

A Special Meeting of the Common Council of the Town of Clarkdale was held on Tuesday, February 22 2011 at 3:00 P.M. at Clark Memorial Clubhouse, Men's Lounge, 19 N. Ninth Street, Clarkdale, Arizona.

CALL TO ORDER - Meeting was called to order at 3:00 PM by Mayor Von Gausig.

Town Council:

Mayor Doug Von Gausig

Vice Mayor Richard Dehnert

Councilmember Patricia Williams - absent

Councilmember Curtiss Bohall

Councilmember Bill Regner

Town Staff:

Town Manager Gayle Mabery

Community Development Director Sherry Bailey

Human Resources/Community Services Director Janet Perry

Police Chief Pat Haynie

Utilities Director Wayne Debrosky

Public Works Director Steve Burroughs

Town Clerk/Finance Director Kathy Bainbridge

CSP Manager Jodie Filardo

Town Attorney, Jonathan Millet

PUBLIC COMMENT – The Town Council invites the public to provide comments at this time. Members of the Council may not discuss items that are not specifically identified on the agenda. Therefore, pursuant to A.R.S. §38-431.01(G), action taken as a result of public comment will be limited to directing staff to study the matter, responding to any criticism or scheduling the matter for further consideration and decision at a later date. Persons interested in making a comment on a specific agenda item are asked to complete a brief form and submit it to the Town Clerk during the meeting. Each speaker is asked to limit their comments to five minutes.

MAYOR, COUNCILMEMBER AND TOWN MANAGER REPORTS ON CURRENT EVENTS

– A brief summary of current events by the Mayor, Council Members and Town Manager. The Council will not propose, discuss, deliberate or take legal action on any matter in the summary.

Mayor's Report:

Mayor Von Gausig reported on bills that he has been working on with the League and the State Legislature.

Councilmember Report:

Councilmember Bohall extended a thank you to Public Works Director Steve Burroughs who was a valued member of the Clarkdale Team and will be missed as he takes his new position with Camp Verde.

Vice Mayor Dehnert recognized and thanked Mayor Von Gausig for his work and efforts to continue negotiations regarding revenue sharing and the Model City Tax Code and read the article in the League of Arizona Cities and Towns Legislative Bulletin:

Revenue Sharing and Model City Tax Code

There is good news to report regarding two of the most problematic bills affecting cities and towns introduced during this

session. SB 1220 (uniform local sales tax base) and SB 1221 (urban revenue sharing; distribution freeze) were held in the Senate Finance Committee and did not move forward. Senator Steve Pierce (R-Prescott), the sponsor of both bills, agreed to withdraw them. We are very grateful to Sen. Pierce for being willing to listen to our serious concerns about the legislation. Last Friday, February 11, four members of the League Executive Committee met with Kevin McCarthy, President of the Arizona Tax Research Association (ATRA), to discuss the impacts of SB 1220 on cities and towns, and how improvements could be made to the Model City Tax Code to advance the value of uniformity. ATRA agreed to engage in further discussions, and that effort will be spearheaded on behalf of the League by Vice-President Doug Von Gausig, Mayor of Clarkdale. We appreciate the support of the several Senators who expressed opposition to SB 1220, as well as the efforts of the many cities, towns, business and tourism groups that helped communicate the devastating impact on the economies of cities and the State that would have resulted from passage of the bill.

Vice Mayor Dehnert reported that the Pool Committee received an additional \$5,000 in donations which puts their total contributions only short \$7,000 of goal of the Committee at this time.

Town Manager Report:

1. The Intergovernmental Meeting will be February 24th hosted by Yavapai County and held in Cottonwood.
2. The Open House regarding re-districting will be held at the Clarkdale Clubhouse on February 24th.
3. Recognized Mayor Von Gausig stating that all the work being done on behalf of all cities and towns was greatly appreciated.

CONSENT AGENDA - The consent agenda portion of the agenda is a means of expediting routine matters that must be acted on by the Council. All items are approved with one motion. Any items may be removed for discussion at the request of any Council Member.

