



Randy Lauer, *Mayor*

David Ripma

Alison Caswell

Geoffrey Wunn

Glenn White

Jordan Wittren

Sandy Glantz

Agenda

March 14, 2023

Regular Meeting | 7:00 p.m.

Troutdale Police Community Center – Kellogg Room
234 SE Kendall Ct, Troutdale, OR 97060

1. **Pledge of Allegiance, Roll Call, Agenda Update**
2. **Public Comment:** Public Comment on non-agenda and consent agenda items is welcome at this time. *Public comment on agenda items will be taken at the time the item is considered. Public comments should be directed to the Presiding Officer and limited to matters of community interest or related to matters which may, or could, come before Council. Each speaker shall be limited to 5 minutes for each agenda item unless a different amount of time is allowed by the Presiding Officer, with consent of the Council. The Council and Mayor should avoid immediate or protracted responses to citizen comments.*
3. **Consent Agenda:**
 - 3.1 **Minutes:** November 8, 2022 Regular Meeting, December 13, 2022 Regular Meeting, and January 10, 2023 Regular Meeting.
4. **Presentation:** An update from Mt. Hood Community College. – *Dr. Lisa Skari, MHCC President; Andrew Speer MHCC Board Chair; and Diane McKeel, MHCC Vice Board Chair*
5. **Report:** A report from the Port of Portland. – *Emerald Bogue, Port of Portland*
6. **Request:** A request for the City of Troutdale to sponsor the 2023 Troutdale Arts Festival. – *Shannon Chisom, Troutdale Arts Festival*
7. **Public Hearing / Appeal:** An appeal of the Planning Commission's decision for LU-0022-2022 Kaleafa Troutdale. – *Alex Lopez, Assistant Planner*
- 8.1 **Public Hearing / Ordinance (Introduction & Adoption):** An ordinance approving a ban on additional recreational marijuana retailers and referring the ordinance to the electors of the City, declaring an emergency. – *Ed Trompke, City Attorney*
- 8.2 **If Needed – Public Hearing / Ordinance (Introduction):** An ordinance approving a ban on additional recreational marijuana retailers and referring the ordinance to the electors of the City. – *Ed Trompke, City Attorney*
9. **Staff Communications**

10. Council Communications

11. Adjournment



Randy Lauer, Mayor
Dated: March 9, 2023

Meeting Participation

The public may attend the meeting in person or via Zoom. Please email info@troutdaleoregon.gov by **5:00pm on Monday, March 13th** to request Zoom meeting access credentials. You may also submit written public comments via email to info@troutdaleoregon.gov no later than **5:00pm on Monday, March 13th**. City Council Regular Meetings are broadcast live on Comcast Cable Channel 30 (HD Channel 330) and Frontier Communications Channel 38 and replayed on the weekend following the meeting - Friday at 4:00pm and Sunday at 9:00pm.

Further information and copies of agenda packets are available at: Troutdale City Hall, 219 E. Historic Columbia River Hwy. Monday through Friday, 8:00 a.m. - 5:00 p.m.; on our Web Page www.troutdaleoregon.gov/meetings or call Sarah Skroch, City Recorder at 503-674-7258.

The meeting location is wheelchair accessible. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to: Sarah Skroch, City Recorder 503-674-7258.

MINUTES
Troutdale City Council – Regular Meeting
Troutdale Police Community Center – Kellogg Room
234 SW Kendall Court
Troutdale, OR 97060

Tuesday, March 14, 2023 – 7:00PM

1. PLEDGE OF ALLEGIANCE, ROLL CALL, AGENDA UPDATE

Mayor Lauer called the meeting to order at 7:07pm.

PRESENT: Mayor Lauer, Councilor Ripma, Councilor Wunn, Councilor White, Councilor Wittren and Councilor Glantz.

ABSENT: Councilor Caswell (excused).

STAFF: Ray Young, City Manager; Sarah Skroch, City Recorder and Ed Trompke, City Attorney.

GUESTS: See Attached.

Mayor Lauer asked for agenda updates.

Ray Young, City Manager, replied the only update is just a caution that if Item 8.1 does not pass then Council will need to discuss 8.2. If 8.1 does pass, then 8.2 will not be needed to discuss.

2. PUBLIC COMMENT: Public comment on non-agenda and consent agenda items is welcome at this time.

None.

3. CONSENT AGENDA:

3.1 MINUTES: November 8, 2022 City Council Regular Meeting; December 13, 2022 City Council Regular Meeting and January 10, 2023 City Council Regular Meeting.

MOTION: Councilor White moved to approve the consent agenda. Seconded by Councilor Wunn.
Motion Passed 6-0.

4. PRESENTATION: An update from Mt. Hood Community College.

Dr. Lisa Skari, MHCC President, Diane McKeel, MHCC Board Vice Chair and Andrew Speer, MHCC Board Chair introduced themselves and presented a PowerPoint (included in the Council packet).

Councilor Glantz asked if the college still has the nursing program.

Dr. Skari replied they have the CNA and nursing program. They no longer have the LPN program.

