use of meeting time, resolutions, minutes, bills, and other items which are routine in nature and for which no debate is anticipated, shall be placed on the Consent Agenda. Any item placed on the Consent Agenda may be removed at the request of any council member prior to the time a vote is taken. All remaining items of the Consent Agenda are then disposed of in a single motion to adopt the Consent Agenda. This motion is not debatable. The Recorder to the Council will then poll the council members individually by a roll call vote. If there are any dissenting votes, each item on the consent Agenda is then voted on individually by roll call vote. Copies of the Council packets include more detailed staff reports, letters, resolutions, and other supporting materials. A citizen wishing to review these materials may do so at Stayton City Hall, 362 N. Third Avenue, Stayton, or the Stayton Public Library, 515 N. First Avenue, Stayton.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours prior to the meeting. If you require special accommodations please contact Alissa Angelo, Deputy City Recorder at (503) 769-3425.

PUBLIC HEARING

Ordinance No. 968, Proposed Code Amendments Regarding Wireless Communication Facilities

- a. Commencement of Public Hearing
- b. Staff Report – Dan Fleishman
- c. Questions from Council
- d. Proponents’ Testimony
- e. Opponents’ Testimony
- f. General Testimony
- g. Questions from Public
- h. Questions from Council
- i. Staff Summary
- j. Close of Hearing
- k. Council Deliberation
- l. Council Decision on Ordinance No. 968

UNFINISHED BUSINESS – None

NEW BUSINESS

Ordinance No. 967, Amending SMC 5.12 to Declare a Temporary Moratorium on Medical Marijuana Facilities

Action

- a. Staff Report – Chief Rich Sebens
- b. Council Discussion
- c. Council Decision

STAFF/COMMISSION REPORTS

Public Works Director’s Report – David Kinney

Informational

- a. Building Sewer Maintenance Policy

PRESENTATIONS/COMMENTS FROM THE PUBLIC

Recommended time for presentations is 10 minutes.

Recommended time for comments from the public is 3 minutes.

BUSINESS FROM THE CITY ADMINISTRATOR

BUSINESS FROM THE MAYOR

BUSINESS FROM THE COUNCIL

FUTURE AGENDA ITEMS – April 21, 2014

- a. Court Ordinances
- b. Well Investigation
- c. Introduction of New Library Director
- d. Northwest Natural Gas Franchise Agreement
- e. Parks System Development Charges (SDC)

ADJOURN

CALENDAR OF EVENTS

APRIL 2014

Tuesday	April 1	Parks & Recreation Board	7:00 p.m.	E.G. Siegmund Meeting Room
Monday	April 7	City Council	7:00 p.m.	Community Center (north end)
Tuesday	April 8	Commissioner's Breakfast	7:30 a.m.	Covered Bridge Café
Friday	April 11	Community Leaders Meeting	7:30 a.m.	Covered Bridge Café
Wednesday	April 16	Library Board	6:00 p.m.	E.G. Siegmund Meeting Room
Monday	April 21	City Council	7:00 p.m.	Community Center (north end)
Monday	April 28	Planning Commission	7:00 p.m.	Community Center (north end)

MAY 2014

Monday	May 5	City Council	7:00 p.m.	Community Center (north end)
Tuesday	May 6	Parks & Recreation Board	7:00 p.m.	E.G. Siegmund Meeting Room
Tuesday	May 6	Budget Committee	7:00 p.m.	Community Center (north end)
Thursday	May 8	Budget Committee	7:00 p.m.	Community Center (north end)
Friday	May 9	Community Leaders Meeting	7:30 a.m.	Covered Bridge Café
Monday	May 12	Budget Committee	7:00 p.m.	Community Center (north end)
Tuesday	May 13	Commissioner's Breakfast	7:30 a.m.	Covered Bridge Café
Monday	May 19	City Council	7:00 p.m.	Community Center (north end)
Wednesday	May 21	Library Board	6:00 p.m.	E.G. Siegmund Meeting Room
Monday	May 26	CITY OFFICES CLOSED IN OBSERVANCE OF MEMORIAL DAY		
Tuesday	May 27	Planning Commission	7:00 p.m.	Community Center (north end)

JUNE 2014

Monday	June 2	City Council	7:00 p.m.	Community Center (north end)
Tuesday	June 3	Parks & Recreation Board	7:00 p.m.	E.G. Siegmund Meeting Room
Tuesday	June 10	Commissioner's Breakfast	7:30 a.m.	Covered Bridge Café
Tuesday	June 10	PEG Commission	12:00 p.m.	City Hall Conference Room
Tuesday	June 10	Public Safety Commission	6:00 p.m.	City Hall Conference Room
Friday	June 13	Community Leaders Meeting	7:30 a.m.	Covered Bridge Café
Monday	June 16	City Council	7:00 p.m.	Community Center (north end)
Wednesday	June 18	Library Board	6:00 p.m.	E.G. Siegmund Meeting Room
Monday	June 30	Planning Commission	7:00 p.m.	Community Center (north end)

**City of Stayton
City Council Meeting Action Minutes
March 17, 2014**

LOCATION: STAYTON COMMUNITY CENTER, 400 W. VIRGINIA STREET, STAYTON

Time Start: 7:00 P.M.

Time End: 7:37 P.M.

COUNCIL MEETING ATTENDANCE LOG

COUNCIL	STAYTON STAFF
Mayor Scott Vigil	Alissa Angelo, Deputy City Recorder
Councilor Emily Gooch	Keith Campbell, City Administrator
Councilor Catherine Hemshorn	Dan Fleishman, Director of Planning & Development
Councilor Jennifer Niegel	David Kinney, Public Works Director
Councilor Henry Porter	Mark Greenhalgh-Johnson, Interim Library Director
Councilor Brian Quigley	Rich Sebens, Police Chief
	Christine Shaffer, Finance Director
	David Rhoten, City Attorney (excused)

AGENDA	ACTIONS
REGULAR MEETING	
Presentations / Comments from the Public	
a. Where to Start Fitness – 2 nd Annual K9 Run	Daniel Hawkins from Where to Start Fitness promoted April 5, 2014 K9 Run.
b. YMCA Quarterly Report	Lisa Eckis and Chad Brookman reviewed the quarterly report included in the Council packet.
Announcements	
a. Additions to the Agenda	None
b. Declaration of Ex Parte Contacts, Conflict of Interest, Bias, etc.	None
Consent Agenda	
a. February 18, 2014 City Council Action Minutes	Motion from Councilor Gooch, seconded by Councilor Quigley, to approve the consent agenda. Motion passed 4:0 (Hemshorn abstained).
Public Hearing	None
Unfinished Business	None
New Business	
a. 10 th Avenue ODOT Speed Study and Control Order	Motion from Councilor Quigley, seconded by Councilor Porter, to concur and accept the Oregon State Speed Control recommendation for a 30 mph speed limit for 10 th Avenue (Fern Ridge Road to E. Santiam Street) and request that ODOT issue a final speed control order. Motion passed 5:0.
Staff / Commission Reports	
Finance Director's Report – Christine Shaffer	Ms. Shaffer briefly spoke about the letter from the Santiam Heritage Foundation.
a. February 2014 Monthly Finance Department Report	
b. Santiam Heritage Foundation – Community Grant Letter	

