

**City of Benton City  
Planning Commission Board Meeting Minutes  
February 25<sup>th</sup>, 2015**

**CALL TO ORDER** – (-1:00:09\*Video recording begins\*\*Audio recording not available) Commission Chair Allen called the January 25<sup>th</sup>, 2015 Planning Commission Board Meeting to order at 6:05 p.m.

**ROLL CALL** – (-1:00:04\*\*) **Commissioners Present:**

**Commissioner Gary Robins**  
**Commissioner Steve Zetz**  
**Commission Chair Don Allen**  
Board Vacancy

**Commissioners Absent:**

**Commissioner Ivan Howard** (Unexcused)

**City Professionals Present:**

**Stephanie Haug, Clerk of Board**  
**Paula Kauer, General Clerk**

**Other Professionals Present:**

**Eric Ferguson, City Attorney, Kerr Law Group**

**PLEDGE OF ALLEGIANCE TO THE FLAG/U.S.** – Commission Chair Allen lead the Board and audience in the Pledge of Allegiance - (-0:59:52\*\*)

**APPROVAL OF MINUTES FOR JANUARY 28<sup>TH</sup>, 2015 PLANNING COMMISSION BOARD MEETING**  
(-0:59:24\*\*)

**Commissioner Zetz:** I make a motion to approve the Minutes.

**Commissioner Robins:** I'll second.

**MOTION #1** - Commissioner S. Zetz moved and Commissioner G. Robins seconded to approve the Minutes of the January 28<sup>th</sup>, 2015 Planning Commission Board Meeting as presented.

**VOICE VOTE #1** – C. D. Allen, C. G. Robins, C. S. Zetz  
**ALL YEAS. Motion carried.**

**ZONING TEXT AMENDMENT – MARIJUANA ESTABLISHMENT REGULATIONS** - (-0:58:52\*\*)

**A. STAFF REPORT - Eric Ferguson, City Attorney, Kerr Law Group** – From last meeting – “Regulate” or ban – Fit into our code – Address concerns – Processing and producing = Industrial – Retail = Commercial – Indoor production – Requires a Master State Business License – I-502 Liquor Board – Conditional Use Permit – Give City flexibility at regulating – Buy-in and approval – Change business license – Chapter 5 – Zoning changes – Specific marijuana regulations – Prosser and Walla Walla examples used – (-0:54:07\*\*Video recording ends/01/01/000\*Audio recording begins) Continues to be up in the air at legislature – 26 bills to date – Medical marijuana a mess – Still all over the board – Congress hasn’t made changes either

**Commissioner Zetz** – Medical not allowed – Since no state license from Kent?

**Mr. Ferguson** – Old initiative – 2001 for medical – 2012 in number of statutes passed – Gregoire vetoed parts – Threw it up in the air – Changes that would make the legal didn’t pass – But did it make it illegal?

**Commissioner Zetz** – Conditional Use requires Public Hearing – Applies – Would need Public Hearing?

**Mr. Ferguson** – Yes – Just like any other Conditional Use – Giving Constitutional Due Process - Zoning decision

**Commission Zetz** – Someone with State license – Regulation in place - Could they challenge? Drag City into court

**Mr. Ferguson** – Different argument – Bans – State allows – How can City say I can't do something state allows – Courts sided with cities – Argument different if choose to regulate – Lots of opinions – Potential ramifications with all options – Could challenge any authority

**Commissioner Robins** – Your proposal - Least of all evils – Not saying no – Not saying yes

**Mr. Ferguson** – Personal legal opinion - Safest route is to stay on moratorium – Legislature still making decision – Mr. Kerr feels ban is easier to defend – No work plan for ban – This is best to regulate if allowing in any capacity is desired – City maintains most control but still allows marijuana businesses

**Commissioner Zetz** – All other lawsuits of other jurisdictions based on ban – Not based on regulations

**Mr. Ferguson** – Believe that's correct – However one situation where regulations used as a de facto ban

**Commissioner Zetz** – All jurisdictions have been successful in their challenges - Cost to defend – Five - \$100k? Kennewick?

**Mr. Ferguson** – Plaintiffs took much different approach in Kennewick – Equal protection – Disparate impact on certain minorities or classes – Did not submit any data to support – Summarily dismissed – Litigation will cost money – No sure way not to be in that situation – Could do absolutely nothing as a city and still be in similar situation - Seattle did not adopt regulations – This does restrict I-502 – More than law itself – Could be sued for not fulfilling duty to regulate as liquor stores

**Commissioner Zetz** – This regulation would satisfy argument – Versus letting I-502 stand by itself

**Mr. Ferguson** – But is still restriction of 502 – Don't want to imply somehow this doesn't narrow 502 – Does regulate and does allow in some areas

**Commission Chair Allen** – Section 4H – No City liability - Indemnify City – Liquor Board already issued permits - Challenges to cities or from Feds – Have you seen any kind of challenge that way

