



**MARIJUANA SUBCOMMITTEE MEETING**  
**March 3, 2016 1:00 pm**  
**Newberg City Hall, 414 East First St**  
**Permit Center Conference Room**

Chair Tony Rourke called the meeting to order at 1:02 p.m.

**ROLL CALL:**

Members Present: Councilor Denise Bacon (arrived late) Councilor Tony Rourke (Chair)  
Councilor Stephen McKinney

Staff Present: Doug Rux, Community Development Director  
Bobbie Morgan, Office Assistant II Truman Stone, City Attorney  
Shelden Clay, City Detective

**APPROVAL OF MINUTES:**

**MOTION: Rourke/McKinney** moved to approve the February 4, 2016, minutes. Motion carried (2 Yes/ 0 No).

**PARAPHERNALIA:**

City Attorney Truman Stone gave a handout of the most current State Statute regarding marijuana to replace pages in the packet. In the statute, it was illegal to possess drug paraphernalia with the intent to sell or deliver. Measure 91 created a new section in the statute that gave a definition for marijuana paraphernalia which was no longer illegal. The Municipal Code created a local ordinance violation for drug paraphernalia, but there was no definition of possession with the intention to sell. He was asking for guidance on whether the Code needed modifications or if it should be repealed and the City would be under the state statute.

Police Detective Sheldon Clay presented ways people ingested marijuana and showed examples that had been seized prior to the change in the statute.

There was discussion regarding the paraphernalia items.

CA Stone suggested repealing Municipal Code sections 9.10.010 and .020 regarding possession of less than an ounce of marijuana and an exemption for those holding medical marijuana cards, as these were pre-empted by State law and .080A regarding the penalty. Regarding paraphernalia, the Municipal Code was parallel to the state statute with one exception, as an offense it was unlawful to use or have the intent to use paraphernalia, and the statute said it was illegal with only the intent to distribute or sell. There was no definition of marijuana paraphernalia in the Code which needed to be added.

Detective Clay said one of the issues was having a piece of paraphernalia that had been used, and they would like to be able to charge minors in possession if there was marijuana residue on the paraphernalia. The State Statute only discussed the intent to sell, not the intent to use, and if minors possessed marijuana paraphernalia



they would not be violating the state statute. Marijuana use among young people needed to be specifically addressed.

CA Stone said it did not create criminal offenses, but would be infractions equivalent to traffic fines, but police officers would be able to seize the paraphernalia. The possession with intent to use was only in the Code, not in the state statute.

Detective Clay thought there should be a distinction between drug paraphernalia and marijuana paraphernalia in the Code to allow for what was now legal by the state statute, and address the issue of minors with the intent to use even for marijuana paraphernalia. The current Code covered drug paraphernalia, but did not cover marijuana paraphernalia use. The statute only covered intent to sell, and the Code addressed the possession.

Chair Rourke thought the age should also be looked at, as it should be 21 and under instead of 18 and under.

Councilor McKinney was in favor of mirroring the State and addressing any ambiguity in the Code so it was simplest for the people enforcing the Code.

**MOTION: Bacon/Rourke** moved to repeal Municipal Code sections 9.10.010, .020, and .080 A as they no longer met state statute. Motion passed (2 Yes/ 1 No [McKinney]).

**MOTION: Rourke/Bacon** moved to add a definition of marijuana paraphernalia to the Municipal Code that mirrored ORS 475.525 subsection 4. Motion carried (3 Yes/ 0 No).

**MOTION: Rourke/Bacon** moved to change the Code section 9.10.050 C to say delivery of drug or marijuana paraphernalia to a minor under the age of 21 would be a violation. Motion carried (3 Yes/ 0 No).

Councilor Bacon asked what happened if a minor had a medical marijuana card. CA Stone answered with the way it was written there was no exception. They could create a new subsection where possessing marijuana paraphernalia or delivering marijuana paraphernalia to a minor possessing a medical marijuana card was exempt.

Detective Clay explained the different types medical marijuana cards.

**MOTION: Rourke/Bacon** moved to exempt medical marijuana cardholders in .050. Motion carried (3 Yes/ 0 No).

**MOTION: Rourke/McKinney** moved to keep in the Code that possession with intent to use was a municipal offense. Motion carried (3 Yes/ 0 No).