5. REPORT: A report from the Port of Portland.

<0:30:00>

Emerald Bogue, Director of Policy and Regional Affairs, Port of Portland, stated that tonight's discussion will focus on the TRIP (Troutdale Reynolds Industrial Park) property and the airport. They continue to be committed to seeing the projects at the TRIP property through, including the 40-Mile Loop. They're thankful for Metro coming in and helping with funding gaps due to increasing development pricing and hopeful they will get some support also from ODOT.

Ken Anderton, Senior Manager of Real Estate Development, Port of Portland, stated the last several years of development have been smooth sailing. The majority of construction is done, and the 40-Mile Loop trail is the last little piece to be completed. There are approximately 4200 employees in the TRIP property. There is continued interest in the TRIP property, and they continue to talk to Ray Young about companies that could locate to TRIP and any possible incentives.

Emily Bower, Senior Manager of Equitable Development, Port of Portland, stated the Port will be initiating an East County Plan to target business recruitment and business retention for existing Port properties, identify meaningful outcomes to support local jurisdiction and to aggregate opportunities of economic improvement to help align funding and capacity to achieve those goals.

Steve Nagy, Director of Operations, Port of Portland, introduced Kama Simonds as the new Senior Manager, PDX Airside and General Aviation. He stated in 2016 a 2-year Airport Master Plan was completed which looked at the long-term health, viability, development and redevelopment of the airport. The recommendations out of that were to reconstruct the runway including the length of the runway. In order to achieve the reconstruction, they need to align with FAA for federal grants. The operations at the airport are still going strong and they're committed to the outcome of the 2016 plan.

Councilor Glantz asked how long the runway is.

Steve Nagy stated the runway was 5000 feet before and there was a 350-foot reduction from that.

Councilor White stated Troutdale was really involved with the Master Plan. He stated he would love to work with the Port on preserving businesses at the airport.

Steve Nagy stated the pandemic affected aviation across the board. They haven't lost business; it just hasn't grown.

Councilor White stated he's concerned about illegal camping around the airport property.

Steve Nagy stated the Port is vigilant about illegal camping. They have posted no trespassing/camping signs and staff have been approaching those people. They're getting more guidance from the FAA on how to handle illegal camping in that area and regionally.

6. REQUEST: A request for the City of Troutdale to sponsor the 2023 Troutdale Arts Festival.

<0:57:30>

Shannon Chisom, Cascadia Arts Association, stated that Cascadia is the non-profit that puts together the Troutdale Arts Festival. She stated last year's festival was fantastic, but they learned some lessons. Parking is an issue, even with shuttles. Cascadia has been talking about having First Friday on Friday and then having the Troutdale Arts Festival on Saturday, having a major community concert on Saturday night and the arts festival on Sunday. They would move the events onto downtown Troutdale on Columbia River Highway. They have figured out how to have special parking for the businesses, so they're not impacted in a negative way. The festival will be June 3rd and 4th. They would like to ask the City to partner with them and sponsor them with a \$10,000.00 contribution.

Councilor Wittren asked the approximate head count at the festival.

Shannon Chisom stated there are approximately 2000 on the first day and 1500 the second day.

Councilor White asked how they would do it in the downtown area.

Shannon Chisom replied, in the street like First Friday.

Mayor Lauer stated he was in support until he found out that Columbia River Highway would be closed for 3 days. It would have a negative impact on many of the businesses in downtown Troutdale.

Shannon Chisom stated they have been talking to staff and local businesses and working with salons and some of the salons are very supportive. She hasn't heard any strong negatives yet.

Saul Pompeyo, Ristorante Di Pompello Owner, stated 3 days will be too much and businesses will lose too much money. Losing one whole weekend is too much. He stated he submitted a survey to the downtown businesses (gave copies to Council and Staff).

Rich Allen, Troutdale resident, stated he would like Council and Saul to consider that we're missing an important point. He likes to go places and see events. When he comes across a

nice town that has amenities, he goes back. The benefits of a draw like this go beyond the event. People will come back for future visits that will help the City thrive.

Shannon Chisom stated she appreciates the comments. This event will be a benefit and Troutdale will see a significant number of attendees.

MOTION: Councilor White moved to sponsor the 2023 Troutdale Arts Festival with a \$10,000.00 contribution. Seconded by Mayor Lauer.

VOTE: Councilor White – Yes; Councilor Wittren – Yes; Councilor Glantz – No; Councilor Ripma – Yes; Councilor Wunn – Yes and Mayor Lauer - No.

Motion passed 4-2.

7. PUBLIC HEARING / APPEAL: An appeal of the Planning Commission’s decision for LU-0022-2022 Kaleafa Troutdale.

<1:36:22>

Alex Lopez, Associate Planner, gave a brief overview of the staff report and presented a PowerPoint (attached as Exhibit A).

