

**ASSEMBLY STANDING COMMITTEE
COMMITTEE OF THE WHOLE
THE CITY AND BOROUGH OF JUNEAU, ALASKA
MINUTES**

March 14, 2016, 6:30 PM.
Municipal Building - Assembly Chambers

Assembly Worksession - No public testimony This meeting will immediately follow the
Special Assembly Meeting

I. ROLL CALL

Deputy Mayor Jesse Kiehl called the meeting to order at 6:40 p.m. in the Assembly Chambers.

Assemblymembers Present: Mary Becker, Jamie Bursell, Maria Gladziszewski, Loren Jones, Jesse Kiehl, Jerry Nankervis, Kate Troll and Debbie White.

Assemblymembers Absent: Barbara Sheinberg.

Staff present: Kim Kiefer, City Manager; Amy Mead, City Attorney; Laurie Sica, Municipal Clerk, Greg Chaney, Lands and Resources Manager; Rob Steedle, Community Development Director; Christine Steadman, Planner.

II. APPROVAL OF AGENDA

Hearing no objection, the agenda was approved as presented.

III. APPROVAL OF MINUTES

None.

IV. AGENDA TOPICS

A. Land Management Plan

Greg Chaney was present to provide answers to any questions about the Draft Land Management Plan 2016. He recommended that the COW accept the plan following discussion and move it to the Assembly for public hearing.

Ms. White asked about the word "retain" and its meaning if there was a large parcel of land to sell, but the access lot said retain. Ms. Chaney said it was very site specific, but the word retain meant that it was to be kept, and to dispose would take significant public process. There could be a dedicated right of way through an access lot. She asked if there is any commercial or industrially zoned land set to be disposed by CBJ. Mr. Chaney said there was some in Lemon Creek behind Costco / Home Depot. The area is down to the lower level gravel and if there is a good proposal, we could dispose of the property.

Ms. Troll said there were some recommendations from the Parks and Recreation Advisory Committee (PRAC) and the Juneau Commission on Sustainability (JCOS) and she thought that some of the comments might be more appropriate for inclusion in the comprehensive plan. Mr. Chaney said there were significant comments on parkland, the last update to the Parks and Recreation Comprehensive plan was long ago. After PRAC has done its work to review its comprehensive plan, he recommended adopting an update to the Lands Management Plan and the Parks and Recreation Comprehensive Plan in tandem at a future date.

Ms. Troll said that there was direction from JCOS regarding infill and other topics and it may not fit with this Lands Management plan but we need to have a way to track their good thoughts. Mr. Chaney said he thought that their ideas were included in the general section of the plan and incorporated - the plan holds up well to the principles the JCOS provided. He did not feel they were lost by any means.

MOTION, by Troll, to forward the approval of the Land Management Plan to the full Assembly.
Hearing no objection, it was so ordered.

B. Update on Marijuana Legislation

Mr. Kiehl said this was an Assembly generated item and he asked staff for any input. Ms. Kiefer said staff was available to answer questions.

Mr. Kiehl asked if the Assembly was prepared to open the discussion to review its decision on zoning for marijuana establishments.

Mr. Jones said there were two choices: to uphold an ordinance adopted in November, or to instruct staff to bring forward an ordinance to change the ordinance we adopted in November. Mr. Jones said as he read the ordinance that came out of the Planning Commission, when it gets before the Assembly, if we are to make some amendment to that he asked if it would require reintroduction, as it would change the title, and he did not see that action solving the problem that has been brought to us.

Mr. Kiehl agreed that Ordinance 2015-38 was not a vehicle to change zoning, even though it was in Title 49. That was a separate question. Ms. Mead said the ordinance was drafted as a special use chapter and did not include a zoning component.

Mayor Becker said the issue of cultivation in D-1 zones is of concern. She said she would like to have a discussion about the significant concerns expressed by the community, whether the ordinance is reopened or not.

Ms. Gladyszewski said she would like to see Ordinance 2015-38 come before the COW for review.

Ms. Sheinberg asked if at the upcoming Assembly meeting there would be proposed changes to the special use chapter in Title 49. Ms. Mead said yes. Ms. Sheinberg said she was pleased to hear that and thought that would address some of the concerns that have arisen.

