

City Council

Special Meeting Minutes

**Tuesday October 13, 2009
Council Chambers – City Hall
749 Main Street
7:00 PM**

Call to Order – Mayor Charles Sisk called the meeting to order at 7:00 p.m.

Roll Call was taken and the following members were present:

City Council: *Mayor Charles Sisk, Mayor Pro Tem Sheri Marsella Councilors: Ron Sackett, Dave Clabots, Frost Yarnell, Hank Dalton (arrived at 7:02 p.m.) and Robert Muckle (arrived at 7:21 p.m.)*

Staff Present: *Malcolm Fleming, City Manager
Heather Balsler, Deputy City Manager
Tom Phare, Public Works Director
Kevin Watson, Finance Director
Paul Wood, Planning Director
Bruce Goodman, Police Chief
Bonnie Star, Economic Development Director
Kathleen Hix, Human Resources Manager
Meredyth Muth, Public Relations Manager
Nancy Varra, City Clerk*

Others Present: *Sam Light, City Attorney*

PLEDGE OF ALLEGIANCE

All rose for the pledge of allegiance to the flag.

APPROVAL OF AGENDA

Mayor Sisk called for changes to the agenda and hearing none, moved the agenda be approved, seconded by Councilor Yarnell. All were in favor. Absent: Councilors Dalton and Muckle.

PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

There were no public comments.

Councilor Dalton arrived at the meeting at 7:02 p.m.

**ORDINANCE No. 1561, SERIES 2009 – AN EMERGENCY ORDINANCE OF
THE CITY OF LOUISVILLE ESTABLISHING A TEMPORARY MORATORIUM
ON THE ACCEPTANCE, PROCESSING, OR ISSUANCE OF APPLICATIONS
OR REQUESTS FOR BUSINESS REGISTRATION, SALES TAX LICENSES,
BUILDING PERMITS, AND CERTIFICATES OF OCCUPANCY FOR MEDICAL
MARIJUANA DISPENSARIES WITHIN THE CITY OF LOUISVILLE – 1st
Reading – Set Public Hearing 10/20/09**

Mayor Sisk requested a City Attorney introduction.

City Attorney Light read Ordinance No.1561, Series 2009.

Mayor Sisk requested a Staff presentation.

Deputy City Manager Balser reported Ordinance No. 1561, Series 2009, is before Council for first reading as an emergency ordinance. The ordinance proposes a temporary moratorium on the acceptance, processing, or issuance of applications or requests for business registration, sales tax licenses, building permits, and certificates of occupancy for medical marijuana dispensaries within the City of Louisville. Additionally, upon the effective date of the ordinance no application or request for business registration, sales tax license, building permit, or certificate of occupancy for a medical marijuana dispensary or for any business purporting to sell or actually selling for medical use shall be received, reviewed, approved or otherwise acted upon. City staff is directed to study, develop, review and evaluate appropriate regulations or recommendations pertaining to medical marijuana dispensaries for Council consideration. The provisions of the ordinance are temporary and may be repealed by subsequent legislative enactment. The temporary moratorium established by this ordinance shall terminate as of April 20, 2010 unless sooner repealed. City Council may consider the following policy actions in light of the proposed ordinance:

1. Approve Ordinance No. 1561, Series 2009 establishing a moratorium.
2. Reject Ordinance No. 1561, Series 2009 and adopt additional land use regulations to permit medical marijuana dispensaries by right and/or special review, under certain conditions for operation and locations and/or subject to supplemental regulations.
3. Reject Ordinance No. 1561, Series 2009 and direct staff to review whether options and legal support exist for prohibiting medical marijuana dispensaries entirely within the City of Louisville.

City Attorney Light clarified the ordinance imposes a temporary moratorium on the processing or approval of medical marijuana dispensaries. Any action taken on the ordinance on first reading is not final action. If approved on first reading, final action will be on the ordinance's second reading, at the October 20, 2009 City Council meeting. The ordinance is not an outright ban on medical marijuana dispensaries, nor is it an outright approval of any medical marijuana dispensaries. The effect of the ordinance is to put on hold city processes on the operation of medical marijuana dispensaries, until the City can study the issues, review its regulatory options and enact appropriate regulations.