Mayor Lauer explained, tonight we are holding a public hearing regarding application LU-0022-2022, a De Novo hearing for the appeal of the Planning Commission decision denying application for a conditional use permit to allow a retail, recreation marijuana store at 25643 and 25651 Stark Street. The decision of the Planning Commission was appealed by the Applicant, John Widmer, W.S.W. This is a quasi-judicial decision. Unlike in legislative hearings, where personal opinion may come into play, quasi-judicial rulings must be grounded in the relevant code, and if the application meets the code, the Council must approve it. The hearing will proceed as follows: After the preliminary legal matters, staff will make a presentation of the history of the application and appeal, followed by Appellant’s argument, next followed by the Planning Commission Chair’s statement and recommendation, and then the Council will hear public testimony. Finally, there will be time for factual rebuttal by the Appellant/Applicant, staff and the Planning Commission Chair, if they desire. After that, the Appellant and Planning Commission Chair will each have 3 minutes for closing argument and 3 minutes for rebuttal argument with the Appellant/Applicant having the last word if the Planning Commission Chair offers rebuttal, of 1 minute. Council members may ask questions of the Appellant/Applicant, staff, or anyone else who testifies during the time they provide their comments, but not during the closing argument. If any person has signed up to speak during the public comment portion of this hearing, please wait to be recognized by the Council before speaking. When it is your turn, please state your name and city of residence for the record so the information can be entered into the minutes. Speakers will be limited to 3 minutes. The appeal is a De Novo hearing, which means new facts or evidence may be submitted. All evidence presented to the lower approval authority is in the record and shall be considered and given equal weight as evidence presented on this appeal. I now call to order the public hearing and ask the City Attorney to cover the preliminary legal matters.

Mayor Lauer opened the public hearing at 8:50pm.

Ed Trompke, City Attorney, stated the criteria that must be addressed in this hearing are Community Development Code: TDC 6.320 (conditional uses), 3.312 (general commercial zone) and Chapters 1 and 2 (introductory and procedures for decision making) and in addition Council needs to be aware of ORS 475C Section 248, which talks about the preemption of City regulation of marijuana retail stores such as this one, among other things. Because the City Council is sitting quasi-judicially, any testimony, argument or evidence that speakers give the Council must be directed at these criteria, or at some other criteria in the code or comprehensive plan which the speaker believes should apply to this decision. If a speaker's testimony would be repetitious, we ask that if you take the opportunity to appeal the decision, you must complete a speaker sign-up form (sign-in sheet) before the hearing ends. Only those people who have appeared before the City Council, in person or in writing, will have standing to appeal this item to the Land Use Board of Appeals. Failure to raise an issue accompanied by statements or evidence that are sufficient to allow the Council and the parties an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue. Failure of the applicant to raise constitutional, statutory or other issues relating to the decision and any proposed conditions of approval with sufficient specificity to allow the city or its designee to respond to the issue may preclude an appeal to LUBA or an action in the circuit court where that is appropriate. He asked if any members of the Council wish to declare a potential or actual conflict of interest or bias.

Councilor Wittren stated he was on Planning Commission during this and he will abstain from the vote and commentary.

Ed Trompke asked if any members of the Council wish to report any site visits or ex-parte contacts. Do any member of the audience wish to challenge the jurisdiction of the Council to hear this matter? Does any member of the audience wish to challenge the impartiality of any member of the Council? Seeing none, that concludes the legal matters.

Mayor Lauer asked staff if there were any clarifying questions before moving on to the Appellant's argument.

Councilor Glantz stated she listened to all Planning Commission meetings but she doesn't comment or go on camera. She asked if that is an impartiality problem.

Ed Trompke stated the only question is whether you have an open mind to hear the facts as presented and to render a decision at this time based on the facts in the record currently and to be put in the record at this time.

Councilor Glantz stated she is open.

Mayor Lauer stated we will continue to the Appellant's argument with 15 minutes to present.

John Widmer, Oregon City resident, stated his wife and his brother and himself started this company in 2013. They have been working on an appeal process prior to the zoning being

inexplicably changed back in June. Troutdale is one of the few cities that actually has a park buffer. This was 5 blocks to the west in Gresham. The OLCC passed a rule 2-3 years ago that said if there's a physical barrier that the 1000-foot rule kind of goes out of effect as related to schools. He was trying to figure out if they could get the park buffer removed. The Planning staff looked at their application and approved it then Planning Commission's arguments of MHCC being a school is inaccurate. They can prove it. He's had 2 lawyers look at it and say this is a homerun, they have to approve it because it's properly zoned. Now suddenly the question of whether or not MHCC is a secondary school. It's not. OLCC says it's not. There are over 700 dispensaries in the State of Oregon, and they own 11. They've only had one issue of safety. They have triple the security now. It's such a regulated industry. It's talked about whether it's safe, you can't quantify safety issues. This has been delayed for so long and it's costing him a lot of money. If it doesn't get voted in their favor it will go to LUBA and it will pass. Look at the facts. The Planning Commission kept bringing up the concept of marijuana, Measure 91 passed. This is the only spot in Troutdale that would even be allowed the space. They pay Gresham \$150,000 annually for their shop off Orient Drive. There is real tax money involved that the citizens aren't going to get access to. He hopes Council can understand his frustration. It should be black and white, but it's convoluted.

