



Work Session
February 3, 2014

Call to Order / Pledge of Allegiance

Mayor Nehring called the meeting to order at 7:02 p.m. and led those present in the Pledge of Allegiance.

Roll Call

Chief Administrative Officer Hirashima gave the roll call. The following staff and councilmembers were in attendance.

Mayor: Jon Nehring

Council: Steve Muller, Kamille Norton, Jeff Seibert, Michael Stevens, Rob Toyer, Jeff Vaughan, and Donna Wright

Absent: None

Also Present: Chief Administrative Officer Gloria Hirashima, Finance Director Sandy Langdon, Police Chief Rick Smith, City Attorney Grant Weed, Public Works Director Kevin Nielsen, Parks and Recreation Director Jim Ballew, Community Information Officer Doug Buell, Commander Lamoureux, Lt. Thomas, and Recording Secretary Laurie Hugdahl.

Motion made by Councilmember Muller, seconded by Councilmember Wright to approve the agenda. Motion passed unanimously (7-0).

Committee Reports

Approval of Minutes

- 1. Approval of the January 13, 2014 City Council Meeting Minutes.**

Consent

2. **Approval of the January 22, 2014 Claims in the Amount of \$909,096.08; Paid by Check Number's 89638 through 89746 with Check Number's 88740, 89433, 89554, and 89593 Voided.**
3. **Approval of the January 17, 2014 Payroll in the Amount of \$836,909.34; Paid by Check Number's 27318 through 27355.**

Review Bids

Public Hearings

New Business

4. **Consider the Final Plat of Rock Creek North Division 2, Phase 2.**

CAO Hirashima reviewed this item. She explained that the plat consists of 15 lots and was originally approved by Snohomish County before the City annexed the area. The overall plat is 143 lots on 33 acres. This is Division 2. This project is located east of 83rd Avenue and south of 84th Street NE. They have met all the conditions of final plat approval.

5. **Consider the Professional Services Agreement with HDR Engineering for Preliminary Engineering and Environmental Documentation in Support of the Interstate 5/SR 529 Interchange Expansion Project.**

This item was removed due to continuing negotiations.

6. **Consider an Ordinance Amending Marysville Municipal Code (MMC) Chapter 12.20 Entitled "Animals and Vehicles on Sidewalk"; Providing for Severability; and Effective Date.**

Commander Lamoureux discussed updates to the proposed amendments as a result of comments and questions from the Council last week.

Regarding Councilmember Seibert's question about improved shoulders that have been designated as walkways as well as park trails. Director Ballew explained that there is currently signage on parks trails that prohibits motorized uses, but bike lanes adjacent to sidewalks are considered non-recreational. The Court found that if the road system or trail system is considered a transportation corridor, not a recreational corridor, the use of the Recreation Immunity Act does not assist the City. Based on that, he recommended restricting the amendments to transportation corridors, and not recreational corridors. Councilmember Seibert asked about classifying the improved shoulder as a sidewalk so that police could enforce negligent activities.

Director Nielsen discussed difficulties in meeting certain criteria with the shoulders in the County. Councilmember Seibert said he mainly wants to delineate the improved shoulders from other shoulders and classify them as walkways, not a parking strip or a place to ride your bicycle at high speeds in order to assist police. Director Nielsen explained that in specific places there will be no parking signs. City Attorney Weed wondered if there was already a civil infraction that the police could issue for those who act recklessly on the shoulder or the road. Commander Lamoureux commented that currently if there is not a sidewalk then the transporter is considered to be in the street right-of-way which enables the police to have enforcement action. Councilmember Seibert said he wanted to differentiate between normal shoulders and shoulders that are “improved” and designated as walkways to protect pedestrians. Commander Lamoureux offered to look into this further, but he thought that it was still enforceable by police even though it was part of the street. City Attorney Weed suggested inserting language such as “. . . or other walkway specifically designated for pedestrians”.

Councilmember Seibert suggested painting pictures of pedestrians on the road on shoulders that are designated walkways. He then asked about the possibility of people being able to take a picture of people who park illegal in walkways and send it in to police. Commander Lamoureux stated that in order to write an infraction it would have to actually be observed by the officer writing the infraction.

Director Nielsen commented that painting symbols on a roadway would open up a bunch of other conditions. Chief Smith added that adding regulations to the MMC actually makes it more difficult for the police to take enforcement action. He commented that any time there is an extension of the roadway he thinks it is already looked at very carefully by police.

