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January 13, 2011

MINUTES OF THE REGULAR MEETING OF THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, held in the Council Chamber, 88 E. Chicago St., on Monday, December 6, 2010, at 7:03 p.m.

THE MEETING WAS CALLED TO ORDER BY MAYOR BOYD W. DUNN.

The following members answered roll call:	Boyd W. Dunn	Mayor
	Bob Caccamo	Vice-Mayor
	Trinity Donovan	Councilmember
	Rick Heumann	Councilmember
	Matt Orlando	Councilmember
	Jack Sellers	Councilmember
	Jeff Weninger	Councilmember.

Also in attendance:	Rich Dlugas	Acting City Manager
	Pat McDermott	Assistant City Manager
	Mary Wade	City Attorney
	Marla Paddock	City Clerk

INVOCATION: Susan Stevens-Clarke – Chandler Bahai Faith

PLEDGE OF ALLEGIANCE: Webelos Scouts Pack 285

SCHEDULED PUBLIC APPEARANCES:

UNSCHEDULED PUBLIC APPEARANCES:

CONSENT:

MOVED BY COUNCILMEMBER HEUMANN, SECONDED BY COUNCILMEMBER ORLANDO TO APPROVE THE CONSENT AGENDA AS PRESENTED.

MOTION CARRIED UNANIMOUSLY (7-0).

1. MINUTES:

APPROVED, as presented, Minutes of the City Council Regular Meetings of November 15, 2010 and November 18, 2010, and the Special Meetings of November 18, 2010 and November 22, 2010.

2. ANNEXATION: Ocotillo Road and the Consolidated Canal Ord. #4266

ADOPTED Ordinance No. 4226, annexing approximately 0.43 acres located at the SWC of Ocotillo Road and the Consolidated Canal.

3 CITY CODE AMENDMENT: Traffic Barricade Design Ord. #4270

ADOPTED Ordinance No. 4270 amending Chapter 43, Section 43-5.8 of Part VII, of the Chandler City Code, making revisions to the Technical Design Manual #7 – Traffic Barricade Design.

4. CITY CODE AMENDMENT: Meet and Confer Process Ord. #4274

INTRODUCED AND TENTATIVELY APPROVED Ordinance No. 4274 amending Chapter 2 of the Code of the City of Chandler, by amending Sections 2-13.8 and 2-13.10, relating to the Meet and Confer process.

Background:

The City adopted its first Meet and Confer Ordinance (3619) IN October of 2004, which became Section 2-13 of the City Code. Section 2-13 was amended in November 2006 to add the Sergeants as an employee organization covered under the Meet and Confer Ordinance.

Every year, prior to negotiations, City management meets with City Council in order to brief Council on the proposals submitted by each employee group. The main purpose of the meeting is for management to get direction from Council regarding the City's position on these proposals. The current Ordinance stipulates that, after negotiations begin; neither the City nor the employee group can discuss matters of negotiation with the City Council.

As negotiations progress, it is not uncommon for new options to be explored that may result in reaching an agreement. Unfortunately, the current Ordinance prevents City management from exploring other options with City Council while negotiations are underway. It is only after the parties reach impasse that City management and the employee groups are able to discuss the matters with City Council.

After several years of working under the Ordinance, both City management and the employee groups agree that it is in the best interest of the City to modify the Ordinance to allow discussions with Council during negotiations. The proposed change allows City management to schedule one meeting with City Council, if needed, to get further direction during negotiations. If City management schedules such a meeting, the employee group will also be allowed to schedule a meeting with the City Council to discuss their position. In addition, dates have been changed to allow the time for such meeting to take place.

Discussion:

MAYOR DUNN noted that the amendment being done to the meet and confer process was the second being done since the ordinance's adoption in 2004. He thanked City Management and the Employee Groups for working on the item and bringing forward to the Council a change to the ordinance. He believed the change would help improve the process. He believed that some members of the Council had been frustrated in terms of not being able to give direction or points of view during the process. He reiterated that he believed the change would help the process work more efficiently.

