

CITY OF LEADVILLE
CITY COUNCIL REGULAR MEETING
Tuesday, May 05, 2015

<p><u>City Council Members</u> <u>Present:</u> Jake Mohrmann, Councilmember Gwen Shepherd, Councilmember Max Duarte, Councilmember Greg Labbe, Councilmember Luke Finken, Councilmember <u>Absent:</u> Jaime Stuever, Mayor Mike Canty, Councilmember</p>	<p><u>Staff Present</u> Joe Swyers, City Clerk Sarah Dallas, Planning Official, Deputy City Clerk and Administrative Services Manager (ASM) Roy McGinnis, Finance Director Mike Leake, Police Chief Dan Dailey, Fire Chief Jim Schneiter, Street Dept. Supervisor.</p>	<p><u>Others Present:</u> Christy Culp Laurel McHargue Rob Holmes Rohn Bertolas Steve Prestash</p>
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City Council met in a regular public session in the Council Chambers of City Hall.

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

(6:31 PM) Public comments on items not on the agenda: None.

(6:31 PM) Agenda Revisions: Mayor Pro Tem Finken moved to delay item #12, Art Gallery permit application for HarperRose to May 19. Councilmember Labbe seconded. Roll Call: unanimous yes.

(6:32 PM) Approval of minutes of the regular meeting of April 21, 2015.

Councilmember Labbe moved to approve the minutes of the regular meeting of April 21, 2015. Councilmember Finken seconded. Roll call: unanimous yes.

(6:33 PM) Arbor Day Proclamation.

Mayor Pro Tem Finken read the proclamation declaring Monday June 22, 2015 as Arbor Day in the City of Leadville.

(6:35 PM) Update by Christy Culp from Colorado Department of Local Affairs (DOLA).

Christy Culp handed out a presentation and explained what DOLA does and some of the projects being pursued.

(6:49 PM) Citizens for Dog Enforcement.

Laurel McHargue, 815 Spruce Street, expressed concerns about dog control, that the general impression of people is that there is no control over dogs. Chief Leake explained that, though we have no code enforcement officer at this time during this time of being short staffed, all police officers are animal control officers. He does not have sufficient staff to hire and train a code enforcement officer. Most of what they see is people leaving dogs out to do their business, then letting them back in. Regarding incidents of dogs coming up to their fence and aggressively barking or growling at passersby there is not a lot for the police to do because the dog is in their yard. He explained the difficulties in catching a dog. He is working on something to publish in the paper to explain to people what they should do regarding dogs. Ms. McHargue asked about citizens carrying means to defend themselves. Chief Leake explained that it is legal for people to carry pepper spray, a firearm with a concealed weapon permit or a golf club. Ms. McHargue expressed concerns about legal risks of people defending themselves. Chief Leake will research that. Councilmember Labbe recounted incidents of people going to jail after defending themselves. Chief Leake explained that was a county case, and stressed that in the city he has no issue with people defending themselves. It is possible that a dog owner could ask for charges. Councilmember Labbe asked if there is more than just giving the owner a ticket. Councilmember Duarte explained options in county court as well as municipal court. Tickets can be up to one thousand dollars. Chief Leake will look into what fines the municipal court is imposing.

(7:03 PM) Temporary Use Permit for Skyline Baseball Parade on Saturday, June 6, 2015.

Mark Wadsworth, president of Skyline Baseball, described the event and Skyline Baseball in general.

Councilmember Labbe moved to approve the temporary use permit for Skyline Baseball to hold the annual Skyline Baseball parade on Saturday, June 6, 2015 at 10:00am from Harrison & West 9th, right on West 6th, and ending at Baker field. Also, that the City of Leadville provide a police escort for the parade. Councilmember Finken seconded. Roll call: unanimous yes.

(7:06 PM) Temporary Use Permit for TransRockies run on Thursday, August 13, 2015.

Katie Mazzia explained the TransRockies event and stated that the entire event contracts for recycling throughout the event, including along trails. Chief Leake explained that it is a low impact event. Councilmember Labbe moved to approve the temporary use permit for the PepsiCo TransRockies, 2015 trail running race, to start stage 3 on Thursday, August 13th, 2015 at 8:00am on Harrison Avenue. That the city provide a one lane closure and a police escort heading out of town north on US Highway 24. Councilmember Finken seconded. Roll call: unanimous yes.

(7:12 PM) Temporary Use Permit for Eagles Softball Tournament August 7th, 8th, and 9th.

Rohn Bertolas explained the tournament for fifteen teams. Last year's even was done differently and beer was not sold. This year a permit was applied to they can sell the beer. Recyclables will be taken back to the Eagles lodge. Councilmember Labbe moved to approve the temporary use permit for Eagles Lodge Leadville Boom Days Softball Tournament at Leiter Field, Boom Days weekend from August the 7th, 2015 through August the 9th 2015 and that the City of Leadville arrange for use of the Street Department dump truck for trash. Councilmember Duarte seconded. Roll call: unanimous yes.