**Mr. Ferguson** – Only thing going to do is keep said City employee or City without liability from person issue license to - Only from applicant – Not Federal government – Rare in current administration – Possible if change of administration – Congress could be sued by local citizen for not enforcing own law

**Commissioner Zetz** – My understanding - Based on letter from Department of Justice – At any time Feds can say "Washington, you're done"

**Mr. Ferguson** – Correct – Only assurance anyone has that Federal government isn't going to suddenly shut program down – Is letter from head of particular division overseeing this – Would not take much to withdraw that memo

## **B. PUBLIC HEARING**

Public Hearing begins at 6:29 p.m. (491/2/040\*)

**Peggy Higham, 717 12<sup>th</sup> St.** – Hoping to hear City would be putting ban in place – City already has bad reputation of drug problems – Don't want to add – A lot of grandkids – Asked – 3<sup>rd</sup> Grade – How be legal here but illegal nationally – How do you explain? Causes confusion – Haven't seen anything positive – Other than enterprising Girl Scout sold cookies outside dispensary – Lawsuits – Facing from individuals for home value decrease – Further damage and further problems for people near pot shops – We don't need – Negatively on family – Should be looking at other cities – Their successes in court with ban – Missed information on moratorium – As a twenty plus year resident of this community – Would like to see a full out ban – Not a moratorium – Our community cannot withstand the negativity that will come out of this - Colorado – Accidental overdoses in kids – More available – Neighbors agree

**Marcus Kastl, 1103 East Corral Creek** – Not for or against pot store in town – Money they're making in taxes from sales – Would be great for Benton City to have something – Not selling cocaine or heroin

### C. FINDINGS OF FACT

**Commission Chair Allen** – Thank you for your participation – Please go to Council Meetings to have your say – Encourage you to attend – Only a recommendation board – Passing will be done by City Council

**Ms. Haug** – Marijuana control regulations – Page 6 – Locational criteria – No. 1 – States can't be located within 1,000 ft. – Last in (j) states any property zoned R-1, R-2, R-3 or URA - Restricting beyond edge of zone as well?

**Mr. Ferguson** – Would that mean there is a 1,000 ft. buffer inside R-1 that's right by C-1? If someone in a business on the edge of R-1 that would mean 1,000 ft. after that – That's how I take that

**Ms. Haug** – What's URA?

**Commissioner Robins** – Urban Renewal Area?

**Commissioner Zetz** – Looking at the R zones in City – Add 1,000 ft. buffer to R zones – Any place left in City?

**Ms. Haug** – Think only place left South of freeway

**Commission Chair Allen** – Extremely limited where could put in this City – Close to many issues brought – Child care places – Elementary schools - Playgrounds

**Commissioner Zetz** – I-502 by itself without regulation – If no ban – Not much left in Benton City

**Mr. Ferguson** – Haven't gone thru scientific process of applying this to make sure – Make that part of process

**Ms. Haug** – Afraid if keep it with 1,000 ft. buffer – Becomes de facto ban

**Commissioner Robins** – So keep everything down thru Item (i) – Eliminate (j) portion of the Logistic Criteria under G

**Commissioner Zetz** – Need some sort of buffer between Residential and Commercial

**Mr. Ferguson** – Would mean essentially first house right on edge could be directly beside of marijuana business – Beauty of doing it with Conditional Use – Gives City chance to prevent these things from happening – More work for Council and Staff? Yes – Can shut things down – Would take that as 1,000 ft. into Commercial Zone

**Commissioner Robins** – Is (j) (*Section 20.60.290(G)(j)*) from I-502 or is it ours? Looking at map and criteria above – Already included – If bone of contention – Just omit it

**Ms. Haug** – Maybe as part of the regulations – Cannot be located in Commercial or Light Industrial zone that is adjacent to a Residential Zone

**Commissioner Zetz** – Is there a lot limit in Commercial – Can see clever person taking parcel - Shaving off ten feet of it – Making another parcel

**Ms. Haug** – There is a buffer requirement for Commercial – For setbacks and fencing requirements – Maybe not 1,000 ft. buffer for this – Maybe 100 ft. – Otherwise 1,000 ft. would wipe out whole city in de facto ban

**Mr. Ferguson** – Pretty much limited to other side of highway when I-502 passed – Or just sliver

**Ms. Haug** – There is Industrial in Industrial Park – Commercial north end of town available

**Mr. Ferguson** – If Commission recommendation to keep R-1, R-2, R-3 – Those options effectively go away

**Commission Chair Allen** – With Conditional Use – Would give City Council leeway – How to approach each individual basis – City would dictate how they want it done

**Mr. Ferguson** – Couldn't do with Conditional Use Permit – Couldn't keep (j) then waive it for particular applicant – Would have to not have (j) – If don't want someone in a particular spot - Deny their Conditional Use – Can't waive ordinance for one person – Would create equal protection argument

**Commissioner Robins** – If we were just to take (j) out of it – Would we still be okay – Do we want restrictions on those three zones at least?