Police Chief's Report – Rich Sebens a. February 2014 Statistical Report b. 2013 Yearly Stats Report c. Drug K9 Fundraiser	Mr. Sebens reviewed his monthly and annual reports.
Public Works Director's Report – Dave Kinney a. February 2014 Operating Report b. Adaptive Management Group Update	Mayor Vigil asked about repair of potholes on Wilco Road. Mr. Kinney stated Public Works staff is working with Marion County on these repairs.
Planning & Development Director's Report – Dan Fleishman a. February 2014 Activities Report	At the request of Councilor Gooch, Mr. Fleishman gave an update on the recent railroad meeting he attended.
Library Director's Report – Mark Greenhalgh-Johnson a. February 2014 Activities	Mr. Greenhalgh-Johnson provided a brief update of what is coming up at the Library.
Presentations / Comments From the Public	None
Business from the City Administrator	Mr. Campbell spoke about the Future Agenda Items section of the agenda.
Business from the Mayor	Mayor Vigil spoke about the upcoming Clean-Up Day on May 3 rd .
Business from the Council	Councilor Porter spoke further about the railroads being abandoned. Councilor Gooch requested further information (i.e. a presentation, handouts and/or lists of resources) be available at Council meetings when a proclamation is being made.
Future Agenda Items a. Cell Phone Tower Public Hearing b. Sewer Lateral Line Replacement c. Senior Services Meal Site Agreement Renewal d. AFSCME Bargaining Agreement e. Well Investigation f. Moratorium on Marijuana Dispensaries g. Jordan Bridge Update h. Proclamation for Crime Victims Awareness Month	

APPROVED BY THE STAYTON CITY COUNCIL THIS 7TH DAY OF APRIL 2014, BY A ____ VOTE OF THE STAYTON CITY COUNCIL.

Date: _____

By: _____

A. Scott Vigil, Mayor

Date: _____

Attest: _____

Keith D. Campbell, City Administrator

Date: _____

Transcribed by: _____

Alissa Angelo, Deputy City Recorder



MEMORANDUM

TO: Mayor Scott Vigil and Stayton City Councilors

FROM: Alissa Angelo, Deputy City Recorder

DATE: April 7, 2014

SUBJECT: Consent Agenda: Senior Services Meal Site Agreement Renewal

ISSUE: One year extension of the Facility Use Agreement with Northwest Senior & Disability Services (NWSDS) for use of the Stayton Community Center as a senior meal site.

STAFF RECOMMENDATION: Authorize the City Administrator to execute the Facility Use Agreement for 2014-2015.

BACKGROUND INFORMATION: The City of Stayton has enjoyed a good working relationship with NWSDS for many years. The agency uses the kitchen facilities and south side of the Community Center on a weekly basis as a senior meal site serving the greater Stayton area. The 2010 renewal included a 19% increase in the base rent, from \$420.00 to \$500.00 a month plus the annual locker rent of \$250.00. All terms of the previous agreement remain unchanged for the coming year.

FACTS AND FINDINGS: NWSDS has agreed to the terms of the renewal.

FISCAL IMPACT: Annual rent to the General fund of \$6,250.

OPTIONS: Approve, deny or direct modification of the proposed Use Agreement

MOTION(S): N/A included as a Consent Agenda item

USE AGREEMENT STAYTON COMMUNITY CENTER FACILITY

THIS USE AGREEMENT is made by and between the City of Stayton, CITY, and the NorthWest Senior & Disability Services, USER.

WHEREAS, the primary use of the Stayton Community Center is as a public use and meeting area for the City of Stayton and any persons or groups who rent the facility from the CITY; and,

WHEREAS, the NorthWest Senior & Disability Services desires to rent certain portions of the Center, and the CITY agrees to such use and rental as follows:

WITNESSETH

THAT IN CONSIDERATION of the payment of user fees and the USER's covenants herein contained, the CITY will allow USER to use the following described premises:

The Stayton Community Center south meeting room, including kitchen facilities and one (1) storage locker, of the Stayton Community Center located at 400 West Virginia Street, Stayton, Oregon.

1. USER shall pay a user fee for the rental of the above described premises in the amount of five hundred dollars (\$500.00) per month commencing July 1, 2014. All rental fees shall be in advance prior to the first of the month.

A non-refundable, one-time per year storage locker rental fee of \$250.00 for one (1) locker used shall be paid prior to July 1, 2014 for use through June 30, 2015 unless this Agreement is earlier terminated.

2. USER agrees to abide by the general rules and regulations governing the use of the Stayton Community Center, attached herein as Exhibit A. In any case where the general rules and regulations conflict with the terms of this Agreement, the terms of this Agreement shall prevail.
3. Other than with prior written consent of CITY, the premises shall be used as a senior nutrition site for the NorthWest Senior & Disability Services. USER is entitled to use of the designated portion of the Center on weekdays, Monday through Friday, between the hours of 9:00 a.m. to 2:00 p.m.
4. CITY reserves the right to rent or use the foyer and/or north end of the facility to others at any time USER is renting the facility.
5. In addition, on not more than four weekdays during the course of this Agreement, CITY reserves the right to schedule events that may involve the use of the entire premises of the Stayton Community Center. In order to allow USER to make suitable alternative arrangements, CITY shall notify USER of such events no less than 21 calendar days in advance of the date scheduled.
6. USER agrees to carry general liability insurance on the premises with an aggregate limit of at least \$1,000,000.00, meeting the statutory and city code requirements. USER further agrees to designate the City of Stayton as an additional named insured on the policy. USER shall provide CITY with a certificate evidencing said insurance coverage prior to occupancy.

7. USER shall protect, indemnify, defend and hold CITY harmless from any claim, loss, liability, or damage to persons or property and all costs and fees in the defense arising out of or related to any activity on the premises and any person who comes on the premises at the invitation or with the acquiescence of USER. USER's duty to indemnify shall not apply to nor prevent any claim by USER against CITY for injury or damage to USER or USER's property for which CITY may be liable.
8. USER is responsible for telephone service for the NorthWest Senior & Disability Services. CITY grants USER the right to install a telephone line and telephone jack to the kitchen for the operation of the NorthWest Senior & Disability Services nutrition site, at USER's sole expense.
9. USER shall be responsible for:
 - a. Daily supervision and staffing of the nutrition site.
 - b. Daily setup and putting away of tables and chairs for the nutrition program.
 - c. Providing dishwashing soap, dishwasher detergent, cleaners, and other cleaning supplies in order to maintain the kitchen area and clean up tables used for meals.
 - d. Daily cleanup of the kitchen, stoves, refrigerator, counters, tables and chairs.
 - e. Daily sweeping of the dining area and kitchen.
 - f. Ownership and maintenance of the existing commercial dishwasher, agreeing that the equipment will be used by other renters of the facility.
 - g. Daily checking of the bathroom areas including the restocking of toilet paper and paper towels.
 - h. Daily checking of all exit doors to ensure the facility is secure.
 - i. Provision of any special equipment or materials needed by the USER for conduct of the nutrition program.
10. USER shall be responsible for:
 - a. Any repairs to the premises necessitated by the negligence of USER, its agents, employees, and invitees, except as provided in paragraph 6 of this Agreement;
 - b. Any repairs to any of CITY's personal property and for any damage to the personal property which occurred during times USER is renting the facility.
 - c. Except with respect to activities for which CITY is responsible, USER shall pay as due all claims for work done on or for services rendered to or material furnished to the premises and shall keep the premises free from any and all liens of any kind whatsoever relating to USER's use and occupancy of the premises.
11. CITY shall be responsible for:
 - a. All utilities and general maintenance of the facility.
 - b. Providing utility paper supplies for use in the kitchen and bathrooms consisting of a reasonable quantity of toilet paper and paper towels.