Logan Leichtman, Dundee resident, stated we believe if this decision is denied, it will actively harm the citizens and take away tax revenue. If this is denied, the tax distributions are based pro rata on the number of retail outlets in a particular jurisdiction. There is only 1 currently and you add one more, that is twice the tax revenue. With respect to the MHCC and Planning Commission's finding that it is a secondary school, they heard a presentation from MHCC and they never once called themselves a secondary school. They call themselves a post-secondary school. This is all in his written testimony as well. The Planning Commission is attempting to interpret State Law, ORS and OARS, and OLCC is the only entity authorized to interpret those laws and administrative rules related to those laws and they have done so. When the applicant receives a land use compatibility statement, they take that to OLCC and OLCC runs through multiple levels of review to determine whether an applicant meets all of the criteria. Notwithstanding that, if the OLCC determines that there is a elementary or secondary school within 1,000 feet, they can still authorize the placement for the location for a retail premises. If the City denies their application, they are not only substituting their own judgment for OLCC's, they are also depriving OLCC of further ability to make a determination. Security was addressed, nothing has been quantified. The relevant code section says the proposed use as conditioned, assuming there are conditions.

John Widmer stated a number of their vendors are in the industrial areas. Look into those to see if they've had issues. His location is well lit with a lot more people around. Look at the zoning and call it what it is.

Logan Leichtman stated it is incredibly rare to see a retail shopping center property owner, one, able to rent to a cannabis business and also willing. It's a rare opportunity to provide for a good business location that is well lit and with other businesses close by. There are many factors that contribute to a decrease in safety risk.

Mayor Lauer stated that the applicant's argument will start now.

Tanney Staffenson, Planning Commission Chair, stated on November 9, 2022 the Planning Commission held a Type III quasi-judicial public hearing for case file LU-0022-2022 Kaleafa Troutdale conditional use permit. The hearing was conducted as outlined in the Troutdale Development Code in Section 2. After reviewing the application and reading the hearing procedure and asking the members if there were any conflicts of interest and there were no challenges, it was determined that conditions for a Type III quasi-judicial de novo hearing had been met. The criteria for decision was Chapter 1, Chapter 2 and Section 3.312, Section 6.300 and Chapter 17. After hearing from City staff, applicant and public testimony, the applicant requested a continuance at approximately 8:00pm. The continuance was granted and the case was set over for date certain to December 14, 2022. At the December 14th Planning Commission meeting, after reviewing the application, reading the hearing procedure and asking the members if there were any conflicts of interest, bias, ex-parte communication and there being no challenges, it was determined that the conditions for a Type III quasi-judicial de novo hearing had been met. After deliberation the Planning Commission voted 6-0 in denial of the application at that time. The decision was based on testimony and information received from staff, applicants and public at the hearing. This information caused the criteria in Chapter 6 Section 3.320A, E and F not to be met. Information and deliberation entered into the record for support and clarification of this decision. The first would be using the school definition contained in the Troutdale Development Code. In that definition which includes colleges, intentionally included in the definition at the time due to the role that MHCC plays in this community. There's been a great deal of deliberations so far about what MHCC is and isn't. For the record, there are at least 261 high school students that attend MHCC for their classes. This is either in addition to their attendance at their home high school or in some cases MHCC is the only school that they actually attend daily. There is attendance taken in the classroom and that information is provided to the sending school. This is compulsory for these students. They get a letter grade which counts toward their high school GPA and in some cases be allowed by some colleges and universities as credit towards their future compulsory requirements. Discussion and documentation included in the record regarding schools and definition was for the Planning Commission to make sure that their interpretation and definition of a school met the test the OLCC has for school definition. Regarding the criteria E not being met, the exhibit provided on the OLCC website, which is fairly accessible, and these are safety concerns and the Planning Commission believes they are legitimate safety concerns and possibly may or may not increase with the application. At times there are ways to condition these, that is a correct statement. Police and emergency response times are elevated along with increased crime in the area. The applicant raised a question regarding conditional use approvals that their application may impact other approval of conditional use applications. At the December 14th hearing the Planning Commission voted 6-0 in favor of denial of the application finding fact and final order for application were discussed. This decision was based on testimony information received at the hearing. The Planning Commission found that MHCC met the definition requirements not only in the Troutdale Development Code but also included in the State definition and OLCC definitions for a school were met. After the meeting on December 14th he wrote the finding of fact that these findings were reviewed and edited by the City Attorney and voted on by the Planning Commission at the January 11th meeting.

Mayor Lauer stated the appellant mentioned a park buffer but it's not in the findings by the Planning Commission.

Taney Staffenson stated the way that they got down that road is because there was some maintenance work done to the Troutdale Development Code which was a piece of code that was left out. It was left out of the code but the Planning Commission never intentionally left that out of the code, nor did they know it had happened.

Ed Trompke stated it's unclear, but it appears that that may have been a publication error.

Councilor White asked if the location is sandwiched between MHCC and Walt Morey Middle School.

Taney Staffenson stated it's basically between the two, it's not an exact straight line. Walt Morey is about 1100 feet away.