Mr. Jones said he read the packet thoroughly and said he was torn on the topic of reopening the issue. He voted to remove cultivation from D-1 and that motion failed. He serves on the statewide marijuana control board and has watched what other communities are doing with zoning. This is a unique debate that Alaska is having. When you talk with people, they are supportive of personal use, of decriminalization, and some are surprised about the business side of the initiative - even though the four possible uses were listed - so now we have to regulate a business that has been legitimized by law. The federal government has made it clear that if we regulate, they will allow the state and locals to control. This city got ahead of it, the marijuana committee worked hard, and by the number of votes we took, which were close, we took the time and put a lot of effort into it. I am not sure if I would support reopening this again. It will be never-ending, no matter which way we go, and it has ignited enough interest between various groups, we will have many upset people in either direction. We have done enough of due diligence, enough discussion, enough close votes, and I don't see enough of those votes changing if we go out again. I would personally like to see cultivation in D-1 removed, but at this point I am not sure we need to spend time re-opening this discussion.

Ms. Troll said she concurred with much of what Mr. Jones said, and our previous vote was a 4-4, and not a clear majority. Her interest has been to see the industry succeed. Washington and

Colorado had primary recommendations to not allow commercial marijuana operations in residential districts. I think we should start off by allowing all of our residential districts to be the same. I respect the majority vote and due process. I would like for us to consider using some of our commercially zoned land to be leased for greenhouses, warehouses, to give the industry a chance, and we need to respect basic zoning principles. She was willing to revisit the issue as the previous vote was 4-4.

Ms. Becker said that she did not know that the industry could begin only if CBJ allowed cultivation in D-1. We are talking about a 500 foot area, and the manager is prepared to tell us the size of operation in a D-1 zone. Ms. Kiefer outlined the area within the room, measured to include the first row of seats, the two white pillars, and to the back wall of the room. Ms. Becker said she was not sure how many plants could be grown in that space.

Ms. White said 500 square feet was the size of a two car garage. She had trouble revisiting this, there was significant time spent on this. This is an industry that the public has voted to legitimize. This is an industry that is currently operating without us and we do not want to drive this industry under ground. There can be significant regulations on light, odor and other issues in the conditional use permit process. We can address setbacks. This use can still be done and if we are not careful, there will be other businesses not allowed in D-1, such as child care centers. The requirement for a marijuana establishment to hold two open houses for the public as a requirement for a marijuana establishment permit in a D-1 zone seems over the top and she said she would not be comfortable in a situation such as that. The Assembly, staff and the law department have spent a lot of time on this issue and she did not want to open the topic.

Ms. Bursell said she did not believe that by removing marijuana cultivation from D-1 it would mean that no one could grow it. She asked about D-1 inside the urban service boundary, and did this give certain people an advantage. An area under cultivation of 500 square feet needs 31 grow lights and for each light you can get a pound a month. One pound is about \$2000 so she figured an income of \$62,000 a month in such a facility. This is a large income. Her concern was about the money, because it was federally illegal, and there was not the ability to use a bank, there could be a lot of cash on hand at a business. This is the concern of the crime rate. Filing taxes will also be an issue federally, the business owner cannot deduct payroll expenses and rent complicates the issue. The Denver Police Department has some statistics since legalization and they found the rate of criminal activity in licensed facilities was higher than in non-licensed facilities. She felt strongly that on your own property you should be able to do what people want to do and she respects her neighbors, but this is about what is the best for Juneau. So many people have come forth to say this would negatively effect Juneau and to see this neighborhood conflict is sad. We need to listen to people and see what they really want within their neighborhoods and not make the decision for them. It would be a good thing to come to the vote of the citizens. I do not want to see more disharmony and this is a potential for increased conflict.

Mr. Nankervis said he was not available to vote on that 4-4 vote. He was not on the marijuana committee but followed the discussions closely. He did not support the ballot initiative, but if he was here on that night, he would have supported cultivation in D-1 and he has not heard any arguments to make him believe that what was done is so fatally flawed that we need to open it again. Once we start applying the law we may change our minds. Some of this is a horse out of the barn, and we find ourselves with trying to do the right thing in the best interest of the community. If this is going to be a business, I would prefer it to be treated like any other business and that we don't create unnecessary obstacles.