12. USER agrees to maintain the premises in a clean and sanitary condition at all times. USER's on-going maintenance of the facility in a clean and sanitary condition is an essence of this Agreement and is the primary reason CITY has allowed USER to pay a reduced fee for the use of the facility. CITY will carefully monitor USER's ability to maintain the premises in a clean and sanitary condition; and, if CITY finds USER has not maintained the premises in a satisfactory manner, such shall be cause for termination of this Agreement.
13. USER shall make no improvements or alterations to the premises of any kind without first obtaining CITY's written consent. All improvements or alterations performed on the premises by either CITY or USER shall be the property of CITY when installed unless agreed otherwise in writing at the time of the installation of the improvement or alteration.
14. USER shall maintain a record of hours of operation of the Stayton nutrition site, attendance, volunteer hours worked, on-site meals served, off-site meals served and special programs offered to seniors in conjunction with the nutrition programs. USER shall present a brief written report on the NorthWest Senior & Disability Services nutrition program, operations and costs to CITY upon request.
15. The term of this Use Agreement shall be for one (1) year commencing July 1, 2014 and terminating at 11:59 p.m. on June 30, 2015. This Agreement will be reviewed by March 30, 2015 and may be extended upon written agreement of both parties.
16. This Agreement may be terminated by either party by giving the other party thirty (30) days' written notice.
17. The remedies of CITY and USER for breach of this Agreement shall be as set forth in ORS 105.105 through ORS 105.155 and shall specifically include the remedies set forth as follows: ON 24 HOURS' NOTICE: CITY may, after 24-hours' written notice specifying the cause, immediately terminate this Agreement if: 1) USER or someone in USER's control seriously threatens immediately to inflict personal injury, or inflicts any substantial personal injury, upon CITY or other users; 2) USER or someone in USER's control intentionally inflicts any substantial damage to the premises; or 3) USER or someone in USER's control commits any act which is outrageous in the extreme.
18. In the event of termination of this Agreement under the terms hereof or otherwise, CITY may take possession in the manner provided in ORS 105.105 through 105.555 or in any other manner, including voluntary surrender by USER.
19. In the event of suit or action to enforce the rights of the CITY or the USER hereunder, the court may allow reasonable attorney fees to the prevailing party of said suit or appeal thereon.
20. It is understood that no modification of this Agreement shall be valid unless that modification appears in writing and has been signed by the USER's and by CITY's representatives who have been authorized to do so at a regularly scheduled meeting of the Stayton City Council.
21. USER shall refrain from storing on or discharging from or onto the premises any hazardous wastes or toxic substances as defined in 42 USC 9601-9657.
22. Waiver by either party of strict performance of any provision of this Agreement shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

23. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, and assigns.
24. This Agreement is the entire, final, and complete agreement of the parties pertaining to the agreement and supersedes and replaces all written and oral agreements heretofore made or existing by and between the parties or their representatives relating the property.
25. The Stayton City Administrator, or his designate, is hereby authorized to administer this Agreement for CITY.
26. The Nutrition Services Manager, or his designate, is hereby authorized to administer this Agreement for USER.

This Agreement has been approved by the City of Stayton at a regularly scheduled meeting of the Stayton City Council on the _____ day of _____ 2014.

CITY OF STAYTON

Date: _____ By: _____
Keith D. Campbell, City Administrator

Approved As To Form

Date: _____ By: _____
David A. Rhoten, City Attorney

NORTHWEST SENIOR & DISABILITY SERVICES

Date: _____ By: _____
Rodney Schroeder, Executive Director (Operations)

APPROVED AS TO FORM

Date: _____ By: _____
Bruce A. Zagar, Legal Counsel



Stayton Police Department Council Staff Report



TO: Mayor Vigil and the Stayton City Council
FROM: Rich Sebens, Chief of Police
SUBJECT: Liquor License-“New Outlet” Application “Off-Premises Sales”
DATE: April 7, 2014

BUSINESS NAME: La Esperanza Bakery
1174 N 1st Ave
Stayton, OR 97383
B: 503-769-6788

PARENT COMPANY NAME: La Esperanza Catering Inc.

OWNERS: Mr. Armando Perez
10241 Leverman Rd. SE
Aumsville, OR 97325

ISSUE:

An application for a “New Outlet” Liquor License Application for “Off-Premises Sales” has been submitted to OLCC. The location for the new outlet is at the La Esperanza Bakery on 1st Ave. in Stayton.

BACKGROUND INFORMATION:

Mr. Armando Perez of Aumsville is the long-time owner of the La Esperanza Catering Inc. which is the parent company of the La Esperanza Bakery on 1st Ave in Stayton. Mr. Perez has never sold alcoholic beverages from any of his businesses. He has since applied to sell “off-premise” alcoholic beverage products. The beverages will be sold from the bakery and stored in a 5 door cooler of the style used in grocery or convenient stores.

The location is zoned for this type of business for the city of Stayton.

FACTS AND FINDINGS:

Stayton PD has conducted an extensive background investigation of the business and applicant. Based on the application and background investigation, I find no legal authority to recommend denial of this application.

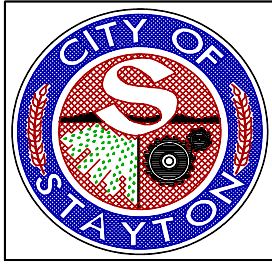
STAFF RECOMMENDATION:

It is the recommendation of the Stayton Police Department to forward this application to the Oregon Liquor Control Commission (OLCC) with a recommendation to approve the license for "Off-Premises Sales".

FISCAL IMPACT: **N/A**

MOTION(S):

No Motions are needed as this is a consent agenda item.



City of Stayton

Planning and Development Department

Mailing address: 362 N. Third Avenue· Stayton, OR 97383

Office location: 311 N. Third Avenue

Phone: (503) 769-2998 · FAX: (503) 767-2134

Email: dfleishman@ci.stayton.or.us

www.staytonoregon.gov

MEMORANDUM

TO: Mayor Scott Vigil and City Council Members
FROM: Dan Fleishman, Director of Planning and Development
DATE: April 7, 2014
SUBJECT: Public Hearing on Proposed Code Amendments regarding Wireless Communication Facilities

ISSUE

The issue before the City Council is a public hearing on proposed legislative text amendments to the Stayton Land Use and Development Code, Title 17, Chapter 17.20 regarding the wireless communication facilities. Following the public hearing, the City Council is requested to consider enactment of Ordinance 968.

BACKGROUND

The city adopted what is now Section 17.20.160 in 2001. The section establishes the procedures and standards for the approval of wireless communication facilities, as well as the zones in which they are permitted.

The Planning Commission has reviewed current standards and procedures and developed the proposed amendments. The proposed amendments would:

- Add the DCMU zone to the zones where collocation of antennas is permitted.
- Allow the collocation of an antenna on an existing structure to result in an increase of the total height of the structure and antenna by up to 20 feet, compared to the existing structure.
- Clarify that if collocation of an antenna on an existing structure extends the total height of the structure by more than 20 feet or extends more than 4 feet horizontally from the structure, such collocation shall be considered a new WCF.
- Remove the provision that new WCF towers in the P zone are permitted only on City-owned property.
- Delete the provision that requires a setback from public gathering places.

The proposed amendments are attached.

RECOMMENDATION

The Planning Commission forwarded the amendments to the City Council with a recommendation of approval. Staff recommends enactment of the Ordinance.

OPTIONS AND SUGGESTED MOTIONS

1. Approve the first consideration of Ordinance 968

Move to approve Ordinance No 968 as presented.

The City Recorder shall call the roll and the names of each Councilor present and their vote shall be recorded in the meeting minutes. If the vote is unanimous, Ordinance No. 968 is enacted and will be presented to the Mayor for his approval.

If the vote is not unanimous, Ordinance No. 968 will be brought before the Council for a second consideration at the April 21, 2014 meeting.

2. Approve the Ordinance with modifications

Move to approve Ordinance No. 968 with the following changes ... and direct staff to incorporate these changes into the Ordinance before the Ordinance is presented to the City Council for a second consideration.

