



**MINUTES** (Approved as Amended on 4-6-16)

**TIME:** Wednesday, March 16, 2016, 4:00 p.m.  
**PLACE:** Room 16, Tacoma Municipal Building North  
733 Market Street, Tacoma, WA 98402  
**PRESENT:** Stephen Wamback (Vice-Chair), Donald Erickson, Jeff McInnis, Meredith Neal,  
Anna Petersen, Brett Santhuff, Dorian Waller  
**ABSENT:** Chris Beale (Chair), Scott Winship

**A. CALL TO ORDER AND QUORUM CALL**

Vice-Chair Wamback called the meeting to order at 4:02 p.m. A quorum was declared.

**B. APPROVAL OF AGENDA AND MINUTES OF MARCH 2, 2016**

The agenda was approved.

The minutes of the regular meeting and public hearing on March 2, 2016 were reviewed and approved as submitted.

**C. PUBLIC COMMENTS**

No members of the public came forward to provide comments.

**D. DISCUSSION ITEMS**

**1. Marijuana Code Amendments**

Brian Boudet, Planning Services Division Manager, stated that they were seeking feedback from the Commission on potential modifications to the proposal, in response to public comments received at the public hearing on March 2, 2016 and through the comment period. He noted that they had provided staff recommendations in the agenda packet based on analysis, research on other jurisdictions, public testimony, and the Commission's input. He commented that the intent of the staff recommendations was to find a middle ground that respects the will of the voters, respects the legislature, and provides reasonable access.

Molly Harris, Planning Services Division, provided a review of public testimony, staff recommendations, comparisons of key options, maps, and the upcoming schedule. She reviewed that there had been limited testimony during the public hearing and throughout the comment period. The testimony was generally supportive of the potential amendments with differing opinions on retail store dispersion requirements and some concerns related to medical marijuana access. Ms. Harris provided a table comparing options from the existing regulations, the public review draft, and staff recommendations for sensitive use buffers, dispersion, requiring a medical endorsement, allowing cooperatives, and a cap on the total number of stores.

The following is a summary of the Commission's discussion and conclusions and does not reflect the order in which the options were discussed.

Sensitive use buffers were discussed. Ms. Harris reported that they were recommending 1000 feet from elementary, secondary schools, and playgrounds as per State law. For all other sensitive use buffers the staff recommendation was 500 feet Downtown and 1000 feet everywhere else. Mr. Boudet commented that staff was recommending reducing buffers to only 500 feet Downtown because it would open up

numerous opportunities in the Downtown area and because a smaller buffer would not be reasonably functional. Commissioner Neal commented that a separate reduced buffer for transit centers might be necessary to address access issues. Discussion ensued. Commissioners concurred with requiring 500 foot buffers from all sensitive uses citywide with the exception of State buffers for elementary schools, secondary schools, and playgrounds which would remain at 1000 feet.

Dispersion was discussed. Ms. Harris reviewed that staff was recommending a dispersion of 500 feet Downtown out of recognition that there were not many locations available and 1000 feet elsewhere. Mr. Boudet noted that they were recommending a 1000 foot dispersion outside Downtown due to concerns about the potential impacts of overconcentration and in the interest of improving access by spreading stores out. Commissioner Erickson commented that they should also consider traffic impacts, noting that they would reduce trips by dispersing stores geographically around the City. Commissioner McInnis commented that he did not support dispersion as it was not realistic to push retailers into other areas where there may not be a market. Mr. Boudet noted that there was still a good deal of space in areas like 6<sup>th</sup> Avenue even with a dispersion requirement. A map of existing retail locations with the recommended dispersions was discussed. Commissioners concurred with requiring a dispersion of 300 feet between stores inside Downtown and 1000 feet everywhere else.