- A. Reports** - Approval of written Reports from Town Departments and Other Agencies
Building Permit Report – January, 2011
Capital Improvements Report – January, 2011
Magistrate Court Report – January, 2011
Police Department Report – January, 2011
Water and Wastewater Report – January, 2011
Clarkdale Fire District Report and Mutual Aid Responses Report – January, 2011
Cottonwood Area Transit (CAT) Operations Report – January, 2011
- B. Approval for a Request for Extension of the Financial Assurance Time Requirement for Wildhorse Acres Estates Minor Subdivision** - Approval for a request for extension of the financial assurance time requirement for Wildhorse Acres Estates Minor Subdivision.
- C. Salary Range Resolution** – Approval of Resolution # 1358, A Resolution of The Mayor and Common Council of the Town of Clarkdale, Arizona, Amending Resolution #1343, Adopting a Range Placement Table for Employee Salary Ranges, and Setting Effective Dates.
- D. Financial Operation Guide Amendment-** Approval of an amendment to Section II (VI) – Payroll; On Call Policy, of the Financial Operations Guide for the Town of Clarkdale.

Councilmember Bohall moved to accept the Consent Agenda items A-D as prepared by staff. Motion seconded by Councilmember Regner. Motion approved unanimously.

OLD BUSINESS

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CLARKDALE, ARIZONA, AMENDING CHAPTER 10 OF THE TOWN CODE BY AMENDING SECTION 10-2-2 DEFINITIONS, SECTION 10-2-4 REGULATIONS OF SMOKING IN ENCLOSED PUBLIC PLACES; AND AMENDING CHAPTER THREE OF THE ZONING CODE BY AMENDING SECTIONS 3-1 THROUGH 3-8 RESIDENTIAL DISTRICTS BY ADDING MEDICAL MARIJUANA CAREGIVER FACILITY AS A CONDITIONAL USE; SECTION 3-9 CENTRAL BUSINESS DISTRICT AND SECTION 3-11 COMMERCIAL DISTRICT BY ADDING MEDICAL MARIJUANA DISPENSARY; SECTION 3-15 INDUSTRIAL DISTRICT BY ADDING MEDICAL MARIJUANA CULTIVATION FACILITY; PROVIDING SEVERABILITY; AND REPEALING CONFLICTING ORDINANCES - Discussion and consideration of Ordinance# 331, an Ordinance which establishes Medical Marijuana regulations in the Town of Clarkdale.

Community Development Director Bailey reported that the Town Attorney had redone the proposed ordinance to reflect most of the council discussion items from the last council meeting. Town Attorney Jonathan Millet has revised the ordinance to reflect both the suggested ordinance items from the Planning Commission and the remaining items he believes clarifies the ordinance.

The proposed ordinance has the Medical Marijuana Caregiver Facilities permitted in the residential districts as a Conditional Use Permit. Dispensaries in the Commercial Districts are an allowed use and the cultivation/processing facility is allowed only in the Industrial District. This is what the Planning Commission has recommend.

Attorney Millet and Community Development Director Bailey reviewed the proposed ordinance with the Council.

Medical Marijuana Caregiver Facilities are permitted in residential areas with a Conditional Use Permit with stipulations a) Limited to original applicant only and must be renewed annually; and b) Cultivation is only permitted if both the facility and the Medical Marijuana Qualifying Patients it serves are located more than a radius of 25 miles from an operating Medical Marijuana Dispensary.

The Council felt that the section "b" set up a standard that the state has not and wondered why the Town would have that restriction if the State has not made that statement in their law. It is not clarified in the regulations if a caregiver can grow for a patient within 25 miles of a dispensary. Attorney Millet felt it was best for the Town to have the standard in their ordinance.

Community Development Director Bailey explained the process for a CUP. First the application goes to the Community Development Department to request a CUP if they are 25 miles away from dispensary and have registration from State as a caregiver. A public hearing is required for a CUP, there is notification to surrounding property owners and the Planning Commission hears request. They can't deny something legal, but they can address concerns from neighbors. Caregivers need additional registration from the State if they are going to grow for patients. We can't put restrictions for growing on an individual basis, restrictions have to be uniformly applied. The property owner has to submit the CUP application. Caregivers have to live in the resident district at the location of the CUP/Home Occupation Permit. It was also explained that a Home Occupation Permit would be required and those rules would need to be followed.