Ms. Sheinberg thanked the staff for the time to put together the review materials in the packet, to synthesize, refresh and walk through a record that she was not part of creating. She thanked everyone for the many comments on both sides of the issue and she has had some heartfelt discussions with people on both sides. She was not on the Planning Commission or the Assembly at the time and she read every word of the record to understand where we got to where we are and what she found was that there was some agony behind votes. At the end, she felt that there was a good credible process. She had a running list of the arguments for and against a small cultivation in and outside of the urban service boundary. Some people did raise concerns on many issues

and the Planning Commission took those issues up and debated them. Planning Commission Chair Satre's action allowed for additional comment and time for voting. It was a good process on a tough decision. She did not think the Assembly should revisit a good process. If there had not been vigorous debate, then it would be worth it. She did not favor opening this up again and revisiting this. We have reinstatement of the zoning officer in the upcoming budget and that is important. Having been on the Planning Commission, she believes in the conditional use process, she has seen them approved and denied and had many conditions put on them.

Ms. Gladziszewski said she appreciated Ms. Sheinberg's comments. She sat on the marijuana committee and as a past member of the Planning Commission she believes that a conditional use process works and small grows can be permitted in the D-1 area. This is a contentious issue, a new industry and she wished for more agreement than a 5 -4 vote. We have an additional petition that was submitted tonight and there won't be consensus on this issue, that is clear. The process was thoroughly debated and she did not favor opening the ordinance for amendment.

Mr. Kiehl said the marijuana committee started its work in February and as chair we attempted to do significant research, to do a thorough job, to gain public comment and participation, and have an open process. When the zoning ordinance was before us we held an additional public hearing beyond what we normally do for an ordinance. For all the public process, we do not have consensus. As Chair Satre said, in a land limited town, these disagreements will arise frequently and we can not eliminate them. We have some long-standing disagreements about zoning and uses allowed. He voted to keep marijuana cultivation in D-1 outside of the urban service boundary and he still thought it was a good decision. He spoke about the research he had done on the topic, particularly regarding crime rates. He said he could not promise there would not be a business that got robbed, as he could not promise his house would not be robbed. He was looking forward to the ordinance that would come before the Assembly in a few weeks and he was satisfied with the decision made in November. Absent a motion, he asked if the Assembly was ready to move on to the next topic.

MOTION, by Becker, to re-open the ordinance regarding cultivation of marijuana in D-1 zoning districts.

Roll call:

Aye: Becker, Bursell

Nay: Jones, Gladziszewski, Kiehl, Nankervis, Sheinberg, Troll, White.

Motion failed: 2 ayes, 7 nays.

Ms. Troll asked about the possibility of leasing CBJ land in commercial or industrial zones for this industry.

Mr. Jones said he thought the private sector would be competing for this new business.

Ms. Gladziszewski said that when staff is directed there needs to be five members to request that. She said that if someone was interested they could do research and contact the lands division. What good would the research do? Ms. Troll said that she thought this was being proactive, as a gesture to make sure that this industry succeeds and whether or not it is market rate or reduced, that is a separate discussion.

Mr. Jones asked, as part of the current housing plan, is there are commercial businesses or industrial uses that might be better suited to move to free up land useful for housing. Was this an idea in some plan that may already get to what Ms. Troll is asking for. Also CDD was asked to compile a list of industrial / commercial land - does this exist? Ms. Kiefer said there is about 1400 acres of industrial land in CBJ and about 650 acres is the airport, 100 acres is the landfill, the golf course is a significant amount and there is some in wetlands. She was not aware of a review done for commercial properties, and asked for more specific instructions.

Mr. Nankervis said he appreciates the effort, but there is not a demonstrated need. There is nothing to prohibit any business from approaching us as a landowner to see if they can lease or

purchase property. We don't need to change anything that we do now - we have an open door policy. Ms. Troll said just by having the discussion, the Assembly has elevated the willingness to look at the issue.

Ms. Troll said she attended an AML program on the marijuana industry. If we only allow a retail source to sell edibles, they are potentially more harmful than for someone to purchase it and smoke it. If we are going to have people consume marijuana the more appropriate way is to allow them to smoke it, but they can only have edibles because of the smoking ordinance. She would like the Assembly to evaluate allowing marijuana retail stores to allow consumers to smoke on the premises in a way that doesn't negate the smoking ordinances. My discussion with the law department has been that there is no resolution on this issue yet. We are getting inquiries from tourists now on how to participate.