Councilor Ripma stated he assumes that Council is not to consider distance from parks tonight.

Ed Trompke stated if you do it raises the issue of whether the publication error fails to put the appellant on notice that it was probably the intention of the City to leave that in and we're simply sitting with our hands off of it until this works its way through. It does appear that it wasn't the intent of the Planning Commission or Council to delete the text that was deleted. It wasn't stricken.

Councilor Ripma stated the appellant mentioned that they had noticed the change and that parks were no longer part of whatever could block the siting of this facility. He's asking if Council is allowed to consider the parks issue.

Ed Trompke replied you can but it raises an issue that they will argue if they appeal.

Taney Staffenson stated for clarification, the comment was made that there are a few kids that go to MHCC. There are 261 children under the age of 18, doesn't sound like a few kids. It was also discussed about the measurement, property line to property line, and MHCC as a school would be inside that buffer. That is what drove the Planning Commission to the decision that they made.

Mayor Lauer stated for those of you who wish to testify for public comment, when you are called, please state your name and city of residence for the record and make your comments. You will have up to 3 minutes to speak.

Mayor Lauer opened public comment at 9:25pm.

Diane Castillo White, Troutdale resident, stated she wants to speak to compulsory attendance. In Oregon, she believes a student is obligated to achieve a grade 12 equivalent unless you are 16 & 17 and you have a full time job. MHCC offers credit recovery for students with failing grades and core content subjects required for graduation must take credit recovery. The high

school credit recovery program at MHCC is provided to current enrolled high school students grades 9-12. This makes it compulsory for attendance. Safety is an unknown factor. The public stated that the old Albertsons (now Safeway), many have witnessed a lot of theft there.

Adrian Koester, Troutdale resident, stated he is a former high school teacher. Regarding the health and safety aspect, his opinion is that this is no more dangerous than the liquor store a few blocks down the street. Does he think it's a problem for teenagers and children in Oregon? Yes, he does. From his experience having worked in programs with both community colleges and high schools, MHCC offers services to high school students, it is not a secondary institution. It is not a secondary school.

Mayor Lauer closed public comment at 9:31pm.

Taney Staffenson asked what is a school and the definition? He can only tell what MHCC told him. He included in the record a list of schools included in MHCC's program. One of the things that was intentionally done with this legislation was that it was not going to be near schools, yet we try to find ways to put it near schools. He stands with the Planning Commission's definition of a school.

Ed Trompke handed out copies of the relevant statutes.

John Widmer stated whether or not MHCC is a school or not will be decided by OLCC. If they get approval, then OLCC will have to review and determine that. 1.5% is the number of students that are under 18 that go to MHCC. He stated OLCC emailed him and stated it's not a school and he gave it to the Planning Commission.

Logan Leichtman stated whether or not the timeline and code publication, actually what happened he was asked to look at it after the re-adoption of the code. He looked at and analyzed the code and there was no parks buffer. It wasn't in the code and that is what developers go by. There was nothing in the code of any specific restriction from the city about the location of the school.

Ed Trompke stated based on what you have here, remember that this is a conditional use permit. The City can attach conditions to it, including conditions like 1000 feet from the school. The City's definition of the school is important to that, they do get to define what that is because there's preemption of certain matters of regulation by the OLCC. The courts have been less than clear yet about defining what that is but the statutes also state expressly that the City's do have reasonable time, place and manner regulation authority. They have authority to impose reasonable time, place and manner restrictions on the operation of a recreational retail store or marijuana. A condition can be that it must be located 1000 feet from a school. In terms of defining what a school is and interpreting a statute, OLCC will have a say in it but the courts will make the final decision, not OLCC. OLCC did define it, they said a secondary school means a learning institution containing any combination of grades 9-12 and includes junior high schools that have a 9th grade. He read that to mean a learning institution includes PCC, MHCC, CCC, they're all learning institutions. So is U of O.

John Widmer stated OLCC will ultimately determine this. If it goes to LUBA they'll stick to the facts and the City will have the expense to fight this.

Logan Leichtman stated he wants to address the reasonable time, place and manner regulations. It is not reasonable to impose a condition that used to be in the code in a quasi-judicial hearing.

Taney Staffenson stated the Planning Commission first saw this application in November of 2022. The definition for a school is a public, parochial or private institution that provides educational instruction to its students including accredited colleges or universities. There are things that the City regulates at a level, that's why there's a development code. He's sensitive to the students. What are the parents going to say? He's responsible to the development code and the people of the city.

Councilor White asked how close the location is to Cannery Park and would it be enough to stop this application.

John Widmer stated it would have; it would have been 800 feet.

Ed Trompke stated to address requests for continuances you would ask the applicant or anyone that has appeared if they wish to request a continuance or decide to move directly to decision at this time. If there is no request for continuance you can close the public hearing and leave the record open, or not.

Mayor Lauer closed the public hearing at 9:51pm.

Mayor Lauer asked if someone would like to make a motion to close the public testimony portion of the hearing.

MOTION: Councilor Wunn moved to close the public testimony portion of the hearing. Seconded by Councilor White.