5. LEASE AUTHORIZATION: San Marcos Commons Phase II Ord. #4275

INTRODUCED AND TENTATIVELY APPROVED Ordinance No. 4275 authorizing leases 1, 2 and 3 subsequent to the San Marcos Commons Phase II Development Agreement.

Background:

On May 27, 2010, the City Council authorized the creation and execution of a development agreement for San Marcos Commons Phase II which would lead to the construction of a parking garage and over 139,000 square feet of retail, restaurant and office space.

As part of the Development Agreement and given that the improvements would sit on City owned land, an ordinance is required to enable the leases to be executed. The leases follow the business terms laid out in the master development, but provide more detail on operations, insurance and other practical matters.

Discussion:

MAYOR DUNN thanked staff for bringing the item forward. He stated it was the next step of the downtown project for future development for office and retail. MAYOR DUNN questioned what the approval of the lease agreement allowed the City to do. He asked what could be seen in the future in terms of future development.

Downtown Redevelopment Manager TERI KILLGORE stated that the execution of the development agreement would be the final step brought before the Council. She explained that with approval of the leases, finishing touches would be done on the development agreement. She stated it would be up to the developer to begin recruiting financing, partnerships and beginning to prelease the buildings. She stated that the parking garage and the first two buildings would begin construction by September 1, 2012, completing in 2013. The last two buildings would be built in 2013-2014.

MAYOR DUNN asked when the City's obligations to the parking garage take place. He questioned if it would affect the commitment on part of the City's behalf.

MS. KILLGORE stated that the developer would pay the first 25% of garage costs. The costs were projected out at $10.3 million, with the City putting in the last 75% at $7.725 million. She explained that that would begin once the developer expended the full 25% of the contribution.

ACTION**:**

6. DISCUSSION AND POSSIBLE ACTION: Zoning Code Amendment – Medical Marijuana

Background:

A voter initiative (proposition) established a governing process for the dispensing of marijuana for medical purposes as defined by the initiative and administered by the State Department of Health Services (DHS). The proposition did not preempt a jurisdiction's authority to enact reasonable zoning regulations that limit the use of land for medical marijuana dispensaries. The proposition does not permit a medical marijuana dispensary within 500 feet of a public or private school existing before the date of the medical marijuana dispensary application. The Department of Health Services intends to set-up an application process for medical marijuana dispensaries and qualifying patients in approximately 120 days from the certification of the proposition. The application process is expected to be in place by April or the very end of March 2011. If Chandler

were to adopt further reasonable zoning regulations, policy direction would need to be collected and written in the form of an ordinance (Zoning Code amendment) to be published in the newspaper before the end of the year and with hearings completed by Planning Commission and City Council in January 2011 and February 2011 to be effective prior to the end of March 2011.

Some Cities and counties state-wide adopted various zoning ordinances and procedures that have similarities and differences. There will be al limit as to the number of dispensaries licensed in the State and it is expected that there may be up to 120 dispensaries or one-tenth of the number of registered pharmacies. Qualifying patients who reside further than 25 miles from a licensed dispensary will be authorized to grow their own medical marijuana under the restrictions of the proposition and the rules established by the Department of Health Services. Residential care facilities will also be able to dispense medical marijuana to their residents through the assistance of caregiver licensed for such activity.

A medical marijuana dispensary is defined by the proposition as a growing facility, a retail sales facility, or a combination of both. Dispensaries may also, as being further defined by DHS, include a manufacturing facility, such as one that combines the medical marijuana with other products and those possession/delivery operations (storage locations that deliver medical marijuana to retail dispensaries). Other adjacent cities and adjacent county islands may have zoning regulations that differ from the City of Chandler.