The City Recorder shall call the roll and the names of each Councilor present and their vote shall be recorded in the meeting minutes. If the first consideration is approved, Ordinance No. 968 will be brought before the Council for a second consideration at its December 2, 2013 meeting.

3. Retain the Code unchanged

No motion is necessary.

Additions are underlined; deletions are ~~crossed-out~~.

17.20.160 WIRELESS COMMUNICATION FACILITIES

1. **PURPOSE.** The provisions of this section are intended to ensure that wireless communication facilities (WCF) are located, installed maintained, and removed in a manner that:
 - a. Minimizes the number of transmission towers throughout the City.
 - b. Minimizes the impact to residential areas.
 - c. Encourages the collocation of WCF.
 - d. Encourages the use of existing buildings, utility and light poles, water towers, and similar structures for locating WCF instead of new towers.
 - e. Ensures that all WCF including support towers, antennas, and ancillary facilities are located and designed to minimize the visual impact on the immediate surroundings and throughout the City, and minimize public inconvenience and disruption. Nothing in this section shall apply to amateur radio antennas, or facilities used exclusively for the transmission or reception of television and radio signals.
2. **SITING RESTRICTED.** No WCF may be constructed, modified, installed or otherwise located within the City except as provided in this section. Depending on the type, height, and location of a WCF, it shall be a permitted use not subject to site plan review, or a permitted use subject to site plan review.
 - a. **Outright Permitted Use.** No land use permit is required for a WCF which pursuant to subsections 3 through 5 of this section, is an outright permitted use not subject to site plan review. Such a WCF shall require a building and/or electrical permit, depending on the type of installation.
 - b. **Site Plan Review.** A WCF which, pursuant to subsection 3 through 5 of this section is a permitted use subject to site plan review, and shall be processed in accordance with the site plan review procedures of Section 17.12.220. The approval criteria and standards contained in this section, as well as the criteria of Section 17.12.220, shall govern the approval or denial and any conditions of approval, of the site plan review. In the event of a conflict in criteria or other requirements, this section shall govern.
3. **COLLOCATION OF WCF ANTENNAS ON EXISTING BUILDINGS, UTILITY OR LIGHT POLES, AND WATER TOWERS.**
 - a. **Permitted Use.** Such collocation shall be considered an outright permitted use provided that the antennas and ancillary facilities comply with the standards of this section, and the antennas extend no more than 10 feet above and no more than 2 feet horizontally away from the existing structure, and the collocation site is zoned CR, CG, CCMU, DCMU, DRMU, ID, IC, IL, IA or P. (Amended Ord. 902, May 7, 2008)
 - b. **Site Plan Review.** Such collocation shall be a permitted use subject to a site plan review approval provided that the antennas and ancillary facilities comply with the standards of this section, the antennas extend no more than 20 feet above and no more that 4 feet horizontally away from the existing structure, and the collocation site is zoned HD, CR,

CG, CCMU, DCMU, DRMU, ID, IC, IL, IA or P. As part of collocation on a utility or light pole, the existing pole may be replaced if needed for structural soundness provided the total height of the pole and antenna is not increased by more than 20 feet above the existing height of the pole and the diameter of the pole is not increased by more than 20%. (Amended Ord. 902, May 7, 2008)

4. COLLOCATION OF ADDITIONAL ANTENNAS ON EXISTING WCF TOWER.

- a. Permitted Use. Collocation of additional antenna(s) on an existing WCF support tower shall be considered an outright permitted use if the existing WCF was specifically approved, as part of a prior land use approval (by the City) of a WCF tower, for collocation of additional antennas.
- b. Site Plan Review. Collocation of additional antennas on an existing WCF tower shall be a permitted use subject to site plan review approval if the existing WCF was not specifically approved as part of prior land use approval of a WCF tower, for collocation of additional antennas.

5. NEW WCF WITH SUPPORT TOWER.

- a. Site Plan Review. Construction of new WCF with support tower shall be a permitted use and require site plan review approval in the IL, IC, IA, and P zoning districts. Location of antennas on an existing structure on which the antennas extend 20 feet or further above or more than 4 feet horizontally away from the existing structure shall be considered a new WCF. ~~The placement of a WCF tower in the Public/Semi-Public zone district is specifically restricted to the City of Stayton municipal property.~~

6. APPLICATION REQUIREMENTS.

- a. Collocation of WCF Antennas. In addition to application materials required elsewhere in this Code, an applicant shall submit the following information:
 - 1) A description, site plan, and elevation drawing of the proposed antennas and any ancillary structures location, design, and height. The description must include a response to how the proposed facility meets applicable Code standards and requirements.
 - 2) A statement documenting that placement of the antennas is designed to allow future collocation of additional antennas if technologically possible.
 - 3) Plans showing the connection to utilities/ right-of-way cuts, and ownership of utilities and easements ~~are required~~.
 - 4) Documents demonstrating that necessary easements and leases have been obtained.
 - 5) Plans showing how vehicle access and parking will be provided.
 - 6) If ancillary facilities will be located on the ground, a landscape plan and fencing plan, showing how these facilities will be buffered from adjacent property.
- b. Construction of New WCF Tower. In addition to application materials required elsewhere in this Code, an applicant shall submit the following information:

- 1) A description, site plan, and elevation drawing of the proposed WCF and tower location, design, and height. The description must include a response to how the proposed facility meets applicable Code standards and requirements.
 - 2) The general capacity of the WCF tower in terms of the number and type of antennas it is designed to accommodate.
 - 3) A signed agreement stating that the applicant and any future owners of the WCF will allow collocation with other users, provided all safety, structural, and technological requirements are met.
 - 4) Plans showing the connection to utilities/ right-of-way cuts, and ownership of utilities and easements are required.
 - 5) Documents demonstrating that necessary easements and leases have been obtained.
 - 6) Plans showing how vehicle access and parking will be provided.
 - 7) If ancillary facilities are located on the ground, a landscape and fencing plan shall be required showing how these facilities will be buffered from adjacent property.
 - 8) A visual study showing a graphic or computer simulation of the proposed WCF tower, antennas and ancillary facilities from at least 5 points (representing a wide variety of views) within a 2 mile radius. Such points shall be chosen by the applicant with review and approval by the City Planner.
 - 9) Evidence demonstrating collocation is impractical on existing buildings, utility and light poles, water towers, existing WCF towers, and existing WCF sites for reasons of structural support capabilities, safety, available space, receiving or transmitting interference, or failing to meet service coverage area needs.
 - 10) A statement providing the reasons for the location, design, and height of the proposed WCF tower and antennas.
7. **STANDARDS FOR WCF SITES.** Installation, construction, or modification of all WCF towers, antennas, and ancillary facilities shall comply with the following standards:
- a. **Separation between WCF towers.** No WCF tower may be constructed within 2,000 feet of any pre-existing WCF tower and no closer than 3,500 feet from Wilderness, Pioneer, and Stayton Riverfront Parks. Tower separation shall be measured by following a straight line from the portion of the base of the proposed tower which is closest to the base of any pre-existing tower.
 - b. **Height Limitation.** Within the IL, IA, IC and P zoning districts, the maximum tower height shall be 140 feet, as measured from the ground elevation to the highest point of the tower or antennas.
 - c. **Collocation.** WCF towers shall be designed to accommodate collocation of additional providers antennas:
 - 1) WCF towers at 75 feet or less in height shall be designed to accommodate collocation of at least one additional antenna either outright or through future modification.