VOTE: Councilor White – Yes; Councilor Wittren – Abstain; Councilor Glantz – Yes; Councilor Ripma – Yes; Councilor Wunn – Yes and Mayor Lauer - Yes.

Motion passed 5-0 (Wittren abstained).

Councilor Glantz asked what Council is allowed to make the decision based on.

Ed Trompke stated they're allowed to make the decision based on the approval criteria and any statutes that govern that. Mostly statutes limit your discretion and the approval criteria. You can impose any conditions, because it is a conditional use, that are reasonable time, place or manner conditions.

Councilor Wunn stated the language about the park within 1000 feet, is it back in the code now?

Ed Trompke stated that staff has not made a decision on how to deal with that. The cleanest way to deal with it is to readopt, say it was omitted in error.

Councilor Wunn asked if staff has a definition of a secondary school.

Alex Lopez replied, no.

Mayor Lauer stated the Council is here to come to one of two decisions, uphold the Planning Commission's decision or overturn their decision.

Councilor Ripma stated the fact that some other cities in Oregon might choose to not condition locating a facility like this because of the presence of a community college, they're allowed under the OLCC rules to make that a condition. Troutdale is allowed to make that a condition. He quoted Ed Trompke's December 8th email, "It may well be that OLCC will define high school students attending MHCC as not attending a secondary or elementary school but OLCC needs to do it officially and not in an email. OLCC must engage in statutory interpretation, not discretionary, rulemaking. Courts will ultimately have the final say, for better or worse, what the legislative assembly meant." He thinks the Planning Commission acted well within the discretion they have under these rules and laws. He's persuaded that the Planning Commission was correct.

MOTION: Councilor Ripma moved to make a tentative decision to deny the appeal of decision LU-0022-2022 and uphold the Planning Commission denial of a conditional use permit to locate a recreational retail marijuana store in the general commercial zone at 25643 and 25651 SE Stark Street and further that the City Council adopt the findings made in that decision. Seconded by Councilor Glantz.

VOTE: Councilor White – Yes; Councilor Wittren – Abstain; Councilor Glantz – Yes; Councilor Ripma – Yes; Councilor Wunn – Yes and Mayor Lauer - Yes.

Motion passed 5-0 (Wittren abstained).

8.1 PUBLIC HEARING / ORDINANCE (Introduction & Adoption): An ordinance approving a ban on additional recreational marijuana retailers and referring the ordinance to the electors of the City, declaring an emergency.

<3:03:24>

Ed Trompke gave a brief overview of the staff report.

Mayor Lauer asked if this creates a moratorium until November 2024.

Ed Trompke stated passage of the ordinance doesn't but delivery of it to OLCC by the City Elections Officer does.

Mayor Lauer asked if now is the appropriate time to put the omitted language back in, or wait for the LUBA appeal.

Ed Trompke stated it could be done now.

Councilor Wittren stated one good thing to bring up is the tax base that has been lost on year over year over year on the one that Troutdale has now. It is not the revenue maker that they said it was going to bring to town. He thinks it's a good idea to bring it back to voters because a lot of voters were swayed by the large tax dollars that were supposed to come to the communities. He's in favor of sending it back to the voters.

Councilor Wunn stated he fully supports bringing it to the voters to decide.

Councilor Glantz stated she used to be more pro on the marijuana but what she was comfortable with was that she felt like cities had control to put it in an appropriate time, place and matter. She feels like the State is taking over a lot of that control and that makes her anxious.

Councilor White stated that when Troutdale voted to approve marijuana it was a slim margin, but he thinks they had faith in the Planning Commission to manage it and they did an excellent job. He's in favor of the moratorium.

Mayor Lauer opened the public comment at 10:23pm.

Paul Wilcox, Troutdale resident, read a self-prepared statement (attached as Exhibit B).

Tanney Staffenson, Troutdale resident, stated he is in favor of the ordinance. He thinks it gives staff and teams time to get some of the pieces of the code back into place. He stated that just because someone doesn't testify against something doesn't mean they support it. Some of the decisions made years ago were made because of people and neighboring businesses wanting help. The Planning Commission tried to accommodate the residents and businesses.

Diane Castillo White, Troutdale resident, stated she is in agreement with adopting the ordinance.

Adrian Koester, Troutdale resident, stated he recognizes his opinion is not in the majority but the main point is from an optical standpoint, the timing of this ordinance in conjunction with the denial and the anticipated LUBA appeal is optically extremely problematic. It looks like it could potentially set a very dangerous precedent that could prompt certain forces in Salem to try to take even more direction from the local jurisdictions than they already have. Setting that kind of precedence concerns him greatly.

Ed Trompke stated he was informed in the last few days that OLCC has stopped issuing new retail store licenses because they see a market over supply. If you are strong capitalists, you can see why the State is interfering with the market.

Mayor Lauer closed the public comment at 10:30pm.

MOTION: Councilor Ripma moved to adopt an ordinance approving a ban on additional recreational marijuana retailers and referring the ordinance to the electors of the City, declaring an emergency. Seconded by Councilor Glantz.