The ordinance places a moratorium on medical marijuana dispensaries for a period of six months; from October 20, 2009, to April 20, 2010. Additionally, the moratorium could be released earlier or extended. The moratorium does not relate to the criminal prosecution immunity protection provided in the state constitution for medical use of medical marijuana for either patients or caregivers. The moratorium is related to the establishment of dispensaries as a business and a land use within the City of Louisville. The moratorium does not involve the criminal aspects from the constitutional amendment, which was passed in 2000. The Colorado Court system has ruled a moratorium is an appropriate method to maintain the status quo while an issue is studied, as long as the moratorium is reasonable and acted upon in good faith.

City Attorney Light explained several municipalities are looking at regulatory options. Some options include considering the use as a permitted or nonpermitted use; zoning the use in some zone districts and adopting additional criteria such as distance requirements and operation requirements. Some municipalities are zoning and licensing medical marijuana dispensaries as a business operation. Those types of licenses involve hours of operations, signage, lighting, age limitation, security and whether there can be consumption on the premises. Some municipalities are taking no action. He noted the sale of marijuana currently remains illegal under federal law. The main thrust of the moratorium is to maintain the status quo while evaluating the options.

City Attorney Light noted there may be case law on this issue and also legislation at the next general assembly. There has been discussion at the Colorado Municipal League that the legislators will look at this issue. He stated the Colorado Attorney General may also be looking at this issue and provide guidance.

Constitution Amendment 20 is a set of constitutional immunities from prosecution at the state level for medical use of marijuana. Those protections are for patients and caregivers. The amendment does not use the word dispensaries nor does it discuss the sale of marijuana. The constitutional amendment allows patients and caregivers to possess and use a presumptive amount of marijuana for treating symptoms of debilitating medical conditions. The question is whether the

description of caregivers can also include an entity and can the entity become a caregiver for a number of patients, all of whom purchase their marijuana at a dispensary. That is why there has been a high interest in establishing retail medical marijuana dispensaries.

Mayor Sisk requested public comments. There were no public comments.

COUNCIL COMMENTS

Councilor Dalton asked if the next meeting would be the final opportunity to adjust the length of the moratorium. City Attorney responded yes, but noted if Council has suggestions or recommendations they can be taken this evening.

Councilor Dalton suggested the moratorium be extended to the term of the legislation session. City Attorney Light noted unless the state legislators adjourn early, their session ends on May 15.

Councilor Yarnell asked if there was a reason for a six-month moratorium. City Attorney Light explained a 4-month moratorium would end in mid-February and the general assembly may not provide legislation until later in the year. If the legislators decide the issue is of state-wide concern for which uniform regulation would be appropriate, the reach of that legislation would extend to home rule municipalities. That is the reason for a six-month moratorium.

Mayor Sisk favored an extension, which would allow the state legislators to pass legislation on the regulations of medical marijuana dispensaries. He voiced his concern over proceeding without guidance from the legislators.

Councilor Muckle arrived at the meeting at 7:21 p.m.

MOTION: Mayor Sisk moved to approve Ordinance No. 1561, Series 2009, on first reading, ordered it published and set a public hearing for October 20, 2009, seconded by Mayor Pro Tem Marsella. All in favor.

2010 PROPOSED BUDGET – DISCUSSION/DIRECTION

Mayor Sisk requested a Staff presentation.

City Manager Fleming summarized the changes to the proposed 2010 budget. Those changes requested by Council are as follows:

- Putting back the amount needed to keep the Senior Meal Program operating all 5 days of the week.
- Cutting the Chamber of Commerce Grant by 50%.
- Correcting the Forestry budget.

- Additional revenue to Memory Square based on additional fees/charges, an estimated \$17,000.

Other options for making up the difference in cost for the extra meal site day include the following:

- Cutting the legislative budget
- Scaling back other programs/find additional revenue at the Recreation Center and increasing the senior meal donation.
- Reducing the annual planting and beautification effort.
- Scaling back dollars for special events.

PUBLIC COMMENT

Robert Pierce, 1827 Eisenhower Drive, Louisville, CO addressed the budget decision to cut the hours of the Senior Resource Advisor. He noted there are four positions in the Senior Division and suggested cutting all four positions equally rather than cutting just one position by eight hours. He noted the Senior Resource Advisor is a critical position and provides help to everyone.