- 2) WCF towers over 75 feet in height shall be designed to accommodate collation of at least two additional antennas either outright or through future modification.
- d. Setback. In addition to required setbacks in each zoning district, the following setbacks from adjacent property lines and streets shall be required:
 - 1) WCF towers in the IL, IC, IA, and P zoning districts shall setback from all dwellings ~~and all public gathering places~~ by a distance equal to one foot greater than the total height of the tower and antennae, and by a distance of 300 feet from any residential zone boundary.
 - 2) Should the use of “Concealment Technology” be implemented, the decision makers may allow the proposed towers setback to be reduced by 100 feet.
- e. Buffering. In the IL, IC, IA and P zoning districts, a sight obscuring fence of a minimum height equal to the height of any ground-based ancillary shelters is required around the perimeter of the tower and ancillary structures. Landscaping is required in accordance with Section 17.20.090, and the decision authority may impose a condition on the size of ground-based ancillary facilities to limit the visual impact of such facilities.

When a tower is proposed within 1,320 feet of a residential zoning district or when the visual impact study required in Section 17.20.160.6.b.8 demonstrates that the proposed tower will be highly visible from a large geographic area of residences, the tower shall be designed so as to be camouflaged to the greatest extent possible by the use of concealment technology.
- f. Lighting. No lighting shall be permitted on the tower, antennas, or ancillary structures except as required by the Federal Aviation Administration or the Oregon State Aeronautics Division.
- g. Color. The tower, antennas, ancillary structures and fencing shall be surfaced with nonreflective paint and/or materials. The surfaces must be neutral colors or shades as approved by the City.
- h. Signs. No signs, striping, graphics or other attention-getting devices are permitted on the tower, ancillary structures, or fencing, except for warning and safety signage with a surface of no more than 4 square feet. Such signage shall be attached to the fence or gate (or structure if no ground-based ancillary structures) and is limited to a maximum of 2 signs.
- i. Removal of Facilities. All tower, antenna, and ancillary structures shall be removed by the facility owner or property owner within 12 months of the date the facility ceases to be operational. The facility owner shall inform the property owner, in writing, of this condition with a copy submitted to the Planning Department prior to issuance of a building permit.
- j. Cooperation. A WCF permittee shall cooperate with other wireless communication providers in collocating additional antennae on towers and support structures. A permittee shall exercise good faith in collocating and sharing the permitted site with other providers, provided the shared use does not result in substantial technical

impairment of the permitted use. Good faith shall include sharing technical information sufficient to evaluate the feasibility of collocation.

- k. **Maintenance.** It is required that a monopole tower maintain original appearance with additional collocation cables and wires to be added internally, and the towers exterior paint be maintained.
 - l. **Variance.** Any deviations from the standards set forth in these regulations shall be by Variance. No variance shall be approved without affirmative findings that the request fully satisfies the criteria as outlined in Section 17.12.190.
8. **FEES.** Notwithstanding other fees or deposits for permits required elsewhere in the Code or by resolution, the City Administrator may require that applicants for WCFs (whether for permitted use or site plan review), submit an amount sufficient to recover all of the City's costs in retaining wireless communications consultants to verify statements in the application materials.

ORDINANCE NO. 968

**AN ORDINANCE AMENDING STAYTON MUNICIPAL CODE
(SMC) TITLE 17, REGARDING THE STANDARDS AND
PROCEDURES FOR WIRELESS COMMUNICATION FACILITIES**

WHEREAS, Oregon Revised Statutes, Chapter 197 requires municipalities to adopt and implement a comprehensive land use planning program in accordance with statewide planning goals established by the Legislature and the Oregon Land Conservation and Development Commission;

WHEREAS, the City of Stayton has adopted Title 17 of the Stayton Municipal Code as the Land Use and Development Code;

WHEREAS, the Title 17, Chapter 20, Section 17.20.160 specifies the procedures for approval of and regulates the location and standards for the development of wireless communication facilities;

WHEREAS, a review of Section 17.20.160 has revealed that amendments are appropriate;

WHEREAS, the Stayton Planning Commission has initiated the process for amending the Land Use and Development Code in regards to the procedures and standards for wireless communication facilities, and following a public hearing, has recommended that the Stayton City Council enact the proposed amendments; and

WHEREAS, the Stayton City Council, following a public hearing, does find that the amends proposed by the Planning Commission are appropriate.

NOW, THEREFORE, the City of Stayton ordains:

Section 1. SMC Title 17, Chapter 20 amended. Stayton Municipal Code, Title 17, Chapter 20, Section 17.20.160 is hereby amended as follows:

Part 1: Amend **Section 17.20.160.3.** to allow collocation of antennas in the Downtown Commercial Mixed Use Zone and to clarify when site plan review is required.

5. COLLOCATION OF WCF ANTENNAS ON EXISTING BUILDINGS, UTILITY OR LIGHT POLES, AND WATER TOWERS.

- a. Permitted Use. Such collocation shall be considered an outright permitted use provided that the antennas and ancillary facilities comply with the standards of this section, and the antennas extend no more than 10 feet above and no more than 2 feet horizontally away from the existing structure, and the collocation site is zoned CR, CG, CCMU, **DCMU**, DRMU, ID, IC, IL, IA or P.
- b. Site Plan Review. Such collocation shall be a permitted use subject to a site plan review approval provided that the antennas and ancillary facilities comply with the standards of this section, the antennas extend no more than 20 feet above and no more than 4 feet horizontally away from the existing structure, and the collocation site is zoned HD, CR, CG, CCMU, **DCMU**, DRMU, ID, IC, IL, IA or P. As part of collocation on a utility or light pole, the existing pole may be replaced if needed for structural soundness provided the **total** height of the pole **and antenna** is not increased

by more than 20 feet above the existing height of the pole and the diameter of the pole is not increased by more than 20%.

Part 2: Amend **Section 17.20.160.5.** to clarify when site plan review is required for the expansion of an existing structure and to remove the requirement that new towers in Public/Semi-Public zone be only on property owned by the City.

5. NEW WCF WITH SUPPORT TOWER.

a. Site Plan Review. Construction of new WCF with support tower shall be a permitted use and require site plan review approval in the IL, IC, IA, and P zoning districts.

Location of antennas on an existing structure on which the antennas extend 20 feet or further above or more than 4 feet horizontally away from the existing structure shall be considered a new WCF.~~The placement of a WCF tower in the Public/Semi-Public zone district is specifically restricted to the City of Stayton municipal property.~~

Part 3: Amend **Section 17.20.160.6.a.3)** to remove superfluous wording.

3) Plans showing the connection to utilities/ right-of-way cuts, and ownership of utilities and easements ~~are required.~~

Part 4: Amend **Section 17.20.160.7.d.1)** to repeal the setback requirement from a public gathering place.

1) WCF towers in the IL, IC, IA, and P zoning districts shall setback from all dwellings ~~and all public gathering places~~ by a distance equal to one foot greater than the total height of the tower and antennae, and by a distance of 300 feet from any residential zone boundary.

Section 2. Effective Date. This ordinance shall become effective 30 days after adoption by the Stayton City Council and the Mayor's signing.

Section 3. A copy of this Ordinance shall be furnished to the State of Oregon, Department of Land Conservation and Development forthwith.

ADOPTED BY THE STAYTON CITY COUNCIL this 7th day of April, 2014.

CITY OF STAYTON

Signed: _____, 2014

BY: _____
A. Scott Vigil, Mayor

Signed: _____, 2014

ATTEST: _____
Keith D. Campbell,
City Administrator

APPROVED AS TO FORM:

David A. Rhoten, City Attorney



Stayton Police Department Council Staff Report



TO: Mayor Vigil and the Stayton City Council
FROM: Rich Sebens, Chief of Police
SUBJECT: Ordinance 967 to Amend SMC 5.12 to Declare a Temporary
Moratorium on Medical Marijuana Facilities
DATE: April 7, 2014

ISSUE:

Whether or not to adopt an ordinance to amend the Stayton Municipal Code (SMC) Title 5.12 Medical Marijuana Facilities which enacts a temporary moratorium on medical marijuana facilities as allowed by Oregon State Law.