Examples of additional zoning regulations being discussed or adopted by other jurisdictions include:

- Location limited to certain zoning districts
- Dispensaries could be subject to use permits depending on the zoning categories
- Distance requirements from churches, schools, and other dispensaries, substance and alcohol abuse treatment centers, correctional transitional housing facilities, public parks and private (HOA) open spaces, public libraries, group homes for the handicapped, childcare centers, family recreation or entertainment centers, etc.
- Requirement of a security plan
- Limit on hours of operation
- Maximum square footage
- Maximum number in City based on population
- Documents submitted to the Department of Health Services as part of the State's application process
- Display of paraphernalia or any implement that may be used to administer medical marijuana
- Sign regulation
- Dispensaries must be located in a permanent structure
- Drive-thru and off-site delivery prohibited
- No on-site seating or on-premises consumption allowed

Unless there is a policy direction for further regulations to be adopted, the Zoning Code does not need to be amended to regulate medical marijuana dispensary uses as the Zoning Code by practice already contains regulations applicable to the use. Currently, Chandler's Zoning Code Table of Permitted Uses for Nonresidential Districts does not contain a specific listing for a medical marijuana a dispensary, however, zoning administration practices rely on a test of analogous (similar or equivalent) uses when determining whether or not any particular use not otherwise listed specifically is permitted in a particular zoning district. Chandler's nonresidential

zoning districts include C-1 (Neighborhood Commercial District), C-2 (Community Commercial District), C-3 (Regional Commercial District), I-1 (Planned Industrial District), and I-2 (General Industrial District) all of which are often euphemistically referred to as “traditional” or “hard” zoning districts. Chandler also has a PAD (Planned Area Development) zoning district which is an overlay district whose underlying permitted uses are most often exact as, or occasionally a hybrid variation of, a “traditional hard-zoned” district. As an example, shopping centers at intersection corner zoned PAD most always have an underlying C-2 use.

A medical marijuana dispensary being a growing facility, a retail sales facility or a combination of both, a manufacturing facility, or a possession/delivery (storage) facility is analogous to listed uses within the Zoning Code’s Table of Permitted Uses and no further definitions or zoning district designations are necessary. A Drugstore (pharmacy) is a permitted use in the C-1, C-2, and C-3 zoning districts and is analogous to a retail dispensary or a retail dispensary with an incidental growing facility. Pharmaceutical Manufacture is a permitted use in the I-1 and I-2 zoning districts and with a Use Permit in the C-3 zoning district and is analogous to a Manufacturing dispensary. Warehousing is permitted use in the I-1 and I-2 zoning districts and is analogous to a possession/delivery (storage) facility. Greenhouse and nursery (commercial) is a permitted use in the C-2, C-3, I-1 and I-2 zoning districts and with a Use Permit in the C-1 zoning district and is analogous to a dispensary that is a primary growing facility.

The topic of zoning for medical marijuana dispensaries is an evolving matter as jurisdictions continue to share information and DHS continues to respond to questions about the proposition’s wording and their interpretations.

Discussion:

Planning Administrator JEFF KURTZ gave an overview to the Mayor and Council regarding the legalization of medical marijuana. He stated that Proposition 203 was passed by voters to start the process to legalize medical marijuana. He explained to the Council that the City of Chandler was keepers of local zoning authority. The proposition as passed does not preempt local jurisdictions or counties from passing zoning regulations that might further regulate the use of land for the particular use. Mr. Kurtz told the Council that the simple action for the Council if they desired, was to direct staff to prepare a zoning code amendment that may include additional land use regulations over and above what the state law contains.

Mr. Kurtz told the Council that primarily in a zoning standpoint, the only item that is contained in state law is a requirement to have a separation of 500 feet from schools. He noted that across the State in Cities and Counties were considering adopting additional zoning regulations that would further direct local communities where the type of uses might be located. He explained that there were zoning regulations in place. He noted that in essence that the medical marijuana would be a retail transaction similar to any other retail transaction done in the City but pointed out that the zoning code could direct where the activities could occur

In addition, he explained that he had seen in other communities was the consideration of additional land use regulations affecting where the marijuana dispensers might be located. He mentioned that in other jurisdictions had additional regulations such as locations, in particular certain zoning districts where the dispensaries may or may not be subject to use permits reviewed on individual basis. He explained that there might be additional distance requirements over what the state law spoke to, a maximum square footage of the facilities, may require the dispensaries to be located in a permanent structure as opposed to a tent or trailer. Further regulations may mimic some of the state laws such as no drive-thru facilities or offsite deliveries.

