



MINUTES OF WORK SESSION OF THE COMMON COUNCIL OF YOUNGTOWN, AZ

THURSDAY, SEPTEMBER 4, 2014, TOWN CLUBHOUSE, 12033 CLUBHOUSE SQUARE

1. **Call to Order** Mayor LeVault called the meeting to order at 7:01 p.m.
2. **Roll Call:** Council present: Mayor Michael LeVault, Vice Mayor Jacob Duran, Councilmembers Margaret Chittenden, Dorena Mello, Shirley Gustafson, Judy Johnson and June Miller. Staff present: Town Manager Jeanne Blackman, Town Attorney's Susan Goodwin and Trish Stuhan, Community Development Coordinator Gregory Arrington, Economic Development Manager Gayle Cooper, Public Safety Manager Mike Kessler, Public Works Manager Marty Mosbrucker, Citizen Services Specialist Stacy Anderson and Town Clerk/Treasurer Diane Cordova.
3. **Business**
 - A. **Discussion Re: Amendment of Town Code Title 17 Zoning Chapter 17.40 C-2 Commercial District Section 17.40.110 Medical marijuana cultivation, infusion or manufacturing facility regulations and medical marijuana dispensary regulations. Related to:**
 1. Retail sales of: edible foods used to consume medical marijuana
 2. Retail sales of: devices, equipment and product used to consume medical marijuana.
 3. Hours of operation for dispensaries.The effect of the amendments will be to permit (1) retail sales of devices, equipment, products or materials used to consume medical marijuana; (2) retail sales of food products containing medical marijuana; and/or (3) to increase the hours of operation for dispensaries.

Gregory Arrington, Community Development Coordinator

 - The Town has one medical marijuana dispensary that has operated for approximately one year. The Town Code regulating medical marijuana prohibits the sale of edible foods. On July 17, 2014, it was brought to the attention of staff that AAA Medical Marijuana, dba Swell Pharmacy, had obtained from the State of Arizona a "Retail Sales License" allowing the sales of edible foods; retail sales of equipment and devices and is requesting extending hours of operation. On July 24, 2014 Council was informed of the operator's sale of edible food products and equipment/devices which are a violation of Town Code. There was a consensus amongst the council to bring back the agenda item to a work session for further discussion. The applicant is requesting Council's consideration of a Zoning Code text amendment for the sale of edible foods/ products/device and to review the request on the hours of operation.

Mayor LeVault

 - This Council will not be influenced by anonymous support emails nor from the contentious emails regarding the medical marijuana dispensary.

Councilmember Johnson

 - For my own informational/educational purposes, I made a visit to Swell Pharmacy. I noticed a diversity of patrons. Good things were being stated about the dispensary. Many stated that they travel a distance to get their medication from the dispensary. I did notice the public notice hearing on their window. I was taken on a tour; staff is very polite and found the dispensary to be very honest. They weigh the marijuana in front of the customer. They provide informational brochures. The medical marijuana is for controlling pain of the body, not for the mind. The medical marijuana is not to get high on, this helps the body.

Councilmember Miller

 - This Council was informed on July 24, 2014 that the dispensary was in violation of code. Why did you guys ignore our Town Code? You all obtained a State License for retail sales without any respect to Town Code. Do you expect to just have a slap on the hand or should there be a separate penalty for each violation? It is your obligation to know the Town Code where your business is being conducted.
 - I did not vote for the legalization of medical marijuana.
 - Are you growing the marijuana?

Chris Martin, Swell Pharmacy, General Manager

- I don't have an answer. It is an error on our part, it is my fault. We should have been aware of the Town Code. I take full responsibility.
- No we do not cultivate.

Councilmember Chittenden

- When you first applied for the business license required by the Town to operate a business, you had to have received the Town Code regarding medical marijuana.
- The Youngtown Market sells equipment/pipes; is a special license required for that?

Chris Martin, Swell Pharmacy, General Manager

- No, that does not require any license.

Councilmember Mello

- When we adopted the medical marijuana ordinance, we were following the State's ordinance.
- Edibles are easier to digest.
- My questions are about the hours of operation.

Town Attorney, Susan Goodwin

- That is correct, we have evolved from the very first steps taken.

Mayor LeVault

- The legalization of medical marijuana was a brand new concept for Arizona, when we adopted a very conservative ordinance. Since then, many municipalities have modified ordinances.
- Some cannot digest due to throat cancer.
- We are not going to decide whether medical marijuana is right or wrong, our voters have already decided that.