Medical endorsement requirements were discussed. Ms. Harris reported that the staff recommendation was to require that 50% of retailers have a medical endorsement. Mr. Boudet commented that requiring 50% was a good balance to try to ensure access to medical marijuana as new retail stores are opened and collective gardens are closed. He noted that they would not be able to ensure that stores with endorsements were selling medical products, but they could ensure that a percentage of stores had the endorsements. Commissioner Neal asked why they were recommending requiring only 50% if it was relatively easy to obtain the license. Ms. Harris responded that while medical endorsements were currently easy to get, it might not remain that way in the future. Vice-Chair Wamback commented that since the Department of Health had not yet released their rules to regulate the sale of medical products, it might not be appropriate to include an endorsement requirement in the zoning code. Vice-Chair Wamback added that if there was no requirement that stores with medical endorsements sell medical marijuana, then requiring an endorsement would not be the best way to ensure patient access. Commissioner Petersen commented that while the requirement does not guarantee medical marijuana will be available, requiring that all stores have the endorsement would improve the odds. Commissioner Petersen expressed concern about how they would determine which stores would be required to have an endorsement with a 50% requirement. Commissioner Santhuff commented that requirement should either be 100% or 0%. Commissioners concurred that they should require that either none or all of the retailers to obtain a medical endorsement.

Cooperatives were discussed. Ms. Harris reported that staff was recommending allowing cooperatives with a 1000 foot buffer from sensitive uses due to past code enforcement issues with collective gardens. Commissioner Petersen questioned if the State would take into consideration the buffer rules for individual jurisdictions when allowing cooperatives. Mr. Boudet responded that historically the State had not considered the rules for local jurisdictions. Vice-Chair Wamback expressed concern about how well the Liquor and Cannabis Board would enforce City restrictions on cooperatives and asked if they could maintain a moratorium until the State provided additional guidance. Mr. Boudet responded that they could, but it would effectively be a ban on cooperatives. Commissioner Neal commented that there were people who were growing medicinal strains that would be more difficult to find in recreational stores and that she would prefer to allow cooperatives with the State regulations to provide those people a legal avenue. Commissioner Santhuff commented that patients would still have the ability to grow their own product individually and that he did not want to open the risk of cooperatives going awry. Commissioners concurred with requesting that staff construct language both for banning cooperatives and for allowing cooperatives with the State requirements. Commissioners requested that staff incorporate language into the findings of fact stating that cooperatives should not impact retail stores.

Requiring a cap on the total number of retailers was discussed. Ms. Harris commented that they were recommending a citywide cap of 16 stores to place the total number of stores under local control. Commissioner McInnis expressed support for setting the cap at 16 retailers to keep control of the issue with the City. Commissioner Neal reviewed that there had been a significantly higher number of collective

gardens than the current State cap, indicating that a higher number of retail stores would be supported. Commissioner Erickson recommended adding to the cap the number of retailers allocated to nearby jurisdictions with bans. Vice-Chair Wamback requested that staff provide the allocations numbers for surrounding jurisdictions. Commissioner Santhuff commented that increasing the number of stores beyond the current cap would not improve access for surrounding jurisdictions as they already had to travel to Tacoma. Commissioners concurred with setting a cap at either 16 stores or higher.

Vice-Chair Wamback recessed the meeting at 5:48 p.m. The meeting resumed at 5:54 p.m.

## **2. Code Cleanups**

Stephen Atkinson, Planning Services Division, provided a review of background information, key issues, and proposed clean-up revisions to the Land Use Regulatory Code. Code cleanups for consistency with the Comprehensive Plan included numerous updates to names and terminology throughout the code. For the Shoreline Code, code cleanups would include changes based on the best available science review and amendments to the 13.11 Critical Areas Preservation ordinance adopted in 2015 as well as changes to the Wetland Rating System.

Mr. Atkinson noted that there were circumstances throughout the City where the zoning for existing businesses had changed since permitting. City policy on nonconforming uses had changed in recent years to be more accommodating and to recognize that many nonconforming uses provide benefits and services to the City's neighborhoods. However, in many cases rezoning the uses would be inappropriate given the site context. Therefore, the staff recommendation was to provide a process for expansion and change of a nonconforming use, via a conditional use permit, rather than proposing land use designation or zoning changes to accommodate the uses. Mr. Atkinson noted that the current code allowed for a change of use and expansion within certain parameters, including no expansion of hours of operation and no increase in outdoor storage of goods and materials. The proposal would create a conditional use permit (CUP) process for these nonconforming uses with general CUP criteria as well as new criteria. The new criteria would include consideration for whether a rezone is inappropriate, what the positive impact of the expansion would be, and requiring that the business come into compliance with certain codes such as landscaping standards, buffering standards, pedestrian and bicycle support, off-street parking, and storage areas. Vice-Chair Wamback asked what the trigger would be for a business owner entering into the new process. Mr. Boudet responded that the CUP process would provide the opportunity for a property owner to ask for more than the current limitations of their nonconforming use.

