

LEADVILLE CITY COUNCIL
REGULAR MEETING MINUTES
Tuesday, January 06, 2015

CITY COUNCIL PRESENT:

Greg Labbe, Councilmember
Jake Mohrmann, Councilmember
Mike Canty, Councilmember
Jaime Stuever, Mayor
Luke Finken, Mayor Pro Tem
Max Duarte, Councilmember
Gwen Shepherd, Councilmember

STAFF, DEPT HEADS, & COMMISSIONERS PRESENT:

Sarah Dallas, Administrative Services Manager, HR and Planning Official
Roy McGinnis, Finance Director
Mike Leake, Police Chief
Joe Swyers, City Clerk

City Council met in a regular public session in the Council Chambers of City Hall.

Mayor Stuever called the meeting to order at 6:30 PM with the Pledge of Allegiance. Roll Call was taken.

(6:31 PM) Public comments: None.

(6:31 PM) Agenda Revisions: None.

(6:31 PM) Approval of minutes of the regular meeting of December 16, 2014.

Councilmember Labbe moved to approve the minutes the meeting of December 16, 2014. Councilmember Stuever seconded. Roll call: with the exception of Councilmember Shepherd who abstained, unanimous yes.

Mayor Stuever moved to approve the minutes of the special meeting of December 22, 2014. Councilmember Finken seconded. Roll call: with the exception of Councilmembers Shepherd, Mohrmann and Labbe who abstained, unanimous to approve the minutes.

(6:33 PM) Mayor Stuever adjourned the city council meeting and convened the Local Marijuana Licensing Authority. Mayor Stuever explained the public hearing procedure. Councilmember Finken moved to open the public hearing for the retail recreational marijuana license store at 145 Front Street by Holmes and Tramm dba RFSCLVG LLC dba Roots Rx. Councilmember Labbe seconded. Roll Call: unanimous yes.

Applicant Robert Holmes described his proposal, referred to their previous presentation, stated that they believe it falls within all the state and city ordinances and said they seek approval. He asked where they stand in the licensing process for retail and cultivation, how many licenses are available, and whether they are in 1st, 2nd or 3rd position. Mayor Stuever responded that that answer is premature and that is why, for the store, this hearing is being held. City Clerk Swyers reported that he had no reason to answer any differently than what was detailed in the minutes from two months ago. Councilmember Finken recommended to stick to the public hearing for 145 Front Street and hopefully we can clear it up in the next couple days.

(6:38 PM) Rohn Robbins, applicant's attorney, reported that city attorney Linda Michow told him there can be either a store or a cultivation at 145 Front but not both, and that there are three cultivation licenses available of which one was approved for Roots Rx but not issued. City Clerk Swyers stated that the summary from Linda Michow was accurate and that, as to priorities, we are still dealing with that. Mr. Robbins reported that Linda Michow had told him and there is no priority issue because there are two applicants for three licenses. Mr. Robbins explained that, because of the ordinance provision prohibiting facilities within 250 feet of each other, his client has been put in a position of either accept the cultivation license at 145 Front or give it up and get the retail license at that location, not knowing what is going to happen with their application for 501 Hwy 24. He reported that he was told that that application is complete in all respects except for one issue which was cured today.

Planning Official Dallas reported that there are three cultivation licenses available, one was approved for 145 Front Street for Robert Holmes but not issued. And that is the only status for cultivation other than conditional use permit portions for four locations: one at 145 Front Street, one at 615 Hwy 24 which is no longer viable, one for 210 East 10th Street, and one at 501 Hwy 24. There are two completed applications for three available licenses.

Mr. Robbins referred to the 250 foot limitation and questioned why both applications were accepted. City Clerk Swyers referred to that provision in the municipal code and stated that at the time the applications for the retail store and the cultivation facility at 145 Front Street were submitted there were no existing licenses at that location and that at this time there are no issued licenses for that location.

Mr. Robbins asked if the license for 501 Highway 24 could be considered and granted tonight. City Clerk Swyers stated that is a question later on the agenda as to whether that should go to public hearing.

(6:46 PM) Alex Hearing, of Two Dogs Products, reported that they are looking for a new property, that they were approved by and have licenses from both the state and city [for 615 South Highway 24]. Planning Official Dallas explained that there are complications because they don't have a viable location at this time. Mr. Hearing said they want Holmes and Tramm to get licenses because they could help Two Dogs get facilities for marijuana cultivation.

(6:49 PM) Citizen [name undecipherable from either audio or sign in sheet] spoke against having too many in town, that the two family owned businesses: Earl's and Nature's Spirit, are enough. He expressed concerns about allowing an outside company. There is lot of business now but think about how much in the future after next elections.