He explained that staff was bringing forward a request for direction from Council if so desired, to initiate a zoning code amendment. The zoning code requires that initiation to occur at either Planning Commission or City Council before substantive changes to the zoning code are looked at. He informed the Council that the timeline was short due to the State Department of Health Services issuing the first draft of their rule making procedures this month. They have 120 days from the certification of the proposition in order to pass rules, which is expected to take place around the end of March. He presented to the Council a timeframe which would have to be followed should Council choose to have additional land use regulations.

He explained that the expectation would be to have a Council Subcommittee meeting at the Police Community Room on December 16th. Staff would then take direction from the Subcommittee, prepare an ordinance, advertise the ordinance by the end of the year, have a Planning Commission hearing on January 19, 2011, bring the ordinance to the Council on February 10th, and then return on February 24th for final adoption and be effective on March 26, 2011.

VICE-MAYOR CACCAMO asked if staff had looked at cities in other states where similar laws were passed. He asked if laws in California allowed cities to make their own zoning adjustments/changes because of the dispensaries.

MR. KURTZ did not know if the law specifically allowed them to do so but he believed that they had. He stated that zoning was a local regulation that could be done without the State telling the cities that they could do it. He told the Council it was customary in other states to take a look at local zoning regulations for the type of uses.

VICE-MAYOR CACCAMO asked if it would be possible to get samples of what has been done. He believed the samples would help the Council as a note of comparison when the recommendations are brought forward. He knew that the City could only deal with land issues. He expressed concern over the use of medical marijuana in the workplace. He asked whether cities or employers would have some regulation to be able to make employee rules.

MR. KURTZ stated the topic was evolving. He stated the proposition that was passed contained some language about whether activities in the workplace could be regulated. He stated it was an issue valley wide that would be addressed.

MAYOR DUNN asked if the purpose of the law was that the proposition was passed by the voters and did not require local jurisdictions to do anything. He stated if nothing was done then the only restriction would be that the dispensers could not be located within 500 feet of a public or private school. Current zoning regulations would then be applicable. Mayor Dunn noted that if an amendment was not done there were still current restrictions in the zoning code based on the particular type of use. He stated there would still need to be compliance with the City's sign code and questioned if the PAD process would still apply.

MR. KURTZ stated that the base zoning was still there and that the logical extension of the zoning districts would apply for the type of use. He reiterated that there were current zoning regulations for the type of use.

MAYOR DUNN commended Mr. Kurtz for detailing items in his staff memo for detailing items that other jurisdictions have considered. He encouraged the City Attorney to be involved in the process, beginning at the committee level if the Council felt it needed to move forward. He stated

that the law was vague. He mentioned that the League of Arizona Cities and Towns had done a proposed ordinance. He asked if the proposed ordinance had been received by the City.

CITY ATTORNEY WADE responded it had.

MAYOR DUNN stated he had had discussions with other Mayor and explained that there were real debates as to how restrictive cities would be. He asked if there would only be 120 dispensaries allowed in Arizona.

MR. KURTZ concurred.

MAYOR DUNN asked if the number of dispensaries within the borders of Chandler could be restricted.

MR. KURTZ explained that the way the law was passed, a City must have reasonable zoning regulations. He noted that a jurisdiction south of Chandler tied the number to the maximum of 2 and scaled it up based on population growth. He added that it was dependent on whether limiting the numbers was reasonable or not. He stated he believed that it was not a common belief that the restriction on the type or the numbers would be seen as a reasonable zoning regulation.

MAYOR DUNN stated that there could be restrictions on the certain types of zoning that would have an effect on where the dispensaries could be located. He stated there had been thoughts that the dispensers should be located in more industrial areas instead of retail.