Mr. Atkinson reported that other minor cleanups included updates to the mobile home/trailer court definition; conditional use criteria references; and fixing a reference loop between the Mixed-Use Center Height Bonus Palette and the Development Incentives portions of the Affordable Housing Incentives and Bonus Administrative Code. He reviewed that the Staff recommendation was to release the drafts for public review with a tentative May 4<sup>th</sup> public hearing date.

Commissioner Erickson motioned to release the code cleanups for a tentative public hearing on May 4<sup>th</sup>, 2016. Commissioner Waller seconded. The motion was approved unanimously.

## **3. Wireless Communication Facilities**

Lihuang Wung, Planning Services Division, provided a review of the proposed code amendments for wireless communication facilities. Mr. Wung reviewed that the amendment would make changes to TMC 13.06.545 concerning Wireless Communications Facilities, to bring the code into compliance with Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 and the related Federal Communications Commission (FCC) rules. The amendment would also take the opportunity to enhance the code language to further minimize the visual impacts of wireless communication facilities.

Key revisions to respond to FCC rules included limiting minor modifications of Level 1 structures to cumulative changes and incorporation of FCC criteria for "substantial changes". If cumulative changes went beyond the definition of a minor modification, the changes would go through a Conditional Use Permit (CUP) review. Noting that the FCC language includes allowance for 20 foot antennas protruding

from a tower, Mr. Wung commented that the current code requires applicants to go through an order of preference that prioritizes standards including collocation, concealment, camouflage, and screening.

Key revisions to address visual impacts included prohibiting rooftop antennas under Level 1 modifications; preference for collocation and concealed/flush-mounted preferred over non-concealed; addition of siting criterion that also applies to View Sensitive, Historic and Conservation Overlay districts; encouraging flush-mounting and color-matching and allowing alternative designs; and the addition of photo examples for site location and development standards to showcase alternative treatments. Photo examples of alternative treatments for building-mounted facilities were discussed.

Key revisions to enhance the code language included language stating that Level 2 wireless facilities would also include building mounted antennas that exceed the associated limitations of Level 1 facilities. A more significant change to enhance code language would be the regrouping of zoning districts on the Use Table. Mr. Wung noted that the current code had six groups of uses, with three of them having the same review type. The proposed table would have uses grouped by the type of use: residential, commercial, light industrial, or heavy industrial.

Commissioner McInnis asked if there was a timeframe for cumulative changes. Mr. Boudet responded that cumulative changes, including those spread out over a long period of time, that go beyond minor modifications would have to go through the CUP process.

Commissioner Erickson motioned to authorize for public review the Wireless Communication Facilities proposal in preparation for the Public Hearing scheduled for May 4<sup>th</sup>, 2016. Commissioner Neal seconded. The motion was approved unanimously.

#### **4. Short-Term Rentals**

Mr. Wung provided a review of background information, key issues, and the proposed approach and framework for code amendments concerning short-term rentals. Mr. Wung reviewed that there was a growing peer-to-peer rental market of short-term, transient lodging largely in single-family homes. He reported that in the Tacoma area there were currently around 50 homes listed on VRBO and over 250 homes listed on Airbnb. Potential concerns included the presence of a non-residential/commercial use in residential areas; maintaining “neighborhood character”; tenant behavior and accountability; adequate owner oversight during the stay of tenants; and potential safety concerns. Potential benefits included providing an alternative form of lodging; support for tourism; supplemental income for home owners; efficient use of structures; and encouragement for economic development.