(6:50 PM) Rebuttal: applicant did not have any rebuttal.

Councilmember Labbe moved to close the public hearing of the marijuana licensing board. Councilmember Finken seconded. Roll Call: unanimous yes.

(6:51 PM) Discussion included the following points:

Councilmember Labbe questioned whether the authority can approve a store license after having previously approved a cultivation license at the same location within 250 feet of the proposed marijuana retail store. If they would forgo the licensing of the cultivation facility at that site, then we could go forward with the store.

Councilmember Shepherd agreed with Councilmember Labbe and opined that applying for both the store and cultivation was smart of them because if they didn't get the cultivation then they were first in line for the store.

City Clerk Swyers explained that there is no license which has been issued for that location. Issuance is pending building department and fire code inspections, and a number of other requirements.

Planning Official Dallas explained the steps: conditional use permit (CUP) first, then marijuana license application and going before the marijuana licensing authority for determining moral character and other criteria set forth, then to get the necessary building and fire inspections to get a certificate of occupancy, then issuance of license.

Planning Official Dallas explained that once an applicant is approved, no one else can take that spot, we have no timeline specified to get the inspections and approvals.

Councilmember Labbe asked the applicants about their confidence level in approval of the 501 Hwy 24 site.

(6:58 PM) Councilmember Canty moved to re-open the public hearing. Mayor Stuever seconded.

Roll Call: unanimous yes.

Rohn Robbins explained that the one deficiency in the application for the 501 S. Highway 24 site was cured today. He offered that one alternative is that they could move the retail license to that 10 acre site and leave the cultivation license at 145 Front. Another option is to re-plan the 145 Front site and get approval for retail at 145 Front with the condition that they can fit both in compliance with the ordinance. A third option is for the authority to approve both applications with the condition that the applicants must make an election as to which they want.

Chris Green, planner for Roots Rx, explained some details to fit both retail and cultivation, and said they would have to further study the options. They have 28 feet in one corner for a store. Good planning takes more time and Leadville deserves good planning. Without the 250 foot rule they can physically put a store and a cultivation facility with adequate parking and security as explained in the conditional use presentation and meet the intent expressed by city council for separation—not having plants in a store. Granting the license puts the burden on the applicant to fix this for a win-win for all parties. They need to have the confidence that there are licenses available in order for them to help work collectively to get to an end game that embellishes Leadville.

Rob Holmes, co-owner of Roots Rx, explained that on 10 acres they could put a grow, a kitchen, a store, and maybe convince the city to allow other growers there under a master license, they could bring in outside compliance.

Planning Official Dallas explained that moving the retail store to 501 S. Highway 24 would require a separate conditional use permit application and public hearing for a retail marijuana store at that site.

Councilmember Labbe questioned the provisions in the code and how they apply to having both a retail store and retail cultivation within or on the same site.

Rob Holmes stated that they would be applying for a conditional use permit for a retail store at 501 S. Highway 24 – depending on approval of the cultivation license for that location. He explained that the price of the property at 145 Front is too high for a retail store alone. They planned to have both cultivation and a farm stand at 145 Front. He stressed that 501 S. Highway 24 allows more options. He understands the competition and not having a row of stores, but those concerns do not apply to cultivation. Leadville has something wonderful to market for agricultural: high altitude, low bugs, high lumens, He further questioned how the code was written compared to the intent.

Rob Holmes explained that they came here September 10th, attended numerous council meetings, the rules have changed, hearing for 501 was to be on November 18, then December 2nd, then because of publication error it was moved to December 22nd, then another applicant came in that put them in the same pool, then they closed on the property and were in fourth position but now they are back in second position. They've committed a lot of money and time and not given up. They are willing to work with the town. He repeatedly expressed appreciation for having a dialogue with council and asked for the option to work on creative options. If options don't work, they'll give the license back. He stressed the consequences upon their other applications and on their business of having been denied on their record. He would rather withdraw than be denied.

Rohn Robbins explained how other communities preferred to concentrate marijuana facilities to enable law enforcement to better keep an eye on all of them and to prevent having facilities scattered in residential areas. He asked council if they would approve conditioned on the applicant making an election of store or cultivation before the next council meeting and application public hearing.

Chris Green expressed appreciation for being able to have a professional dialogue, and explained that some tweaks to the municipal code could fix some other things for other marijuana businesses and applicants. He stressed that crafting an ordinance must be done so that it is not specific to one applicant but also for others.

Rob Holmes asked council to the grant the license conditioned upon council reviewing the 250 foot rule and that they, the applicant, could wait for that process.