MR. KURTZ responded that direction could be given from a land use standpoint of where they are found to be compatible. He stated that by those limitations the geographic area of the location.

MAYOR DUNN pointed out that the County could do it's own regulations. The City would have no say on the location of dispensaries if the County felt locations were appropriate, no matter where the County islands may be.

MR. KURTZ noted that the City of Chandler could not control its borders.

MAYOR DUNN asked if staff had had discussions with the County in terms of having compatibility with Cities where County islands are located at.

MR. KURTZ stated staff had not seen anything from Maricopa County.

CITY ATTORNEY WADE reiterated that there had been no indication on what Maricopa County was going to do.

COUNCILMEMBER SELLERS stated that one of the things that made him feel that the City needed to look at the issue from a City zoning standpoint was that a dispensary and a growing facility combined. He believed that rules would be needed to deal with that issue.

COUNCILMEMBER WENINGER believed there was an issue with security. He assumed that pharmacies had security plans in which they made sure the pharmaceuticals were secure. He questioned if large amounts would be kept on the premise. He asked if the drugs would be grown where it would increase and encourage break-ins to steal the drugs. He stated he would be

worried if there were constant break-ins near schools or drugs. He asked if restrictions could be done.

MR. KURTZ stated that there were some generalized term in the law that was passed that required a security plan and a single secured entrance into a dispensary. He noted that he was not sure if the entrance meant that one door into the place was required or one secured entrance that people come in and out of. He stated that a lot of the rule making would lead into some of the questions that the Council had. He added that the term dispensary was a broad term that could include a retail facility, a growing facility, a combination of a retail and growing facility. He stated it was very broad in application and definition.

COUNCILMEMBER WENINGER asked if the City could direct where people could consume it or if it fell under the same laws of cigarettes.

MR. KURTZ responded that as the law was passed it stated it could not be done in a public space. He stated that part of definition; one could ask what a public place was.

COUNCILMEMBER WENINGER stated that if it was allowed in a retail center and up to 30-feet from a patio, it would be a public place.

MR. KURTZ concurred.

Assistant City Attorney GLENN BROCKMAN explained that the act restricted the use and consumption in certain situations. He stated it was prohibited to consume marijuana at the dispensary, public place, public bus, school bus or school grounds. He mentioned there were certain restrictions built into the statute.

COUNCILMEMBER WENINGER questioned if the restrictions were part of the new statute or the normal smoking statute. He believed that currently people could smoke 30-feet from a restaurant door; he questioned if it would be different from that.

MR. BROCKMAN explained that the issue was whether a patio area of a bar or restaurant was a public place. He stated if that area was a public place, then marijuana could not be smoked there. He explained that if it was not a public place and was construed by Department of Health Services to not be a public place, it would be considered private and would be allowable if they were a registered card holder for medical marijuana.

COUNCILMEMBER WENINGER noted that there were a lot of care facilities that were done out of homes. He understood that the dispensaries could be applied there but questioned if there would be large amounts stored there. He further questioned if a use permit would be necessary by those facilities if they were to store things there or if it were for personal consumption.

MR. KURTZ responded that the proposition various generalizations about the issue.

COUNCILMEMBER WENINGER expressed concerns over break-ins at the care centers that are in residential neighborhoods where large amounts would be stored.

MR. BROCKMAN did not believe that large amounts from the dispensary would be stored. He stated that if that happened and the resident was a card holder, the resident would be able to use marijuana and grow their own plants.

COUNCILMEMBER WENINGER questioned if the City had to provide the marijuana use in the insurance plan going forward next year. He asked if there different medicines that the City did not have to provide.

Human Resources Director DEBBIE STAPLETON stated that it did not appear that the City would be obligated to pay for it through the City's insurance.

VICE-MAYOR CACCAMO stated that at one point he had read that pharmacies would dispense medical marijuana. He asked if pharmacies would be included in the number of 120

MR. KURTZ responded that it was his understanding that there would be a specific license for a dispensary wherever that might be, including a pharmacy. He stated that feedback that was received from conventional pharmacies was that they are not approaching the type of service because of internal issues or because of issues with the Federal Government.