VOTE: Councilor White – Yes; Councilor Wittren – Yes; Councilor Glantz – Yes; Councilor Ripma – Yes; Councilor Wunn – Yes and Mayor Lauer - Yes.

Motion passed 6-0.

8.2 If Needed – PUBLIC HEARING / ORDINANCE (Introduction): An ordinance approving a ban on additional recreational marijuana retailers and referring the ordinance to the electors of the City.

The ordinance in agenda item #8.1 passed and therefore this item was not needed.

9. STAFF COMMUNICATIONS

<3:23:52>

Ray Young provided the following staff communications:

- 3/21 URA Meeting with a list for preference of developers for URA site
- New online reporting tool for streets for things such as potholes
- Committee recruitment opening soon, watch for the applications

10. COUNCIL COMMUNICATIONS

Councilor Wittren stated he sat in on the interviews for the prospective developers for the URA site. Reach out if you have questions.

Councilor Wunn stated from what he's heard from the community, people would rather not have marijuana dispensaries directly in the City of Troutdale. This Friday, the Mt. Hood Legacy birthing center is closing. He urged everybody to complain. Hold them accountable and the detriment to the community.

Councilor Ripma stated he would like to deal with TDC omission as soon as possible.

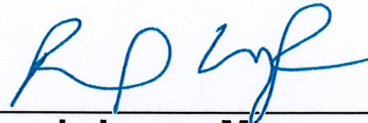
Councilor Glantz stated there is a lot of stuff going on in Salem that is taking away a lot of the City's ability to self-regulate as a city and it's concerning.

Mayor Lauer stated he and other state representatives signed a strongly worded letter to OHA and Legacy on Friday and have been working on it.

11. ADJOURNMENT

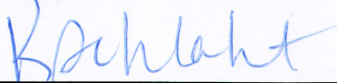
MOTION: Councilor Ripma moved to adjourn. Seconded by Councilor White. Motion passed unanimously.

Meeting adjourned at 10:38pm.



Randy Lauer, Mayor
Dated: April 26, 2023

ATTEST:



Kenda Schlaht, Deputy City Recorder

March 14, 2023 City Council Regular Mtg. - Zoom Guest List

Name (Original Name)	User Email	Join Time	Leave Time	Duration (Minutes)
Troutdale Conferencing	troutconf@troutdaleoregon.gov	3/14/2023 19:02	3/14/2023 22:39	217
Jordan Wittren		3/14/2023 19:02	3/14/2023 19:02	1
Sandy Glantz		3/14/2023 19:02	3/14/2023 22:39	217
Paul Wilcox		3/14/2023 19:02	3/14/2023 22:38	217
Shelly Reynolds		3/14/2023 19:02	3/14/2023 19:05	3
MetroEast		3/14/2023 19:02	3/14/2023 22:39	217
Geoffrey Wunn		3/14/2023 19:02	3/14/2023 22:39	217
Randy Lauer		3/14/2023 19:02	3/14/2023 22:39	217
Dave Ripma		3/14/2023 19:03	3/14/2023 22:39	217
Jordan Wittren		3/14/2023 19:03	3/14/2023 22:39	216
testimony table		3/14/2023 19:03	3/14/2023 22:39	216
Sarah Skroch	troutconf@troutdaleoregon.gov	3/14/2023 19:04	3/14/2023 22:39	215
Shelly Reynolds		3/14/2023 19:05	3/14/2023 21:48	163
Glenn White		3/14/2023 19:06	3/14/2023 19:59	54
Information Technology		3/14/2023 19:08	3/14/2023 22:39	212
Alex Lopez (Alex Anthony Lopez)		3/14/2023 19:08	3/14/2023 22:39	211
Lisa Skari (she/her) MHCC		3/14/2023 19:09	3/14/2023 19:36	27
ray.young		3/14/2023 19:32	3/14/2023 22:39	187
Kelley Graham		3/14/2023 19:53	3/14/2023 22:11	139