Mayor Stuever stressed that ordinance changes have crossed his mind. He doesn't want to postpone because we have another retail hearing coming up in two weeks.

Peter Tramm, co-owner of Roots Rx, questioned the reasons for the 250 foot number and whether council could waive that distance requirement because they could separate the facilities with fencing.

Discussion among staff, applicants and council included a variance from the 250 foot limit. City Clerk Swyers advised that changes to the ordinance must be done with intent to be big and broad and not show favoritism.

Rohn Robbins and Chris Green asked for a straw vote before the official formal vote so that the applicant could decide whether to withdraw because a vote for denial would be very damaging to their business.

(7:37 pm) Mayor Stuever called a ten minute recess.

(7:47 pm) Mayor Stuever re-convened the council meeting and public hearing.

City Clerk Swyers was asked about closing the public hearing before a straw vote, and responded that council has previously not closed a public hearing until just before the final vote in order to receive public input during deliberations and that, in this case, that could be after the straw vote and before the final official vote.

Planning Official Dallas stressed that the vote must only be on the provided criteria for approval or denial.

Mayor Stuever polled the councilmembers. Verbal intents expressed were, with the exception of Councilmember Mohrmann who recused, unanimous to approve based on the criteria.

(7:54 pm) Councilmember Labbe moved to close the public hearing of the marijuana licensing board regarding 145 Front Street. Councilmember Canty seconded. Roll Call: unanimous yes.

Mayor Stuever moved to approve the application of RFSCLV, LLC for a retail marijuana store located at 145 Front Street based upon the information presented in the staff report, the evidence and testimony presented at the November 25th, 2014 and January 6th, 2015 public hearings and that the application meets the criteria set forth in section 5.48.060 of the Municipal Code and is of good moral character. Councilmember Labbe seconded.

Councilmember Labbe stated that there were compelling presentations about intent, code and possible changes to the code. Conditional use permits have been granted. They have given us the possibility that they can meet the existing code. and there may be changes to the code that may be in the best interests of Leadville and the city.

Councilmember Finken explained that it was himself and Chief Leake who wrote this ordinance and he felt terrible that they are going through all these problems because they thought they had done their homework, due diligence and what is best. But often when we go back we need other people to read it over. He looks forward to the future.

Mayor Stuever stressed that it has been a hard road, we are a small community, we are not trying to fuzzy up things, and hoped that everyone could bear with us as we are trying to do the best we can.

Roll call: except for Councilmember Mohrmann who recused, unanimous to approve the marijuana store license.

(7:57 pm) Direction to staff on whether to have hearings for marijuana cultivation license(s).

City Clerk Swyers explained that, similar to liquor license renewals, the authority does not have to have a hearing but, if it has cause to deny, then it must have a hearing. If the authority does not have cause to deny it still has to have an explicit vote of approval. In response to Councilmembers' prior objections to having it come before them if they don't have a choice but to vote yes, he explained they have a choice, but can't risk a no vote without a hearing.

Planning Official Dallas added that city council and licensing authority may have to look to the city clerk or staff or police chief to get their opinions about whether there may be cause for denial before you make a decision.

Councilmember Labbe and Mayor Stuever clarified by saying that, when an application comes up, the authority or council could be advised that there may be cause for denial according to the criteria, then they would set a hearing. Councilmember Labbe opined that public input at a conditional use permit (CUP) hearing may be more valuable or crucial than at a licensing hearing. City Clerk Swyers added that those hearings use different sets of criteria.

Councilmember Labbe explained that a separate licensing hearing from a conditional use permit would be a burden on businesses and may not be needed. Mayor Stuever's poll of council resulted in consensus of agreement.

(8:03 pm) Direction to staff on whether to have hearings for renewals or changes of location.

City Clerk Swyers explained that if staff determines there is no basis for denial, then it comes to council for a vote. If there may be basis for denial, then there will be a hearing. He stressed that if councilmembers have reason to not vote yes, then please inform staff because the choice for council is to either to vote yes or go to a hearing.

Planning Official Dallas and City Clerk Swyers explained that a change of location has to go to a conditional use permit hearing first unless the move is to a location approved for the same kind of land use and they agree to the conditions for the CUP at that location. If the party moving to the new locations thinks the conditions are too restrictive, they must apply for a new CUP. Mayor Stuever's poll of council resulted in consensus of agreement.

(8:08 pm) Mayor Stuever adjourned the Leadville Marijuana Licensing Authority and re-convened city council.

(8:08 PM) Resolution 1, Series 2015 designating public notice location and newspaper.