Vice Mayor Duran

- Has anyone on the Swell Pharmacy staff obtained training courses to see if medical marijuana really medically helps or not? Do you even have a clue?

Adam Baugh, Swell Pharmacy Attorney

- A medical director consults with a patient before a medical marijuana card is issued. Obtaining medical marijuana is not the first option. The medical physician advises a patient of all options. They are the ones that would know the medical effects of medical marijuana.

Councilmember Gustafson

- What is the cost of a monthly prescription?

Adam Baugh, Swell Pharmacy Attorney

- The medical prescription is given in ounces.

Chris Martin, Swell Pharmacy General Manager

- Two and a half ounces lasts about two weeks; five ounces would last a month and would cost around \$580.00

Councilmember Chittenden

- The prescription is issued by a medical director; there is a process to follow correct?

Chris Martin, Swell Pharmacy General Manager

- The process; patient is sent to the dispensary; we match a product to their ailments. We check the status of their medical card to see what they can and cannot have. Their driver license is also checked to verify along with their medical card.

Councilmember Johnson

- Swell Pharmacy gives out the medical marijuana in a small medicine bottle; small amounts are given.
- Besides edibles, they also have topical lotions for skin conditions.

Adam Baugh, Swell Pharmacy Attorney

- I am a zoning attorney with a commercial retail background. I do understand the process of public hearings on zoning requirements.
- I also voted no on medical marijuana. Very naive back then; I've had a paradigm shift since then. I have gained knowledge on medical marijuana.
- A model city ordinance from the Arizona League of Cities and Town, implemented by the State was adopted by many municipalities. Things have evolved since then. Patient needs and patient access have been taken into greater consideration.
- We do not want to error on folly for not following the Town Code; non excusable.
- We have patients that drive a long distance to receive quality medication, which Swell Pharmacy provides. We had a patient drive from Indian School Road and 7th Street and was very upset about the hours.

Vice Mayor Duran

- People drive from County to County to get drugs.

Mercy Vickers, Resident

- Are the technicians that dispense the medical marijuana certified?
- When the edibles are sold, does staff need a food handler's card?

Adam Baugh, Attorney Swell's Pharmacy

- The State License Board does not require certification.
- There is no cultivation taking place at the dispensary.

Mayor LeVault

- The edibles are purchased elsewhere, where they are inspected by the Department of Health.

Councilmember Johnson

- Has the dispensary stop selling edibles?
- Are the edibles pre-wrapped?

Adam Baugh, Attorney Swell's Pharmacy

- Yes, the State has rules/guidelines that must be followed by weight. Edibles are wrapped. There is a tracking and inventory taken to account for products.

Councilmember Mello

- My disagreement is with the hours of operation. I approve of the 8:00 a.m. to 8:00 p.m. giving the extended hour for Monday through Saturday, but not extending till 9:00 p.m.; the 8 a.m. to 7 p.m. or 8 a.m. to 8 p.m. with no hours of operation on a Sunday.

Mayor LeVault

- The current hours of operation are Monday through Saturday, closing at 6:00 p.m.
- The dispensary is asking for an extended hour, to remain open until 7:00 p.m.?

Councilmember Miller

- Is the dispensary also asking to operate on Sunday till 3:00 p.m.?

Adam Baugh, Attorney Swell's Pharmacy

- We are proposing operating until 9:00 p.m., if that appears to be too late, we will agree to Council's decision.
- We are asking to operate on Sundays because of the travel for some of our patrons. There are many other municipalities that have amended their ordinances and have approved Sunday operations. I believe only one remains closed and that is in the City of Buckeye.

Vice Mayor Duran

- Prior to all of this, the dispensary was operating on Sunday's, correct?

Councilmember Mello

- The dispensary in the City of Buckeye is not the only municipality that remains closed on Sunday; Avondale and Tolleson do not operate on Sunday's.

Councilmember Chittenden

- What were the hours that the dispensary was operating in July?

Town Manager Blackman

- The dispensary was operating 8:00 a.m. to 7:00 p.m.

Vice Mayor Duran

- Youngtown does not have to follow what other municipalities have in place.

Adam Baugh, Attorney Swell's Pharmacy

- Illnesses do not stop; continues Monday through Sunday.

Vice Mayor Duran

- Is the Sunday a money issue?

Mayor LeVault

- Aren't the edibles 40% to 50% of your retail sales?
- Is the dispensary asking for a one hour extension Monday through Saturday and no extended hours on Sunday?