Home Occupation requirements

- The business shall be clearly incidental and subordinate to the use of the property and dwelling unit for dwelling purposes; and not change the character of the exterior of the structure.
- No more than twenty-five percent (25%) of the gross floor area of the dwelling and not more than twenty-five percent (25%) of the property shall be devoted to the home Occupation.
- There shall be no more than two part-time employees, each working no more than thirty-two (32) hours per week.
- No business shall be conducted which requires delivery vehicles or other services not customary to a residence.
- There shall be no external evidence of the activity such as outdoor storage, displays, noise, dust, fumes, vibrations or other nuisances discernable beyond the property line.
- One non-illuminated sign, not to exceed two (2) square feet in area.
- The business shall not generate traffic that disrupts the neighborhood.
- Noise shall not be generated before sunrise or after sunset.
- Off street parking is required as set forth in the Town Zoning Code.
- Fire safety inspections shall be conducted for all structures where Home Occupations will be conducted.

Historically, any person in a residential district requesting a CUP also follows the Home Occupation requirements. Attorney Millet thought that another section be added requiring a Home Occupation Permit to the ordinance for clarification.

When a Home Occupation Permit is issued, there is only an initial inspection, unless there is a complaint or an agreement to come back for inspection. State law does not allow inspections except at the annual renewal.

Medical Marijuana Dispensaries are permitted in the Central Business District and Commercial Districts with stipulations.

- (a) Total floor areas not to exceed 1,500 square feet.
- (b) The facility must have windows facing the street with window coverings open during business hours.
- (c) One secure entrance/exit where the purchasing area is located.
- (d) Located no closer than 500 feet from a public school (grades K through 12), day care, pre-school, private school, or charter school.
- (e) No use of medical marijuana shall be allowed on the premises.
- (f) No alcoholic beverages shall be consumed on the premises.
- (g) Shall not dispose of marijuana remnants or by-products in exterior refuse containers and shall be properly ventilated to filter the odor from marijuana so that the odor cannot be detected by a person with a normal sense of smell at any adjoining use or property.

State law sets the 500 foot regulation for public schools. The Planning Commission added day care, pre-school, private school or charter school. The 500 foot boundary does not apply if dispensary is there first.

Councilmember Regner felt that the item regarding alcoholic beverages should be deleted.

Medical Marijuana Processing Facilities are allowed in Industrial Districts.

- (a) Shall not be located within 1,000 feet of a residentially-zoned property. This distance shall be measured from lot line to lot line from the lot in which the processing facility is conducted or proposed to be conducted.
- (b) No use of medical marijuana shall be allowed on the premises.
- (c) No alcoholic beverages shall be consumed on the premises.
- (d) Shall not dispose of marijuana remnants or by-products in exterior refuse containers and shall be property ventilated to filter the odor from marijuana so that the odor cannot be detected by a person with a normal sense of smell at any adjoining use or property.
- (e) Any associated storage facility shall be located in a building with appropriate security measures.

Council questioned the 1,000 foot distance and the Attorney recommended the footage as an added security, which is also included in the Leagues model ordinance.

Vice Mayor Dehnert would like to see the amendments made and brought back to Council for action.

Requested Changes:

- 2-1 Definitions – Medical Marijuana Processing Facility: ADD and/or to “A facility that (i) engages in the growing of medical marijuana and/or incorporates medical marijuana into consumable or edible goods by the means of cooking, or blending.....”
- 2-1 Definitions – Medical Marijuana Caregiver Facility ADD “Requires Medical Marijuana Caregiver Facilities to secure a Town of Clarkdale Home Occupation Permit”.
- 3-1 (C-5) Delete (a) and (b) – [(a) Limited to original applicant only and must be renewed annually; and (b) Medical marijuana cultivation is only permitted if both the facility and the Medical Marijuana Qualifying Patients it serves are located more than a radius of 25 miles from an operating Medical Marijuana Dispensary.]
- 3-2 (C-4) Delete (a) and (b) – [(a) Limited to original applicant only and must be renewed annually; and (b) Medical marijuana cultivation is only permitted if both the facility and the Medical Marijuana Qualifying Patients it serves are located more than a radius of 25 miles from an operating Medical Marijuana Dispensary.]
- 3-3 (C-6) Delete (a) and (b) – [(a) Limited to original applicant only and must be renewed annually; and (b) Medical marijuana cultivation is only permitted if both the facility and the Medical Marijuana Qualifying Patients it serves are located more than a radius of 25 miles from an operating Medical Marijuana Dispensary.]
- 3-4 (C-7) Delete (a) and (b) – [(a) Limited to original applicant only and must be renewed annually; and (b) Medical marijuana cultivation is only permitted if both the facility and the Medical Marijuana Qualifying Patients it serves are located more than a radius of 25 miles from an operating Medical Marijuana Dispensary.]
- 3-5 (C-5) Delete (a) and (b) – [(a) Limited to original applicant only and must be renewed annually; and (b) Medical marijuana cultivation is only permitted if both the facility and the Medical Marijuana Qualifying Patients it serves are located more than a radius of 25 miles from an operating Medical Marijuana Dispensary.]

- 3-6 (C-3) Delete (a) and (b) – [(a) Limited to original applicant only and must be renewed annually; and (b) Medical marijuana cultivation is only permitted if both the facility and the Medical Marijuana Qualifying Patients it serves are located more than a radius of 25 miles from an operating Medical Marijuana Dispensary.]
- 3-7 (C-3) Delete (a) and (b) – [(a) Limited to original applicant only and must be renewed annually; and (b) Medical marijuana cultivation is only permitted if both the facility and the Medical Marijuana Qualifying Patients it serves are located more than a radius of 25 miles from an operating Medical Marijuana Dispensary.]
- 3-8 (C-5) Delete (a) and (b) – [(a) Limited to original applicant only and must be renewed annually; and (b) Medical marijuana cultivation is only permitted if both the facility and the Medical Marijuana Qualifying Patients it serves are located more than a radius of 25 miles from an operating Medical Marijuana Dispensary.]
- 3-9(A-16)(d) change to “Located no closer than 500 feet to a public school, day care, pre-school, private school or charter school which serve students in grades Pre-School – 12th Grade.”
- 3-9 (A-16) Delete (f) – [(f) No alcoholic beverages shall be consumed on the premises.”]
- 3-11 (A-19)(d) change to “Located no closer than 500 feet to a public school, day care, pre-school, private school or charter school which serves students in grades Pre-School – 12th Grade.”
- 3-11 (A-19)(h) change to “Any associated storage facility where medical marijuana or its by-products are stored shall be located in a building with appropriate security measures.”
- 3-11 (A-19) Delete (f) - [(f) No alcoholic beverages shall be consumed on the premises.”]
- 3-15(A-13) Delete (a) - [(a) Shall not be located within 1,000 feet of a residentially-zoned property. This distance shall be measured from lot line to lot line from the line in which the processing facility is conducted or proposed to be conducted...]
- 3-15(A-13) Delete (c) - [(c) No alcoholic beverages shall be consumed on the premises.”]
- 3-15(A-13)(e) change to “Any associated storage facility where medical marijuana or its by-products are stored shall be located in a building with appropriate security measures.”

Councilmember Regner moved to table the discussion and consideration of Ordinance #331, an Ordinance which establishes Medical Marijuana regulations in the Town of Clarkdale to the March 8, 2011 Council Meeting. Motion seconded by Vice Mayor Dehnert. Motion approved unanimously.

NEW BUSINESS

ESCROW AGREEMENT BETWEEN THE TOWN OF CLARKDALE, PTM ENTERPRISES, L.L.C. AND FIRST AMERICAN TITLE INSURANCE COMPANY ALONG WITH

APPROVAL OF CONSULTANT – Discussion and consideration regarding the execution of the Escrow Agreement between the Town/PTM Enterprises, L.L.C/ First American Title Insurance Company and approval of Dr. Fred Goldman, P.E./Southwestern Environmental Consultants, Inc as a qualified and capable consultant to perform the design work for the new Wastewater Treatment Plant per Section 2.2 of the Escrow Agreement.