**Commissioner Zetz** – My opinion – Think it best – Should be something finite as far as buffer – Wouldn't allow Council to grant Conditional Use to – Would be in violation – Provided they adopted – OR didn't adopt it – 1,000 ft. effective ban

**Mr. Ferguson** – Not effective ban – Not outright ban – Awful tight regulation by doing that – Not bad thing legally – Due to size of City limits – Not Seattle – Apples to apples – Not much more restrictive than I-502

**Ms. Haug** – Map we have only includes thru (i) – Doesn't include zoning – Areas exempt – Schools, daycare, parks – Buffer

**Commissioner Robins** – Gives gap where Mayor lives?

**Ms. Haug** – Agricultural Suburban

**Commissioner Zetz** – Prohibited there

**Ms. Haug** – Only Commercial and Light Industrial land

**Commissioner Robins** – Theoretically - If we omit (j) – Still in compliance with what we asked attorney to do last time

**Mr. Ferguson** – Question is – If you strike (j) – Still in compliance with 502 by allowing some – Appears that way – Can't say for certain it wouldn't do that – If we don't do thru and do the science – Happy to help with whatever we need to do

**Commissioner Robins** – Make a recommendation for attorney to take back – Look into that - Huge issue – Keep City out of trouble – Appears to be way of less impact – Legally or financially

**Commission Chair Allen** – What does eliminating (j) do?

**Commissioner Zetz** – Not making recommendation tonight forces need to make recommendation to continue moratorium – Running out of time

**Mr. Ferguson** – Moratorium expires in April

**Commissioner Robins** – If we go back and research – Still in compliance if meet next month

**Mr. Ferguson** – I think we can do that – Once held Public Hearing – Can withhold on Findings until we get information – Think we're okay legally

**Commissioner Robins** – As long as we're trying to do something

**Mr. Ferguson** – Main goal of putting it this way – Get comments from citizens – Suggestions – Some talk at last Commission Meeting – This is to get an idea of what we are wanting – Product but not processing – Indoors only in Light Industrial Districts

**Commissioner Zetz** – Growing prohibited – Nowhere to grow - Growing is more of a county issue – Required to be in a building – Growers not going to want to invest in buildings – Can put up fence – Growers can process too – Cuts down on costs for production – Not likely to have somebody separate the two - But the building requirement is a repellent to growers and producers

**Mr. Ferguson** – Code has it in there can't have it even if they had state license to grow outdoors – Could be challenged – Can just go to County to do that

**D. RECOMMENDATION OF PLANNING COMMISSION (1366/2/378\*)**

**Commissioner Robins** – Recommend we give it back to attorney – Look over Item with (j) – No problem with rest of it - Still in compliance with moratorium

**Commission Chair Allen** – Steph – Notice anything else we'd like to have attorney address?

**Ms. Haug** – Chapter 9 – If we adopt this ordinance – Will need to include something in it amending Chapter 9 – Section that bans it -

**Mr. Ferguson** – Yes – Add another section – Repeal Chapter 9 – Last section added to it

**Commissioner Zetz** – Yes – Please produce GIS maps

**Ms. Haug** – Map options you'd like to see on map – As far as buffers

**Commissioner Zetz** – Look at 1,000 ft. and 500 ft. buffers – With and without (j)

**Commissioner Robins** – Public would like to see this too

**Commissioner Zetz** – Council would like to see also

**Mr. Ferguson** – Best reason for Commission than in Council – More fluid – Less formal

**Commissioner Robins** – Do we have to have another Public Hearing if we change this?

**Commissioner Zetz** – Recommend another Public Hearing – Always welcome public input

**Commission Chair Allen** – Yes – More Public Hearing

**Ms. Haug** - March 25<sup>th</sup>

**Commission Chair Allen** – Could you put notice in water/sewer billing

**Mr. Ferguson** – Can also draft a ban as an option also

**Commissioner Zetz** – Open to having that – Look at all options - No a fan of rolling moratoriums – In agreement about rolling moratoriums being de facto bans – Pick a side – Let the chips fall

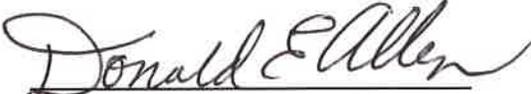
**Mr. Ferguson** – Unique situation - We do have such hyperactivity in legislation – Long session – Interesting to see what goes through committee – What makes it on the floor – What governor says

**Ms. Haug** – In search of new members for Planning Commission - Explanation of process

**ADJOURNMENT (1582/3/670\*)**

**Commission Chair Allen adjourned the February 25<sup>th</sup>, 2015 Planning Commission Board Meeting at 6:53 p.m.**

Planning Commission Meeting ended at 6:53 p.m. (1588/1/057\*Audio recording ends)

  
Don Allen, Commission Chair  
Planning Commission Board

  
Stephanie Haug  
Clerk of the Board

Date: 3/25/15