(7:16 PM) Mayor Pro Tem Finken adjourned city council and convened the Leadville Liquor Licensing Authority.

(8:23 PM) Special Event Liquor Permit for Mining Museum for 6/6 2015 (date change from 5/9).

Rohn Bertolas explained his discussions with the County Commissioners on May 4th and that County Commissioner Bordogna assured him that they could serve beer at the softball tournament. People serving beer will be trustees of the Eagles who can serve beer. Mr. Bertolas described that prior to last year teams would bring their own beer and one brought forty cases of beer and explained that now the teams are forbidden to bring their own alcohol. Drinking must be done within the beer garden where it is controlled. Chief Leake explained that before last year's beer garden there were a lot of issues with tailgating, beer cans and open container violations. Last year with the beer garden it was completely different atmosphere, way more pleasant, no tailgating. After the event the Eagles had cleaned up the area such that you couldn't tell there had been a tournament there. Mr. Bertolas stated that the proof of insurance will be provided before the event. Councilmember Finken moved to approve the special event liquor permit for the Eagles Softball Tournament, August 7th, 8th, and 9th, 2015 from 8 am to 8 pm each day. Councilmember Labbe seconded. Roll call: unanimous yes.

(7:23 PM) Mayor Pro Tem Finken adjourned the Leadville Liquor Licensing Authority and re-convened City Council.

(7:23 PM) Comments by Steve Prestash about dog enforcement.

Mr. Prestash described some incidents with dog enforcement by the county, and that a lot of people let their dogs run free to do their business and suggested cameras for certain spots such as in back of the Tabor Opera House. He suggested a code provision for pit bulls. We need heavier fines for loose dogs and dogs defecating in public areas.

(7:28 PM) First Reading of Ordinance 05, Series 2015, amending zoning table of uses.

Planning Official Dallas and City Clerk/Planning & Zoning Commissioner Swyers described what the Planning & Zoning Commission recommended – as explained in the staff input sheet from City Clerk Swyers. Councilmember Labbe commented that what Planning & Zoning had recommended is not what City Council had agreed to in the work session. Planning Official Dallas again advised that City Council review the information in the staff input sheet, that if it is conditional use for the hospital, it also applies to all of the R-2 zoning district. Planning Official Dallas explained the recommendation for a restriction within 200 ft of a residence as explained in the staff report.

Councilmember Finken moved to adopt on first reading, Ordinance 05, series 2015, an ordinance amending chapter 17.48 of the City of Leadville municipal code concerning changes to the table of uses for retail and medical marijuana establishments except on 32D under R-2 making that conditional use. Councilmember Labbe seconded. Roll call: unanimous yes.

(7:37PM) Second reading & public hearing for Ordinance 04, Series 2015 revising marijuana license municipal code. Mayor Pro Tem Finken explained hearing procedures. City Clerk Swyers reported that notification requirements were satisfied. Mayor Pro Finken declared as part of the record the evidence of notice, any correspondence received prior to the published deadline and in the course of tonight's hearing, and any other documents, photographs, or other material introduced at the hearing.

Robert Holmes asked for review of the changes. Mayor Pro Tem Finken listed the changes to the municipal code for retail marijuana facilities. Planning Official Dallas explained that code changes would apply to future applications, not for entities for which licenses were approved but not issued. Mr. Holmes asked council not adopt the 200 ft restriction recommended by the Planning & Zoning Commission.

City Clerk Swyers explained that the same rules which apply to the 500 ft restriction for distance from schools and further explained that the reason Planning & Zoning Commission had difficulty with a conditional use for the Commercial (C) zone and the Transitional Commercial (TC) zone was that in the downtown area and northern area both have a lot of residences but the southern C and TC areas south of Highway 24 and south of Monroe Street are without residences. Planning & Zoning wanted to allow conditional use in both zones but not where people live. He referred to a map he had prepared showing the area of restriction and the areas southern areas of both zones where such conditional uses would be allowed. The restriction would not affect existing marijuana businesses or the sale of their businesses. Planning Official Dallas explained that it would affect additional licenses at those grandfathered locations. Councilmember Mohrmann suggested a smaller distance.

There were no public comments for or against.

(7:53PM) Councilmember Labbe moved to close the public hearing. Councilmember Finken seconded.

Roll call: unanimous yes.

Councilmember Finken moved to adopt on second and final reading, Ordinance 04, series of 2015, an ordinance repealing and re-enacting Chapter 5.48 of the Leadville Municipal Code regarding the licensing and regulation of retail marijuana establishments. Councilmember Labbe seconded. Roll call: unanimous yes.

(7:59 PM) Resolution 05, Series 2015 amending marijuana license fees.

City Clerk Swyers explained that, though he did research for council on what other cities' fees were, the fees in the resolution are not what he proposed and that he thinks the fees are too low. Clerk Swyers explained that fees must have a direct relationship to the cost of licensing, that the marijuana licensing costs were exorbitant compared to liquor licenses. ASM Dallas explained the time for all of staff and that hopefully the costs would be less in the future. Rohn Bertolas commented that the fees are far too cheap because of the resale value of marijuana licenses are in the hundreds of thousands of dollars. Steve Prestash spoke in favor of higher fees and suggested a city percentage charged on transfer or sale of a marijuana business. Robert Holmes described the financial difficulties of marijuana

businesses. Councilmember Mohrmann clarified that fees are to recoup costs, not to make money. ASM Dallas confirmed that the fees are to be reviewed in a resolution annually.