## RECREATIONAL MARIJUANA TAXES:

Community Development Director Doug Rux presented information on recreational marijuana taxes. The City had adopted an ordinance in 2014 placing a 5% tax on gross sales of medical marijuana and 10% tax on gross sales of recreational marijuana. HB 3400 and HB 2041 indicated that local authority had to go to a vote before implementing a tax and the maximum amount of tax would be 3%. There was a question whether Newberg's ordinance was grandfathered in as it came before the house bills that were passed in 2015.





CA Stone thought that the ordinance was grandfathered in. The counter argument appeared to be that the house bills attempted to pre-empt local government from having taxes other than the 3%. The City had already received tax revenue from medical marijuana.

CDD Rux continued by explaining how the State taxed producers, how they would also collect a 17% tax, and for a retailer it was 17% but they got to keep 2% of that amount, who would collect the tax, financial records for retailers, and distribution of the tax. Local jurisdictions would receive 10% of the tax for local law enforcement. Up until July 1, 2017, it would be based on population and after July 1, 2017, it would be based on the number of licenses that were issued in the community. If a local jurisdiction banned a producer, processor, wholesaler, or retailer, they would not be allowed to participate in the state shared revenue for marijuana. Newberg had not banned any of these. There was a question of whether or not they should be taxing medical marijuana. He asked if they wanted to refer a 3% tax to the voters in case the 10% was challenged.

CA Stone referred to page 8 and discussed the legislative intent to prohibit local taxes. He did not think it was retroactive and repealing previous ordinances, but it would be an issue for the court to decide. There were strong arguments that the intent was to only allow the 3% local tax, and there were strong arguments for home rule authority and that it was not explicitly explained in the house bills. It was uncertain how the issue would come out if it went to court. There was no current litigation on this issue.

Councilor McKinney asked if staff had a recommendation. CA Stone responded a safe harbor would be to send the 3% tax to the voters and repeal the local taxes that were imposed.

Chair Rourke said it would be close to the same amount as the current medical marijuana tax if the 3% was passed and the City received 1.5% from the State, the City would get 4.5%. There was a question of whether they should tax medical marijuana as it was considered being similar to prescriptions.

There was discussion regarding whether or not the local tax ordinance should be repealed before the vote.

CA Stone commented that they could let voters know the 3% would replace the additional local tax. The local tax had no restrictions on how the money was spent, but the State tax was restricted to law enforcement purposes. He thought there would be fixes to the marijuana system at every legislative session for the next several years. There was some impetus to merge the medical and recreational which would make things simpler.

Councilor McKinney asked how soon a recommendation was needed. CDD Rux responded the hope was the subcommittee would come up with a recommendation that day. The election materials needed to be submitted in June for the November election. He gave options for what to do if the State legislature passed other legislation that would affect the recommendations the subcommittee had already made.

There was discussion regarding the options for the taxing issue.

Councilor Bacon did not want to tax marijuana at all.

Councilor McKinney thought it should be taxed to give the Police Department resources for dealing with marijuana issues. He suggested waiting to see if the local tax ordinance passed in 2014 was challenged.

Chair Rourke suggested recommending this issue be decided by the full Council.

**MOTION: Rourke/Bacon** moved to bring the taxing issue to the full Council. Motion carried (3 Yes/ 0 No).



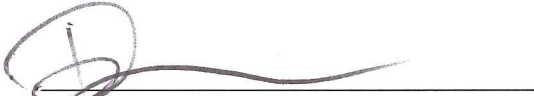
CDD Rux commented on wholesalers in residential areas. He had asked for clarification from OLCC, and OLCC said they would not issue a license to any of the categories in a primary residence.

**FUTURE MEETING SCHEDULE:**

This was the last meeting of the subcommittee.

**ADJOURNMENT:** Councilor Rourke adjourned the meeting at 2:30 p.m.

Approved by the Marijuana Subcommittee this 10 day of May, 2016.

  
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Marijuana Subcommittee Chair

  
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Bobbie Morgan, Office Assistant II