MR. BROCKMAN stated that the act counted for non-for-profit entities to operate the dispensaries. He did not believe that Walgreens or CVS would fall into that category since they are for-profit businesses. He did not believe the dispensaries would be set-up that way.

MAYOR DUNN noted that the Department of Health Services (DHS) spoke to the League of Arizona Cities and Towns. He stated that there was much work being done on their end. He was concerned that the City might be affected or influenced by what happens with DHS. He believed that the ordinance might have to come before the Council after its adoption to be amended or tweaked. He noted that he had heard form an owner of an office complex that was approached by someone who was looking for available space for a dispensary. He asked if applications had been received at a City level.

MR. KURTZ responded that the City had not received anything.

COUNCILMEMBER HEUMANN stated that it was important to have the subcommittee and have something in place. He expressed concern over security, growing and the plant situation.

MOVED BY COUNCILMEMBER HEUMANN, SECONDED BY COUNCILMEMBER ORLANDO THAT PLANNING STAFF PROCEED TO BRING FORWARD PROPOSED AMENDMENTS TO THE ZONING CODE TO ADDRESS ISSUES ARISING AS A RESULT OF THE ARIZONA MEDICAL MARIJUANA ACT IN ACCORDANCE WITH CRITERIA REQUIREMENTS RECOMMENDED OR SUGGESTED BY THE CITY COUNCIL AND THE TRANSPORTATION AND DEVELOPMENT SUBCOMMITTEE

COUNCILMEMBER ORLANDO stated he wanted staff to also incorporate discussion that had taken place with the entire Council.

MAYOR DUNN asked what the committee was expected to do. He stated that committees were not intended to be decision making bodies in terms of making or forwarding a proposed ordinance to the Council. He believed that it would be a good starting point but stated that it would only consist of discussion on how the ordinance should be crafted.

COUNCILMEMBER ORLANDO agreed and stated that was why wanted to have staff follow the suggestions/recommendations done tonight.

MAYOR DUNN believed it would be good to have some discussion and to bring forward ideas to the Council for future discussion.

COUNCILMEMBER HEUMANN noted that the idea for the subcommittee was to help staff as the next step would be to take the issue to P&Z. He noted that P&Z might make changes and then the issue would be taken to the Council.

MR. KURTZ stated that there were other ways to conduct the process but stated it was an option. He stated that it was a path to bring the issue to Council for final determination.

MAYOR DUNN asked staff to make a proposal for the amendment to the zoning code. He asked staff to have the proposal available as soon as possible. He expressed concern over the possibility of not having the opportunity to have a public presentation or further study done.

MS. DIANE WOODS, 241 N. NASH WAY told the Council she had not smoked marijuana. She stated that she had inhaled it twice at distances of 25-30 feet. She stated that she had a bad reaction to it after her neighbor's son smoked it in his yard. She told the Council that the smoke traveled from his yard into her home. She was very ill and experienced a migraine. She was concerned and wanted to ensure that people were protected from people smoking it at any place where it could filter to another area. She suggested having an ordinance requiring a dome similar to that of one that is a nuclear Power Plant that could contain a fire. She asked the Council to incorporate something like that so that people would be protected.

WHEN THE VOTE WAS CALLED, IT CARRIED UNANIMOUSLY (7-0).

COUNCILMEMBER HEUMANN stated that the Council subcommittee meeting would be held on December 16, 2010 at 3:00 p.m. at the Police Community Room.

CURRENT EVENTS:

A. Mayor's Announcements

None.

B. Councilmembers' Announcements

None.

C. City Manager's Announcements

None.

Adjournment: The meeting was adjourned at approximately 7:40 p.m.

ATTEST: _____ _____
City Clerk Mayor

Approved: January 13, 2011

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the regular meeting of the City Council of Chandler, Arizona, held on the 6th day of December 2010. I further certify that the meeting was duly called and held and that a quorum was present.

DATED this _____ day of January 2011.

_____
City Clerk