7. Consider a Resolution Establishing that Special Market Conditions Exist with Respect to the Purchase of Certain Water Filtration Equipment and Technical Assistance and thereby Waiving that Competitive Bidding Occur.

Director Nielsen explained that this is a requirement by state law so the City can waive the competitive bidding process because the material is unique to the operation of the filtration plant.

City Attorney Weed clarified that this item fits into the circumstances where the City is allowed to waive the state bidding laws.

8. Consider an I-502 Recreation Marijuana Regulation Alternative Discussion.

CAO Hirashima reviewed the history of this item including the moratorium imposed by Council, the I-502 Committee recommendations, and the Planning Commission hearing and recommendation to prohibit all aspects of marijuana operations in the City.

City Attorney Weed explained that one of the recent developments on this issue is that the Liquor Control Board asked the Attorney General’s Office for an Opinion about whether I-502 preempts local jurisdictions from banning these types of businesses

altogether. The Opinion was that I-502 does not prohibit cities from imposing a ban should they choose to do it. He stressed that while this is important, it is just an opinion and not law. Another development is that there have been three different bills proposed in the legislature. HB 2322 would prohibit counties, cities and towns from enacting any ordinance or other regulations that would prohibit businesses that get licensed by the state. Concurrently HB 2509 and HB 2510 would specifically allow cities and town to prohibit these types of businesses. None of these bills have passed yet. He reviewed how other cities are handling this issue.

Lt. Thomas stated that the Police Department has held a position of prohibition from the beginning. Their recommendation is that the Planning Commission and City Council continue the prohibition on the establishment of marijuana businesses within the city limits of Marysville. For this recommendation, the police looked at crime statistics associated with this and medical marijuana, information from a white paper based in Los Angeles, other areas of this emerging industry, the fact that it is a violation of federal law, concerns about the state Liquor Control Board's ability to enact robust plans, and organized crime concerns.

Chief Smith commended the City Council for their stance on the moratorium. He stressed the following:

- Marijuana is still a federal crime.
- It does not appear that the Liquor Control Board will not have adequate staffing to monitor over 300 retail shops plus producer / processor sites. The city does not have time to monitor these, and he doesn't have much confidence in the state's ability to monitor these.
- There is a threat to the black market. The DEA is very concerned about these issues in Denver.
- Banking is still an issue. This is a cash business which brings crime.

Mayor Nehring thanked the Committee and the Planning commission for their work on this.

CAO Hirashima stated that the list of pending applications has grown. There are at least 29 applications that have been submitted for producer, processor, and retail operations. The City is receiving applications and business license applications which have been denied on the basis of the moratorium in the city. She reviewed the options available to the Council as a result of the Planning Commission recommendation.

City Attorney Weed stated that the general recommendation of the Planning Commission was to prohibit producers, processors, and retailers, but there was not a specific ordinance before them that they were considering. He noted that if the Council wanted to follow along with this direction staff would need to prepare an ordinance prohibiting these aspects.

Councilmember Wright commented that the sooner the Council addresses this, the better.

Councilmember Seibert asked about HB 2322 which would prohibit cities and towns from enacting any ordinance which has the effect of preventing or impeding the establishment of a marijuana business that gets the required license from the state. This doesn't mean that a city would be prohibited from having its own set of rules, but it couldn't adopt rules that would completely disallow the operation of those businesses if that bill passes as proposed. Additionally, HB2322 states that any city that does an outright prohibition would be disallowed from receiving any of the liquor revolving fund monies that might otherwise be available.

Councilmember Seibert commented that if they had to write something to allow these businesses they would have the ability to at least zone it appropriately. He asked CAO Hirashima if the Planning Commission looked at zoning alternatives at all. CAO Hirashima said that there were some scenarios available that staff had put together, but they weren't necessarily addressed by the Planning Commission. Councilmember Seibert asked if the Council passes an ordinance prohibiting these businesses would they be able to modify it later? City Attorney Weed affirmed that Council could always amend any ordinance that they adopt. He clarified that the legislature needs a 2/3 majority to pass any of the bills he had referred to.

Councilmember Muller asked if those cities that have a prohibition now might actually open themselves up to litigation as opposed to just having a moratorium. City Attorney Weed stated that there are certainly risk management aspects to all of this, but he suggested discussing this in Executive Session.