The proposed approach was discussed. Mr. Wung commented that there were several options: to keep monitoring the trend and tracking the complaints until a more appropriate time to address the issue; to prohibit the use outright; or to allow the use and modify development regulations accordingly. General trends observed from researching other cities included that some jurisdictions regulate and many do not; that the demand for short-term rentals is greater in vacation destinations; that some jurisdictions include zoning limitations on allowed locations, size, frequency, and duration; and some jurisdictions require special licensing.

The proposed regulatory framework was discussed. The proposal was to first provide a definition of “short term rentals”. They would then create requirements including registration, annual safety inspections, a conditional use permit review for accessory activities, whether owners should be required to be on site, safety signs, and a possible 600 foot dispersion between homes with 3 or more rooms or the entire house rented out. There would also be a requirement that, once the code amendments were adopted, existing short term rentals would have 6 months to register.

The current use table for a lodging house was discussed. Jana Magoon, Planning Manager, noted that the current code distinguished between the rental of 1 room, 2 rooms, and 3-9 rooms. There was currently no language concerning the rental of an entire dwelling. Mr. Wung reported that the proposed use table would replace the term “lodging house” with “short-term rental” which would be defined as the rental of one or more rooms (not more than 9) within an owner occupied dwelling, or the rental of an entire dwelling, for less than 30 days.

Mr. Boudet asked if Commissioners had any interest in allowing a CUP for bed and breakfasts in residential zones. Discussion ensued. Vice-Chair Wamback expressed support for separating bed and breakfasts from the short term rental discussion as not every bed and breakfast would be managed by the owner.

Commissioners provided the following comments and questions:

- Vice-Chair Wamback requested a comparison between the proposed framework and the existing requirements for home occupation.
- Commissioner Petersen asked why a 600 foot dispersion was proposed as a requirement. Ms. Magoon responded that it was recommended under the assumption that there would be a negative impact from having too many short-term rentals concentrated in one area.
- Commissioner Neal commented that renting an entire house might have a smaller impact than renting out 3-9 rooms separately. Ms. Magoon responded that when the entire house is rented the owner is less likely to be present, making it more difficult to manage behavior.
- Commissioner Erickson recommended specifying 'bedrooms' and not simply 'rooms' in the code language and that there be a required ratio of bathrooms to bedrooms.
- Commissioner Erickson expressed concern about allowing the rental of as many as 9 bedrooms and the associated parking and nuisance issues. He questioned why they were opening up R-3 and R-4L to the rental of 3-9 rooms on the proposed use table. Ms. Magoon responded that the reason was that both zones allowed uses greater than single family.
- Commissioner Neal expressed concern about the dispersion requirement and recommended against allowing 3-9 room rentals in R-3 and R-4 zones.
- Commissioner Neal asked how the proposed code would affect a bed and breakfast currently in an R-2 zone. Ms. Magoon responded that it would not be allowed under the current zoning or the proposed code.
- Vice-Chair Wamback suggested that in the requirements they clarify the responsibilities for the owners and the occupants especially in terms of consumption of marijuana.
- Commissioner Neal suggested that they consider a limit on the total number of people allowed to stay in a single home in the requirements.
- Commissioner Santhuff suggested that rentals in some of the zones on the proposed short term rental use table should be permitted only with a conditional use. Ms. Magoon responded that to be permitted, all short term rentals would need to sign a document like a notice on title, rental registration, or license instead of a conditional use permit.

#### **E. COMMUNICATION ITEMS & OTHER BUSINESS**

Mr. Boudet reported that the discussion of Enhanced Demolition Permit Review was currently going through the Landmarks Preservation Commission and would be coming to the Planning Commission as well. There would also be a process to improve and finalize the historic inventory that would be used to determine the level of review required.

Mr. Wung reported that the District 4, Environmental, and Architecture, Historic Preservation, and/or Urban Design positions would be expiring on June 30, 2016. He urged Commissioners to reapply for their positions and noted that the call for applications would go out on May 4<sup>th</sup>.

#### **F. ADJOURNMENT**

At 7:32 p.m., the meeting of the Planning Commission was concluded.