BACKGROUND INFORMATION:

The Oregon Legislature enacted House Bill 3460 (2013), which requires the Oregon Health Authority to develop and implement a process to register medical marijuana facilities. This bill allows those with medical marijuana cards to buy and sell marijuana without risk of prosecution at an established facility. With HB3460 in its original form it was undetermined as to whether a local governing body could prohibit facilities from operating in their jurisdiction. During the 2014 legislative session, HB1531 was passed. HB1531 amended HB3460 to allow local entities to impose a temporary moratorium on medical marijuana facilities to locate within their boundaries until May 1, 2015. .

FISCAL/RESOURCE IMPACT:

HB1531 and SMC 5.12 will not have a fiscal impact on the City. If medical marijuana facilities are allowed within the jurisdiction of the Stayton Police Department it will have a financial impact on the City. It will require more staff time to monitor and enforce the laws surrounding medical marijuana facilities.

STAFF RECOMMENDATION:

The current language of HB 3460 makes it difficult for the City to interpret, define, and enforce the rules and regulations for a Medical Marijuana facility. The laws regarding marijuana are still very fluid and additional changes are expected. A moratorium will allow us to learn from other cities that don't issue a moratorium, saving our valuable time, energy and resources. Staff recommends the approval of Ordinance 967 to amend SMC 5.12 to declare a temporary moratorium on Medical Marijuana Facilities.

OPTIONS:

1. Move to enact Ordinance No. 967 relating to Stayton Municipal Code Title 5.12 as presented.
2. Move to enact Ordinance No. 967 relating to Stayton Municipal Code Title 5.12 as amended.
3. Modify the proposed Ordinance to be brought back for consideration
4. Reject the proposed Ordinance 967.

Enrolled
Senate Bill 1531

Sponsored by Senators HANSELL, MONROE, STARR; Senators BAERTSCHIGER JR, BOQUIST, CLOSE, FERRIOLI, GIROD, JOHNSON, KNOPP, KRUSE, MONNES ANDERSON, OLSEN, THOMSEN, WHITSETT, WINTERS, Representatives ESQUIVEL, JENSON, THATCHER, THOMPSON, WHISNANT, WITT (at the request of Association of Oregon Counties and League of Oregon Cities) (Pre-session filed.)

CHAPTER

AN ACT

Relating to marijuana facilities; creating new provisions; amending ORS 475.314; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2014 Act is added to and made a part of ORS 475.300 to 475.346.

SECTION 2. Notwithstanding ORS 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of medical marijuana facilities registered, or applying for registration, under ORS 475.314 that are located in the area subject to the jurisdiction of the city or county. For purposes of this section, “reasonable regulations” includes reasonable limitations on the hours during which a medical marijuana facility may be operated, reasonable limitations on where a medical marijuana facility may be located within a zone described in ORS 475.314 (3)(a) and reasonable conditions on the manner in which a medical marijuana facility may dispense medical marijuana.

SECTION 3. (1) Notwithstanding ORS 475.314 and section 2 of this 2014 Act, the governing body of a city or county may adopt an ordinance enacting a moratorium on the operation of registered medical marijuana facilities until May 1, 2015, in the area subject to the jurisdiction of the city or county if the moratorium is enacted no later than May 1, 2014.

(2) Notwithstanding ORS 475.309 (1)(b), a person who is responsible for or employed by a registered medical marijuana facility located in an area subject to the jurisdiction of a city or county that enacts a moratorium under this section is not excepted from the criminal laws of this state for possession or delivery of marijuana, aiding and abetting another in the possession or delivery of marijuana or any other criminal offense in which possession or delivery of marijuana is an element.

(3) The governing body of a city or county that enacts a moratorium under this section must notify the Oregon Health Authority, in a manner prescribed by the authority, of the moratorium.

(4) A registered medical marijuana facility that is located in an area subject to the jurisdiction of a city or county that enacts a moratorium under this section may choose to surrender the medical marijuana facility’s registration. To surrender registration under this subsection, the medical marijuana facility must notify the authority, in a manner prescribed

by the authority, of the surrender. If a medical marijuana facility surrenders registration under this subsection, the authority may refund any fee imposed by the authority pursuant to ORS 475.314 (12).

SECTION 4. Section 3 of this 2014 Act is repealed on January 2, 2016.

SECTION 5. ORS 475.314 is amended to read:

475.314. (1) The Oregon Health Authority shall establish by rule a medical marijuana facility registration system to authorize the transfer of usable marijuana and immature marijuana plants from:

(a) A registry identification cardholder, the designated primary caregiver of a registry identification cardholder, or a person responsible for a marijuana grow site to the medical marijuana facility; or

(b) A medical marijuana facility to a registry identification cardholder or the designated primary caregiver of a registry identification cardholder.

(2) The registration system established under subsection (1) of this section must require a medical marijuana facility to submit an application to the authority that includes:

(a) The name of the person responsible for the medical marijuana facility;

(b) The address of the medical marijuana facility;

(c) Proof that the person responsible for the medical marijuana facility is a resident of Oregon;

(d) Documentation, as required by the authority by rule, that demonstrates the medical marijuana facility meets the qualifications for a medical marijuana facility as described in subsection (3) of this section; and

(e) Any other information that the authority considers necessary.

(3) To qualify for registration under this section, a medical marijuana facility:

(a) Must be located in an area that is zoned for commercial, industrial or mixed use or as agricultural land; *[and may not be located at the same address as a marijuana grow site;]*

(b) May not be located at the same address as a marijuana grow site;

[(b)] (c) Must be registered as a business or have filed a pending application to register as a business with the Office of the Secretary of State;

[(c)] (d) Must not be located within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors;

[(d)] (e) Must not be located within 1,000 feet of another medical marijuana facility; and

[(e)] (f) Must comport with rules adopted by the authority related to:

(A) Installing a minimum security system, including a video surveillance system, alarm system and safe; and

(B) Testing for pesticides, mold and mildew and the processes by which usable marijuana and immature marijuana plants that test positive for pesticides, mold or mildew must be returned to the registry identification cardholder, the cardholder's designated primary caregiver or the cardholder's registered grower.

(4)(a) The authority shall conduct a criminal records check under ORS 181.534 of a person whose name is submitted as the person responsible for a medical marijuana facility under subsection (2) of this section.

(b) A person convicted for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be the person responsible for a medical marijuana facility for five years from the date the person is convicted.

(c) A person convicted more than once for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be the person responsible for a medical marijuana facility.

(5) If a person submits the application required under subsection (2) of this section, the medical marijuana facility identified in the application meets the qualifications for a medical marijuana facility described in subsection (3) of this section and the person responsible for the medical marijuana facility passes the criminal records check required under subsection (4) of this section, the authority shall register the medical marijuana facility and issue the person responsible for the medical marijuana facility proof of registration. The person responsible for the medical marijuana facility

shall display the proof of registration on the premises of the medical marijuana facility at all times when usable marijuana or immature marijuana plants are being transferred as described in subsection (1) of this section.

(6)(a) A registered medical marijuana facility may receive usable marijuana or immature marijuana plants only from a registry identification cardholder, designated primary caregiver or person responsible for a marijuana grow site if the registered medical marijuana facility obtains authorization, on a form prescribed by the authority by rule and signed by a registry identification cardholder, to receive the usable marijuana or immature marijuana plants.

(b) A registered medical marijuana facility shall maintain:

(A) A copy of each authorization form described in paragraph (a) of this subsection; and

(B) Documentation of each transfer of usable marijuana or immature marijuana plants.