Councilmember Vaughan asked if there are also some risks of allowing these things to occur within the City. City Attorney concurred that there are risks on both sides of this issue. Councilmember Vaughan referred to the Attorney General Opinion and asked if a city should look at that as grounds to go ahead with a prohibition or if they should wait until some kind precedent is set. City Attorney Weed replied that while the Attorney General Opinion is not law, it is given some deference by the courts. He noted that there are no pending cases right now regarding cities' rights to prohibit these businesses. Councilmember Vaughan said he would be interested in seeing what an ordinance for prohibition might look like so they could consider that as a council.

Councilmember Seibert concurred. He said he would like staff to prepare whatever information they would need to discuss the issue in an Executive Session. City Attorney Weed recommended having a conversation about the different approaches they could take to banning these types of businesses before they draft an Ordinance because there is more than one approach to writing this type of ordinance. Councilmember Seibert recommended staff creating a draft ordinance then having a conversation about risk management in Executive Session.

9. Consider the Remedial Action Grant Between the Washington State Department of Ecology and the City of Marysville.

The City was successful in receiving a remedial action grant from the DOE for the Geddes Marina for \$200,000 for cleaning up the site. She commended Shawn Smith for tracking down and obtaining this grant.

Mayor's Business

Mayor Nehring:

- It was a great Super Bowl game yesterday.
- AWC Action Conference was very well put together and was a great lobbying opportunity.
- At the AWC Board meeting there was a lot of discussion about different aspects of the marijuana issue. Their position is that the legislature should not interfere with the cities' ability to enact whatever position they choose on this matter. They also discussed protecting funding. He noted that the state is very overextended in their debt.
- The Red Curtain Foundation is really trying to get an arts center off the ground. They will be having a kickoff luncheon/fundraiser towards this effort on February 18 at 12:30 p.m. Interested council members should let him know if they plan to attend.

Staff Business

Sandy Langdon had no comments.

Rick Smith:

- He praised the Seahawks' performance at the game.
- Police supported the Seahawks by flying 12th Man flags which received very positive public response.
- Regarding the sidewalk issue, he asked for more direction from the Council. Mayor Nehring recommended researching what it would take to make sure that they can police it in a way that would protect the pedestrians in that area. Councilmember Seibert said he thought that what City Attorney Weed had suggested was adequate from his perspective, but he recommended that the police consider what works best for them. Chief Smith indicated they would talk with Grant Weed's office about it.
- More search warrants were issued last week and this week. A burglar was arrested this week. Patrol, the NITE team and detectives have been working together very well and enabled the police to be proactive.
- Pastor/Police Chaplain Greg Kanehan's father passed away last week.

Doug Buell commented that Saturday there would be an event to show *Race: The Power of Illusion* – a three-part PBS documentary from 9 to 2 at the Marysville United Methodist Church.

Kevin Nielsen:

- He commended Mayor Nehring's speech at the Chamber last week.
- There will be a Public Works Committee Meeting on Friday.
- Drive safe because the temperatures are dropping and ice is expected.

Jim Ballew had no comments.

Grant Weed:

- No Executive Session needed tonight.

Gloria Hirashima had no comments.

Call on Councilmembers

Steve Muller stated that the AWC was great. There was a lot of discussion about resurrecting the Public Works Fund. It was very positive. Legislative representatives were very responsive.

Donna Wright:

- She concurred with the AWC. She commented on the value of networking with other council members around the state.
- The Chamber meeting with the Mayor's address was packed.

Jeff Seibert:

- He asked if the Red Curtain Foundation has applied for Hotel Motel Grant funds. Mayor Nehring said he mentioned it to them and they plan to apply next year.
- He was disappointed in the reported low numbers of people who showed up for the odor meeting last week.
- He will not be able to attend the Public Works meeting on Friday.

Rob Toyer had no comments.

Kamille Norton:

- She heard that the Father Daughter dance was wonderful as usual.
- She commended the Mayor's speech on Friday.

Michael Stevens:

- Go Seahawks.
- Go Marysville.
- The Father Daughter Dance was amazing. He enjoyed his fifth year attending.

Jeff Vaughan thanked the Mayor for his orange candy.

Executive Session

- A. Litigation
- B. Personnel
- C. Real Estate

Adjournment

Seeing no further business Mayor Nehring adjourned the meeting at 8:17 p.m.

Approved this _____ day of _____, 2014.

Mayor
Jon Nehring

April O'Brien
Deputy City Clerk