Councilmember Gustafson

- I personally don't do any shopping on a Sunday, only unless I need to go get a prescription.
- What other businesses in Youngtown are open on Sunday beside the Circle K? Ace Hardware?

Councilmember Chittenden

- I would be in favor of a 12:00 p.m. to 3:00 p.m. on a Sunday.

Councilmember Mello

- I don't believe there is a reason to be open on a Sunday; it's not necessary. 8:00 a.m. to 8:00 p.m. and closed on Sunday.

- When the dispensary was not in compliance with code and they were open on Sunday, was it a busy day for them?

Councilmember Johnson

- The Fry's Pharmacy is open on Sunday's.
- Why not support a 9:00 a.m. to 3:00 p.m. on a Sunday?
- Are we saying Saturday till 8:00 p.m. and closed on Sunday?
- Can the staff from Swell's Farmacy bring to Town Hall the educational literature that you have given for council to read?

Public Comment:

Kathryn Daves, Patron of Swells Parnacy

- Swell's Farmacy is a very honest dispensary; one of the best around. My husband is a mechanic and works six days a week, Monday through Saturday, 8:00 a.m. to 6:00 p.m. It is impossible for him to leave work early to get his medication.

Councilmember Miller

- I go to Luke Air Force Base for my medication. They are not open on Saturdays or Sundays.
- In response to the citizen comment, there is no question of honesty here. The dispensary hasn't had any issues. It is very clean.
- Is the dispensary currently following the Town Code?

Councilmember Chittenden

- What are the recommended hours of operation?

Chris Martin, Manager of Swell's Farmacy

- We service around 150 patrons each day, Monday through Sunday.
- We are requesting Monday through Saturday 9:00 a.m. 7:00 p.m. and Sunday 9:00 a.m. to 3:00 p.m.

Adam Baugh, Attorney Swell's Farmacy

- I encourage Council to keep an open mind. We do have letters/feedback from patients. I would ask you to consider the impact and the necessity of medication to patients needed on a Sunday.

B. Discussion Re: Amendment of Town Code Title 12 Streets, Sidewalks and Public Places; Section 12.04.030(L) 4a. Pavement Restoration. Relating to location and relocation of facilities in public right-of way. Community Development Coordinator, Arrington

- The Town's public right-of-way is an essential element that meets the transportation needs of our community. From time to time it may be necessary to construct, reconstruct, repair or alter right-of-way in the community. Within the Town Code there are clearly established provisions to maintain the integrity of our right-of-way, ensuring a safe and reliable roadway system.
- Town Code clearly stipulates when performing any work (excavations) within the right-of-way, the following shall be done; 1. Arterial Streets: Extend the restoration a minimum length of fifty (50) feet both directions from the area of the excavation. 2. Collector Street: Extend the restoration a minimum length of twenty-five (25) feet both directions from the area of the excavation. Staff believes this provision is far reaching and causes a financial burden to permit holders performing work within our right-of-ways and should be re-examined for its merits.

Mayor LeVault

- There are Maricopa County standards and there are also Maricopa Association of Government (MAG) standards on street repair. There are different cuts; parallel street cuts and perpendicular street cuts. There are also standard trench cuts. Our Town code has a required 25 foot repair to the middle of the road.
- The standard was approved due to the entire street repair with the fire flow project. We did not want patch work all over our streets.

Public Works Manager Mosbrucker

- A 50 and/or a 25 foot street repair places a financial burden for any company.
- It's also not good to remove good asphalt, exposing it can and will create problems later on.
- We need to keep in mind that we are moving forward with Economic Development.

Councilmember Chittenden

- How many feet are we reducing the repair to?

Public Works Manager Mosbrucker

- Repair would be 1 foot on each side, which is sufficient now that the fire flow project has been completed.

Councilmember Miller

- Public Works Manager, are you satisfied with this?

Public Works Manager Mosbrucker

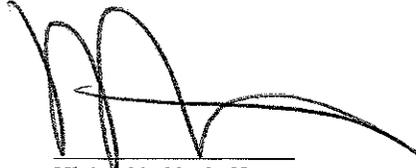
- Yes I am, that is all this is needed for asphalt restoration.
- This council agenda item will come back to council for action on September 18, 2014.

Adjournment.

Motion to adjourn – Councilmember Mello

Second – Vice Mayor Duran

Meeting adjourned at 8:11 p.m.



Michael LeVault, Mayor

Attest:



Diane Cordova, Town Clerk

Minutes approved at September 18, 2014 regular meeting