(7) A medical marijuana facility registered under this section may possess usable marijuana and immature marijuana plants in excess of the limits imposed on registry identification cardholders and designated primary caregivers under ORS 475.320.

(8)(a) A registered medical marijuana facility may not transfer any tetrahydrocannabinol-infused product that is meant to be swallowed or inhaled, unless the product is packaged in child-resistant safety packaging that meets standards established by the authority by rule.

(b) A registered medical marijuana facility may not transfer any tetrahydrocannabinol-infused product that is manufactured or packaged in a manner that is attractive to minors, as determined by the authority by rule.

[(8)] (9) The authority may inspect:

(a) The premises of an applicant for a medical marijuana facility or a registered medical marijuana facility to ensure compliance with the qualifications for a medical marijuana facility described in subsection (3) of this section; and

(b) The records of a registered medical marijuana facility to ensure compliance with subsection (6)(b) of this section.

[(9)(a)] (10)(a) A registry identification cardholder or the designated primary caregiver of a registry identification cardholder may reimburse a medical marijuana facility registered under this section for the normal and customary costs of doing business, including costs related to transferring, handling, securing, insuring, testing, packaging and processing usable marijuana and immature marijuana plants and the cost of supplies, utilities and rent or mortgage.

(b) A medical marijuana facility may reimburse a person responsible for a marijuana grow site under this section for the normal and customary costs of doing business, including costs related to transferring, handling, securing, insuring, testing, packaging and processing usable marijuana and immature marijuana plants and the cost of supplies, utilities and rent or mortgage.

[(10)] (11) The authority may revoke the registration of a medical marijuana facility registered under this section for failure to comply with ORS 475.300 to 475.346, [or] rules adopted under ORS 475.300 to 475.346 **or ordinances adopted pursuant to section 2 of this 2014 Act**. The authority may release to the public a final order revoking a medical marijuana facility registration.

[(11)] (12) The authority shall adopt rules to implement this section, including rules that:

(a) Require a medical marijuana facility registered under this section to annually renew that registration; and

(b) Establish fees for registering and renewing registration for a medical marijuana facility under this section.

SECTION 6. This 2014 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect March 1, 2014.

Passed by Senate February 18, 2014

Repassed by Senate March 7, 2014

.....
Robert Taylor, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House March 5, 2014

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2014

Approved:

.....M,....., 2014

.....
John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2014

.....
Kate Brown, Secretary of State

ORDINANCE NO. 967

AN ORDINANCE ESTABLISHING STAYTON MUNICIPAL CODE (SMC) TITLE 5, CHAPTER 12, WHICH INCLUDES DECLARING A MORATORIUM ON MEDICAL MARIJUANA FACILITIES, AND DECLARING AN EMERGENCY

WHEREAS, the Oregon Legislature enacted House Bill 3460 (2013), which requires the Oregon Health Authority to develop and implement a process to register medical marijuana facilities;

WHEREAS, House Bill 3460 (2013) directed that persons who operate or are employed by a registered medical marijuana facility would enjoy immunity from state prosecution;

WHEREAS, the Oregon Legislature enacted Senate Bill 1531 (2014) which affirmatively afforded Oregon cities the ability to impose a moratorium on medical marijuana dispensaries to locate within their boundaries until May 1, 2015;

WHEREAS, Senate Bill 1531 (2014) removes immunity from state prosecution for person who is responsible for or employed by a registered medical marijuana facility located in an area subject to the jurisdiction of a city or county that enacts a moratorium prohibiting the operation of a medical marijuana facility;

WHEREAS, the issue of whether the City of Stayton determines a certain type of business should operate within its jurisdictional limits is a local government decision, the enforcement of which is subject to the general and police powers of the City of Stayton;

WHEREAS, the Stayton City Council finds that legal uncertainty surrounds the ability/authority of the State to allow for the location of medical marijuana dispensaries in Oregon cities where to do so arguably violates federal law; SMC 5.08 was previously amended to include licensing of medical marijuana dispensaries subject to federal law and the present SMC 5.12.010 shall be revoked;

WHEREAS, the Stayton City Council desires to establish a Chapter in the SMC that specifically recognizes medical marijuana dispensaries which may be regulated at such time as the law in the area is clarified;

WHEREAS, the Stayton City Council deems that it is in the best interests of the health, safety and welfare of the citizens of Stayton to include in the SMC a moratorium prohibiting the operation of a medical marijuana facilities within the jurisdictional boundaries of the City Stayton so as to provide time to examine the range of options surrounding the regulation or prohibition of medical marijuana facilities within Stayton;

WHEREAS, it is the City's Council's desire to add to Stayton Municipal Code Title 5 by establishing Chapter 5.12 Medical Marijuana Dispensaries/Facilities; and,

WHEREAS, it is appropriate that an emergency be declared as to the enactment of this Ordinance as it is necessary for the immediate preservation of the public peace, health and safety, and due to the deadlines placed into effect by state law. This Ordinance takes effect on its

passage so that it is in full force and effect immediately from and after its enactment by the Stayton City Council.

NOW THEREFORE, the City of Stayton ordains:

SECTION 1: Revoking the present SMC 5.12.010. Stayton Municipal Code Title 5, Chapter 5.12 Medical Marijuana Dispensaries/Facilities is hereby established to read:

CHAPTER 5.12

MEDICAL MARIJUANA DISPENSARIES/FACILITIES

SECTIONS

5.12.010	Purpose
5.12.020	Definitions
5.12.030	Moratorium Declared
5.12.030A	Declaration
5.12.030B	Effective Date
5.12.030C	Remedies Not Exclusive
5.12.040	Enforcement
5.12.050	Severability

5.12.10 PURPOSE

The purpose of this Chapter is to put into place reasonable regulations to govern Medical Marijuana Dispensaries or Facilities as allowed by state law. State law also allows for local government to place a temporary moratorium on medical marijuana dispensaries/facilities.

5.12.20 DEFINITIONS

For the purposes of this Chapter, the following words and phrases mean:

MEDICAL MARIJUANA FACILITY: Any facility that dispenses marijuana pursuant to ORS 475.314 or other related provision of Oregon law.

5.12.030 MORATORIUM DECLARED

- A. **DECLARATION:** The City of Stayton hereby declares a moratorium prohibiting the operation of any medical marijuana facility or dispensary in any area subject to the jurisdiction of the City of Stayton as the areas now exist or may be expanded.
- B. **EFFECTIVE DATE:** The moratorium imposed hereby is effective from and after the enactment of this Chapter and continues until May 1, 2015, unless otherwise lawfully rescinded or extended.
- C. **REMEDIES NOT EXCLUSIVE:** The remedies available under Senate Bill 1531 (2014) for a violation of the moratorium imposed by SMC Chapter 5.12 are not

exclusive of any other remedies available under any applicable federal, state or local law. It is within the discretion of the City of Stayton to seek cumulative remedies for a violation of the moratorium imposed by this Chapter. Violations of this Chapter may be enforced according to SMC Chapter 5.08.

5.12.40 ENFORCEMENT

- A. The Chief of Police is charged with the enforcement of the provisions of this Chapter.
- B. The Chief of Police is charged with enforcement of the moratorium.

5.12.50 SEVERABILITY

If any provision(s) of this Chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Chapter that can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.

SECTION 2: OREGON HEALTH AUTHORITY NOTICE. A copy of this Ordinance shall be forwarded to the Oregon Health Authority by regular mail and by any other such means as required by rule of the Oregon Health Authority.

SECTION 3: Upon enactment by the Stayton City Council and the Mayor’s signature, the Ordinance shall become effective immediately.

ADOPTED BY THE STAYTON CITY COUNCIL this 7th day of April, 2014.