Exhibit A

March 14, 2023 Council Meeting Minutes

APPEAL OF THE PLANNING COMMISSION'S DECISION FOR LU-0022-2022 KALEAFA TROUTDALE

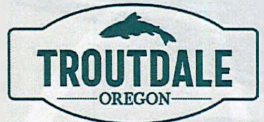
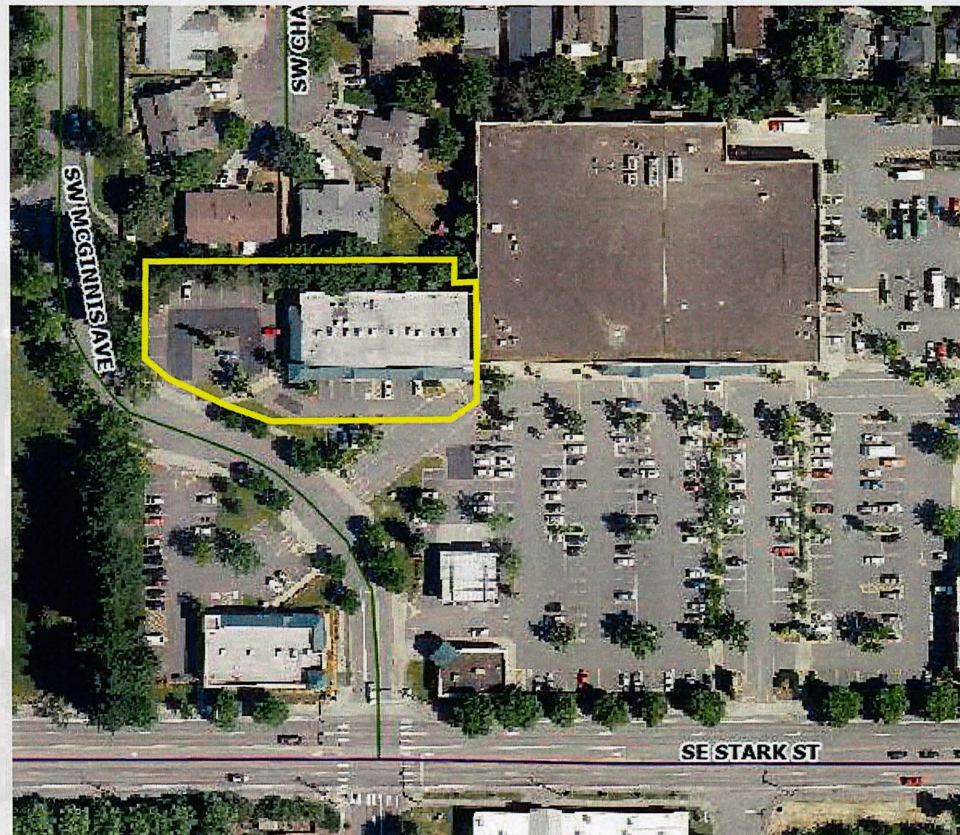
City Council

March 14, 2023



LOCATION MAP

- Location: 25643 and 25651 SE Stark St
 - NWC of SW 257th Dr and SE Stark St
 - Safeway Shopping Center
 - Zoning: General Commercial (GC)



APPLICATION & APPLICABLE CRITERIA

Applicable Criteria

- Comprehensive Land Use Plan
- Troutdale Development Code (TDC)
 - **Ch. 1 Introductory Provisions;**
 - **Ch. 2 Procedures for Decision Making;**
 - **Sec. 3.312 General Commercial (GC);**
 - **Sec. 6.300 Conditional Use;**
 - **Ch. 17 General Provisions;**



BACKGROUND

Planning Commission

- Planning Commission are the decision-making entity for Type III applications [TDC 2.060], which is required for all Conditional Use applications.
- Held meetings on November 09, 2022, and December 14, 2022.
- Planning Commission found that the application did not meet the approval criteria for a Conditional Use
 - Did not meet criteria points A, E & F.



DECISION CRITERIA [TDC 6.320] CONDITIONAL USE

A. The use is listed as a conditional use in the underlying district, or approved by the Planning Commission as similar to conditional uses listed in the underlying district.

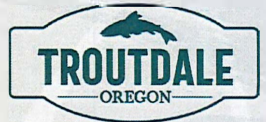
- **FINDING:** The Planning Commission found, through their interpretation of OLCC and ORS statutes, that Mt. Hood Community College (MHCC) qualified as a 'secondary school', and was located closer than the 1,000ft minimum distance required for a marijuana facility from a school.
- Planning Commission determined that MHCC qualified as a 'secondary school', due to several students from local high schools attended MHCC for credit.
- Therefore, this criterion point was not met.



DECISION CRITERIA [TDC 6.320] CONDITIONAL USE

E. The proposed use, as conditioned, will not cause or result in the creation of a public nuisance including, but not limited to, air, land, or water degradation, noise, glare, heat, vibration, or other impacts that may be injurious to public health, safety, and welfare.

- **FINDING:** The Planning Commission found that there are significant concerns over safety not only for the employees of the facility but for the patrons of that business and other businesses located near the facility.
- Public testimony at both Planning Commission meetings expressed similar concerns.
- Planning Commission found that there are significant concerns and a history of increases in violent crime related to the proposed use, therefore, the impacts may be injurious to the public health safety and welfare.



DECISION CRITERIA [TDC 6.320] CONDITIONAL USE

F. The proposal satisfies the applicable provisions of this Code.

- **FINDING:** This criterion point is not met due to criterion points A & E not being met, therefore, the proposal does not satisfy the applicable provisions of the Troutdale Development Code.



Exhibit B

March 14, 2023 Council Meeting Minutes

Mayor and Councilors,

I have just two brief comments. I'd remind or inform Council that Troutdale voters approved Measure 91 on the Nov. 2014 ballot by a margin of nearly 400 votes, or 7%. The prohibition against retailers within 1,000 feet of a city park was a restriction beyond the State requirement, enacted by the Planning Commission and Council at the time, to essentially keep the businesses out of the central business district by using Mayors Square as the basis.

I'll also add that Councilor Caswell is conspicuously absent.

Submitted by:
Paul Wilcox
Troutdale