Councilmember Finken moved to adopt Resolution 1, Series 2015, a resolution designating the official public notice

location and the official newspaper of general circulation for the City of Leadville, Colorado. Mayor Stuever seconded. Administrative Manager Dallas reported a citizen concern that the Herald Democrat does not have a free posting of the legal notices, that a subscription is needed to access the postings, Ms. Dallas suggested that postings could be done somewhere else online for free access but refrained from volunteering herself to do that because of her present workload. Mayor Stuever mentioned Leadville Today as another media outlet.

City Clerk Swyers explained that the resolution defines the minimum of what constitutes a legal publication, but notices can optionally be posted online or at a kiosk, post office, or other locations as other communities have done. Mayor Stuever added that more public notices could be done anytime. Roll Call: unanimous yes.

(8:12 pm) Resolution 2, Series 2015, adopting revised liquor license fees.

City Clerk Swyers explained the changes and that a few years ago a new application fee was \$1000 as recommended by the state. The city has not had new liquor license applications for six years and the experience with recent liquor license applications resulted in a determination to return to the prior fee level. Police Chief Leake explained that one background check for a new license took 10 to 12 hours for investigations. City Clerk Swyers explained that the issues we are dealing with on marijuana applications could similarly affect us on liquor and that \$1250 is half of the marijuana license application fee. Councilmember Labbe questioned the increase for a promotional association application because applicants already have liquor licenses. Clerk Swyers agreed to amending the promotional association application fee to \$200. The event fee dependent on size is covered by different consumption area fees. Mayor Stuever moved to adopt Resolution 12, Series 2015, a resolution adopting fees for processing liquor license applications with amendments made. Councilmember Labbe seconded. Roll Call: unanimous yes.

(8:23 pm) Appointment of alternate Historic Preservation Commission member.

Mayor Stuever moved to appoint Barnabas Kane as an alternate position in the Historic Preservation Commission. Councilmember Finken seconded. Planning Official Dallas explained that the HPC has no limit in its bylaws as to number of alternates. They would move up if a commissioner leaves before their term is up. They would have voting rights if a sitting member is absent at a meeting. Roll Call: unanimous yes.

(8:25 pm) Business License renewal issues.

Councilmembers Finken and Canty agreed to considering the recommendations or questions from the City Clerk. City Clerk Swyers explained concerns about violations by businesses and how that affects renewals. He advised council that he does not have much of an option but to renew unless he has a lot of supporting evidence from code enforcement and the police in which case it graduates to a due process process. Councilmember Labbe reported that the city clerk has gotten direction from the city attorney that he, Councilmember Labbe, does not agree with. City Clerk Swyers explained there are common issues with businesses and marijuana businesses. Administrative Services Manager Dallas stressed that the marijuana issues must be dealt with early and is willing to move the personnel policy discussion to February 10th at 5:30. These issues will be at January 27 work session at 5:30 p.m.

(8:30 pm) Prestash complaint to city council.

Mayor Stuever reported his direction to city clerk to bring to council the issue of payment for a business license. Councilmember Labbe recommended putting the payment in an envelope marked as unaccepted cash and files. Administrative Services Manager Dallas reported there is no answer yet on how litigation may affect enforcement.

(8:33 pm) Meetings.

Councilmember Finken moved to change the second meeting in March from March 17th to Monday, March 16th at 6:30 p.m. Mayor Stuever seconded. He explained that this is for St. Patrick's Day to accommodate cultural beliefs and celebrations and to allow the police chief to work St. Patrick's Day evening instead of attending the council meeting. He suggested that this should also be done for other cultural celebrations. Roll call: unanimous yes.

Council reviewed the council meeting dates and times on January 12th at 2:00 p.m. 13th at 5:00 p.m., 20th at 6:00 p.m. 27th at 5:30 p.m. , February 3rd at 6:30 p.m., and February 10th at 5:30 p.m. Councilmember Labbe advised of a meeting at the hospital on this Thursday at 11:00 p.m. for presentations for a vendor to take over operations.

(8:42 pm) Bills. None.

(8:42 pm) Mayor's Report included: EPA deletion meeting on Dec 18th, Fire Mgmt meeting this Thursday on the IGA, Airport hangar grand opening on the 17th, potential for moon rock to be displayed at the National Mining Museum. next week a crane at Tabor Grand Hotel to install the elevator then 7th Street will be open.

(8:45 pm) Councilmember Reports:

Councilmember Finken asked people to change phone numbers to 293 or 486 so that the Lake County 9-1-1 fund.

(8:48 pm) Public comments: None.

(8:48 pm) Mayor Stuever adjourned the council meeting.