CITY OF STAYTON

Signed: _____, 2014

BY: _____
A. Scott Vigil, Mayor

Signed: _____, 2014

ATTEST: _____
Keith D. Campbell, City Administrator

APPROVED AS TO FORM:

David A. Rhoten, City Attorney



CITY OF STAYTON
M E M O R A N D U M

TO: Mayor Scott Vigil and the Stayton City Council

THRU: Keith Campbell, City Administrator

FROM: David W. Kinney, Public Works Director

DATE: April 7, 2014

SUBJECT: Building Sewer Maintenance Policy

ISSUE

What is the current city policy regarding maintenance of building sewers (house to the city sewer main)?

ENCLOSURE

1. City/County Insurance Services “Real Time Risk” Information Sheet entitled *Review Your Sewer Inspection Policies*, March 2014.

BACKGROUND INFORMATION

City Policy Regarding Maintenance of Building Sewers

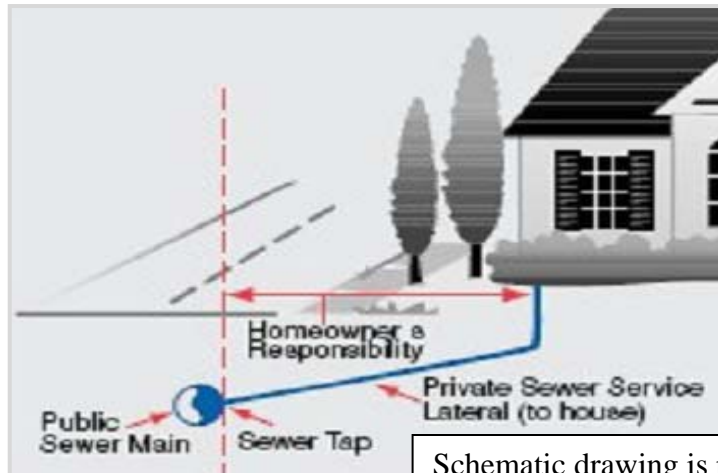
A. Current City Policy Regarding Building Sewer Maintenance

Under SMC Chapter 13, Section 13.24.710 “Definitions” and Section 13.24.850 “Repairs to System”, the property owner is responsible to repair a damaged, blocked or broken building sewer between a structure and the city’s sewer main. This includes the building sewer on the private property and the section of the building sewer in the right-of-way up to the connection with the city 8” or larger sewer main.

13.24.710 DEFINITIONS

For the purpose of this chapter, the following words and phrases shall be defined as follows, unless the context specifically indicates otherwise:

BUILDING SEWER: Means the extension from the building drain to the public sewer or other place of disposal.



Schematic drawing is provided to illustrate the building sewer definition.

13.24.850 REPAIRS TO SYSTEM

1. It shall be the responsibility of the property owner to repair or replace any building sewer showing any defect including, but not limited to, leaks, breaks, settlement, or stoppages.
2. Work on any repairs or replacements under this article shall begin within five (5) days after notification by the city and shall be accomplished without unnecessary delay.
3. If the work is not begun within the specified time or the work does not meet the City specifications in the opinion of the city engineer, the city shall do the work or cause the work to be done. The persons warranting the original construction shall be liable to the city for any costs of such repair.
4. If an emergency is caused by any defect in the sewer or if such defect endangers persons, property, or city utilities or equipment, the city may undertake the necessary repairs without notification to any person, and the costs thereof shall be paid by the person warranting the original construction. The city shall be the sole judge of whether an emergency exists. (prior code section 5.433)

B. Public Works Responses to Sewer Lateral Problems/Blockages:

Property owners occasionally call to report that sewage is draining slowly or is backing up inside their house. These calls are referred to Brenda Kuiken, Sewer System Supervisor, and/or Josh Summerlin, collections system maintenance worker.

The City responds as follows:

1. City takes complaint and PW office staff enters it into IWORQ customer service system.
2. Wastewater staff responds to the site as soon as possible, typically within 30 minutes to 1 hour.
3. Wastewater staff checks main sewer line serving the affected property to check if the sewer mains are full, surging or blocked.
4. If the main line is a problem, the City staff takes steps to remedy the problem.
5. If the main line is flowing normally, then the City staff contacts the property owner to advise them that the blockage or problem appears to be in the sewer lateral (building sewer) from the house to the city's main line. The property owner is advised that the cost of inspection,

cleaning and repairs are the property owners responsibility and we advise them to contact a private company to either clean, TV inspect and/or repair the sewer line.

6. After the inspection is performed or repair is completed:
 - a. If the blockage is in the sewer lateral, it is the property owner's responsibility.
 - b. If the blockage was caused by a City action then the City will reimburse the property owner for costs incurred for clearing the blockage.
 - c. If the blockage was caused by a utility contractor (SCTC, NWN, etc.), the City will notify the utility company to make the repairs or the City will submit the bill to the private utility for the cost of repairs. [Note: This has happened several times in the past 5 years when SCTC's boring contractor punched holes and pushed a fiber optic cable through the sewer lateral].

C. Problems that Arise with Building Sewers:

Typical problems that can block or back up a building sewer include:

1. Tree roots
2. Broken / sheared / crushed pipe
3. Utility contractor cuts or breaks the pipe or pushes a cable/gas line through it.
4. Poorly installed connection point with the City sewer main fails.
5. Backflow from a city sewer line cleaning operation

Costs to Investigate and Repair

1. TV inspection \$150 to \$250 per lateral.
2. Cleaning \$300 to \$500 per lateral (cost may be higher if after-hours)
3. Repairs Varies widely by type of break, location and type of repair
4. Street Restoration (main line is on same side of street) \$ 500 to \$1,500
5. Street Restoration (main line is on opposite side of street) \$1,500 to \$3,000

D. Similar Policies of Other Cities in the Mid-Willamette Valley

In 2012, Peter Olsen, Keller Associates, researched policies in the sewer ordinances of other mid-Willamette Valley cities. He prepared a table that described the various methods being used by some of the mid-sized and larger cities. The general findings were:

1. Property owner is responsible for building sewer from house to City sewer. Salem, Silverton
Stayton
2. Property owner is responsible for building sewer from house to ROW line. McMinnville
City is responsible for building sewer from ROW line to City sewer. St. Helens
Wilsonville
3. City will replace building sewer from house to City sewer. (one time only) Albany
4. City will reimburse owner for a building sewer replaced in the ROW. Lebanon
Only if the entire building sewer from house to City sewer is replaced.

E. City/County Insurance Services (CCIS) Recommendations:

Claims for damage caused by sewer backups occur frequently in Oregon cities. Enclosed is a risk management memo from CCIS that discusses the issue.

CCIS recommends cities take several steps to reduce liability and reduce the potential for future claims:

1. Review the sewer ordinance and sewer inspection policies on a regular basis.
2. Adopt ordinance language so that the property owner is responsible for the inspection and routine maintenance of the entire building sewer lateral from the house to the city sewer main.
3. Require permits before a contractor does work in the City's right-of-way.

The City of Stayton sewer ordinance and the City's right-of-way permit requirements are consistent with CCIS recommendations. We will send our current ordinance to CCIS and ask them to review it and suggest revisions.

F. Staff Summary

The City gets occasional calls to respond to sewer line backups. Since November 2008, the public works department has responded to 19 sewer line backup calls (IWORQ report), an average of less than 5 per year.

The reasons for the sewer line backup or blockage have varied. Financial responsibility has depended on the cause of the problem.

- Property owners have paid for repairs when the building sewer was broken or it was obstructed by roots.
- Private utility contractors have accepted responsibility for all costs when their subcontractor's bored through a building sewer.
- The City has paid for repairs and cleanup when a city project or sewer line cleaning caused a problem.

The public works staff recommends no change in the current policy.

DISCUSSION AND QUESTIONS