Shelly Angell, Executive Director of the Louisville Chamber of Commerce, thanked Council for reinstating half of their grant.

COUNCIL COMMENTS

Councilor Dalton asked what was entailed in cutting the legislative budget. City Manager Fleming stated the only line item in the legislative budget, which could be significantly reduced without impact would be the contingency budget. He noted reducing the contingency line item could constrain Council's ability to address contingencies as they arise. Other line items are related to the City's commitments to DRCOG, other entities, and dues and subscriptions and temporary salaries, which represents the Council's salaries. The City Charter prohibits cutting the City Council's compensation. Reducing all of the other line items would be difficult without undermining the City's ability to carry out the City Council's work and in engaging with regional partners.

Councilor Dalton suggested the contingency budget be cut before the years' end and if contingencies arise, other budget funds be used. City Manager Fleming confirmed the General Fund Reserves are available for unanticipated items.

Mayor Pro Tem Marsella suggested keeping the contingency budget. She suggested if further funds were needed, Council consider reducing the events budget (Fall Festival) further. Councilor Muckle concurred with Mayor Pro Tem Marsella. He suggested the City Council not enter into discussions on staff reduction levels.

Councilor Sackett asked for clarification on the City increasing fees on businesses. City Manager Fleming explained there are about 20 different licenses and permits in the City. Finance Director Watson explained the City is proposing a new business registration fee of \$25.00, which is expected to generate \$17,000 in new revenue.

Councilor Sackett felt increasing fees would hurt small business owners. He stated the City will gain at the expense of the small businesses.

Councilor Dalton spoke to local business owners about the business registration fees and noted some were opposed and some supportive.

City Manager Fleming explained there were several components involved in balancing the budget. Residents are being asked to accept reductions in service levels; employees are being asked to pay more for medical insurance and accept reduced compensation. He expressed hope these reductions in City government expenses would assist the business community.

Mayor Sisk recommended reducing the legislative contingency budget by \$5,000. He agreed the Council should not allocate staff hours, nor micromanage the management staff. He commended Staff for their work and continued discussions on the budget to the October 20, 2009 public hearing.

**EXECUTIVE SESSION – POST OFFICE PROPERTY DISPOSITION
STRATEGY** (Louisville Code of Ethics, Section 5-2(c) CRS 24-6-402(4)(a) –
Authorized Topics)

REGULAR BUSINESS ITEMS SUSPENDED

Mayor Sisk requested the City Council convene an Executive Session for the purpose of discussing strategy for the sale or lease of the Post Office property. (Louisville Code of Ethics Sec. 5-2(b), CRS 24-6-402(4)(f) – Authorized Topics).

City Clerk Varra read Sec. 2.90.050 Public statement from the Louisville Municipal Code, which governs the topics for discussion in an executive session.

City Attorney Light explained Sec. 5-2 (c) of the Home Rule Charter authorizes an executive session for the purpose of discussion of real property acquisitions and dispositions of property owned by the City and is limited to appraisals or value estimates. An executive session is also authorized by the open meetings law of the CRS Section 24-6-402(4)(a).

MOTION: Mayor Sisk moved the City Council adjourn into an executive session for the purpose of discussing the strategy for sale or lease of the post office property, and include in the City Manager Fleming, City Attorney Light and

Economic Development Director Star. Councilor Dalton seconded the motion. All were in favor. The City Council went into executive session at 7:46 p.m. and returned from executive session at 8:21 p.m.

REGULAR BUSINESS ITEMS CONTINUED

CITY ATTORNEY REPORT FROM EXECUTIVE SESSION

City Attorney Light reported in executive session, Council discussed real property dispositions with respect to strategies for the potential disposition of property owned by the City. City Staff and the City Attorney were given direction by City Council. Staff will return to Council any new information with respect to their direction. He noted any official Council action would appear in a City Council agenda and packet and would require an ordinance and a public hearing process.

ADJOURN

MOTION: Councilor Dalton moved for adjournment, seconded by Councilor Sackett. All were in favor. The meeting was adjourned at 8:25 p.m.

Charles Sisk, Mayor

ATTEST:

Nancy Varra, City Clerk