When the Town approved the Second Amendment to the Development Agreement with PTM, Enterprises LLC on August 31, 2010, it was for a short term solution for the provision of wastewater service to The Highlands and the commitment to implement a long-term solution that benefits the Town, its residents and the Developer. Part of the long-term solution was the design and construction of a new wastewater plant. How to manage the design, construction and permitting in the most cost effective way was the intent of the Escrow Agreement approved as part of the Second Amendment.

Before the Council is a proposal by SEC that begins the process for the preliminary design and analysis work, which is necessary before moving onto the construction and permitting that is all based on using equipment from the Desert Oasis Treatment Plant located in Surprise, Arizona that is scheduled to be decommissioned. Sections 1.2 and 2.2 of the Escrow Agreement provide for the process proposal that is before the Council for approval.

1.2 Escrow; New Plant Design Work. As an accommodation to the Town, Developer has agreed to place into escrow funds to be used to pay invoices associated with the design of the New Plant, as provided in Section 16.1.1 of the Development Agreement. Pursuant to the Development Agreement, the Developer is to deposit with the Escrow Agent **\$100,000.00**, which amount is to be deposited by Escrow Agent in a separate interest-bearing escrow account (the “Escrow Account”), with the funds therein to be disbursed by the Escrow Agent as hereinafter set forth for the costs incurred by the Developer in connection with the design of the New Plant.

2.2 Mutual Approval Rights. Either Party may solicit interest, proposals or bids to perform the design work for the New Plant. The Parties agree, however, that only consultants deemed qualified and capable by both Parties, for a bid amount acceptable to both Parties, shall be accepted and approved. The Parties shall mutually approve a “scope of work”, and shall approve a process to solicit and review the bids. The Parties shall agree who – between them both - will be deemed the “owner” and who will enter into the contract with the mutually acceptable bidding consultant.

The Town Attorney has reviewed the proposal and the intended process and agrees that the Engineering services, the purchase of used equipment and the special circumstances all fall within the Town’s purchasing policy.

Town Manager Mabery explained that the Wastewater Treatment Plant being proposed is a used plant. The engineer is available that designed and engineered that plant and is currently working for SEC. When he is not working for SEC, we will need to contract individually. The company that is taking the plant apart can be hired under a Job Order Contract that we can piggyback on with Peoria to put it back together in Clarkdale.

Steve Biasini, PTM Enterprises ,stated that one portion of the \$100,000 will be to complete a budget for the project.

The Escrow Agreement has not been approved by First American Title. The Council could instruct staff to do reasonable modifications to Article V.

Town Manager Mabery explained that the consequences for moving forward will be spending funds to get accurate cost estimates. Final cost may be about \$3.8 million. Clarkdale will need to commit to \$2 million and the associated debt service will be approximately \$10 per customer per month. The new plant is not just for new growth, a higher quality of effluent must be provided within 4 years. Clarkdale has a First Right of Refusal for the plant for now, and will need something formal about July.

Councilmember Bohall moved to approve the Escrow Agreement between the Town/PTM Enterprises, L.L.C/ First American Title Insurance Company, allowing staff to make reasonable modifications to Article V, and approval of Dr. Fred Goldman, P.E./Southwestern Environmental Consultants, Inc as a qualified and capable consultant to perform the design work for the new Wastewater Treatment Plant per Section 2.2 of the Escrow Agreement. Motion seconded by Vice Mayor Dehnert. Motion approved unanimously.

FUTURE AGENDA ITEMS - Listing of items to be placed on a future council agenda. None

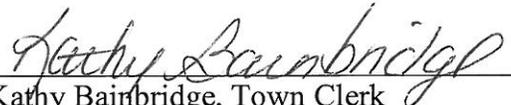
ADJOURNMENT Without any further business, the Council adjourned at 4:50 P.M.

APPROVED:



Doug Von Gausig, Mayor

ATTESTED/SUBMITTED:



Kathy Bairbridge, Town Clerk