City Clerk Swyers explained that the Colorado Constitution, Article , Section 20. The Taxpayer's Bill of Rights states: "A charge is a fee and not a tax when the express language of its enabling legislation explicitly contemplates that its primary purpose is to defray the cost of services provided to those charged. When determining whether a charge is a fee or a tax, courts must look to the primary or principal purpose for which the money was raised, not the manner in which it was ultimately spent.

City Clerk Swyers further explained that the City Attorney stated in a 2004 memo:

"In order for the City to impose any type of special fee, the purpose of the fee must be to defray the cost of a particular government service. In a fairly recent Colorado decision, the Colorado Court of Appeals determined that the "amount of a special fee must be reasonably related to the overall cost of the service," So, where a municipality imposes a license fee on entities "doing business" in the jurisdiction, the amount of the fee should relate to a corresponding governmental service such as the collection of taxes."

Councilmember Labbe moved to adopt Resolution 05, Series 2015 adopting fees for retail and medical marijuana establishment applications and licenses. Councilmember Finken seconded. Roll call: unanimous yes.

(8:20 PM) Resolution 06, Series 2015 regarding authorized signatures for city bank accounts.

Councilmember Finken moved to adopt Resolution 06, Series 2015 a resolution of the City of Leadville, Colorado designating authorized signatories on the city's bank accounts and for the safe deposit box. Councilmember Labbe seconded. Roll call: unanimous yes.

(8:21 PM) First Reading of Ordinance 06, Series 2015, long term lease for Elm Street Park and Leiter Field.

Mayor Pro Tem Finken explained that council has the opportunity on second reading to insert into the lease a provision to allow the permitted alcohol special events. Councilmember Labbe suggested that the County has become open to exceptions. Mayor Pro Tem cited the testimony from Chief Leake about how better regulated it was because of a special event liquor permit. ASM Dallas and City Clerk Swyers explained that the special event liquor permit must be approved by the City because it is within the City. The only involvement for the County is they are the owner of the property and thus they must give permission just as with owners of property for other special events, that the County has nothing to do with approving a liquor permit. He cited the Lions having a beer tent at Leiter Field and Ice Palace Park.

Councilmember Labbe to adopt on first reading Ordinance 06, Series 2015, an ordinance approving a long term lease between the City of Leadville, as landlord, and the Board of County Commissioners of Lake County, as tenant, concerning Leiter field and further approving a long term lease between the Board of County Commissioners of Lake County, as landlord, and the City of Leadville, as tenant, of the Elm Street Park property. Councilmember Finken seconded. Roll call: unanimous yes.

(8:37 PM) Upcoming Meetings.

Councilmembers and staff discussed upcoming agenda items, issues, and work sessions. Temporary use permit On May 12th will be the snow removal plan, ballot issues and the feasibility study for consolidating governments. On May 13th there will be discussion of the comprehensive plan with Planning & Zoning. There will be a fire department planning board meeting on May 28th. They will be meeting on 2nd and 4th Thursdays, but Chief Dailey said they change meetings month to month. There will be a meeting on the building and fire codes.

(8:39 PM) ASM Dallas reported on a card from St. Vincent Hospital for contact information.

(8:40 PM) Police Chief Leake reported that at the State Patrol Academy there is now a wall of seven police officers who graduated the academy and went to the City of Leadville.

Street Supervisor Schneider and Finance Director McGinnis reported on progress getting brooms for the loaders. Deliver will be in 4 to 6 weeks.

Councilmember Labbe shared suggestions for a small neighborhood association for snow removal and trash pickup as well as Neighborhood Watch. Chief Leake explained what is involved with the Neighborhood Watch Program.

(8:51 PM) Bills:

Councilmember Finken moved to approve the bills. Councilmember Labbe seconded. In response to questions, Street Supervisor Schneider explained the ordering of snowplow blade edges, Each loader goes through 8 to 9 per snow plow blade edges per year or \$30,000 to \$40,000. Roll call: unanimous yes.

(8:53 PM) Mayor's Report: none other than the mayor is on vacation.

(8:53 PM) Council Reports:

Councilmembers Mohrmann that he will be representing the city at Mountain Rural Philanthropy Days in Rifle. ASM Dallas has a list of specific projects which need funding. This may be discussed on May 12th meeting.

(8:56 PM) Public Comments not on the agenda:

Steven Prestash, 131 East 3rd Street, commented on litigation he is pursuing with the city and explained some of his issues with the comprehensive plan – specifically gentrification which may put people out of their homes.

Rohn Bertolas asked about using photo radar to control speeding.

(9:00 PM) Mayor Pro Tem Finken adjourned the meeting.