Mr. Kiehl said that in his experience, the question is premature. No zoning, nor any state regulation, has come forward that allows people to consume at a marijuana retail establishment. Mr. Jones said that was correct. In the MCB regulations adopted, we might consider an endorsement on a retail license to allow consumption, but this has not been discussed regarding what those regulations might look like. We don't anticipate issuing the first licenses for retail until September. Whatever we do will run afoul of the initiative that states that you may not consume in public. I understand Ms. Troll's concern and there may be an issue in the summer, but the majority of product will be consumed in the home.

Ms. Gladyszewski said that this issue was discussed in the Marijuana Committee many times, and the smoking ordinance was important. She also said she would like to do more work on Ordinance 20015-38 and hoped that it could be referred to committee at some point.

C. Ordinance 2016-11 An Ordinance Amending Title 11 of the City and Borough of Juneau Code of Ordinances Relating to the Filling of Vacancies on the Assembly.

Ms. Mead said the intention behind the ordinance was to provide talking points for the Assembly. I understood from the last meeting that the Assembly wanted the deputy mayor to fill the mayor's spot on a temporary or interim basis. What she did not know was if that was meant to be until there was an election or until the Assembly appointed someone to sit in the seat until the election, so she based the draft ordinance off of state law, which provides for the latter. The ordinance passed in January was a non-code ordinance and allowed Mayor Becker to return to her Assembly seat after the special election. That language could be incorporated into this draft ordinance before you. The other direction she received from the Assembly was to provide a set point for determining whether or not to have a special election in the case of a mayoral vacancy and again she based this off of state law.

Mr. Nankervis provided a hand out with his talking points on the ordinance, in which he lined out language that had been proposed by Ms. Mead and underlined new language, trying to mirror what Ms. Mead drafted and what he thought the Assembly intended with the exception of time specific issues. Mr. Nankervis said that the vacancies refer to all members of the assembly. The draft states that when the deputy mayor succeeds to the office of mayor that when that mayor is elected at an election, the deputy would have the option to go back to the regular Assembly seat.

Ms. Mead said the difference with Mr. Nankervis memo is that it treats all seats the same. The Charter defines all nine members as Assemblymembers and one is called out as the mayor, which is why the law only calls out the filling of a vacant assembly seat and not a special circumstance of the filling of a mayoral seat. There needs to be an amendment regarding the interim deputy mayor position, because the one thing that is left unstated under Mr. Nankervis' scenario is how to refill the Deputy Mayor position.

Ms. White was concerned with the drafting by the attorney that does not provide for succession by the deputy mayor. She did not want the Assembly to take applications for appointing a member of the community to be Mayor. Ms. Mead said other codes from communities provide that the deputy

mayor fills the vacancy only temporarily, only until the next election. It is not a permanent succession. In other codes they require that if one of the Assemblymembers succeeds to the office of the mayor, including the deputy mayor, they need to resign their seat.

Mr. Jones said that Mr. Nankervis' suggestion allows a deputy mayor to serve as mayor for an 11 + month term of service until the next regular election. No matter how long the vacancy is for the deputy mayor will serve until the next election.

Ms. Gladziszewski said it had not occurred to her that the assembly would pick a mayor, not automatically the deputy mayor.

Ms. Troll said it makes more sense to have the deputy step up to mayor.

Mr. Nankervis said he was assuming what was done in the past and he was trying to codify this. He read that the deputy is selected by the assembly after the election, and did not add this in here because it is somewhere else.

Ms. Mead said if the Assembly chooses to have the deputy mayor succeed to the office of mayor, whether it is until a special election or the next regular election, the ordinance needs to determine the choosing of the deputy mayor, because there would not be another election until the regular election, and what happens to the deputy mayors term if the deputy mayor's term does not end /coincide with the regular election (so a provision for a return) so that the person appointed must be only until the next regular election or the deputy mayor returns.

MOTION by White, that the deputy mayor succeeds to the office of mayor.

Ms. Gladziszewski said it made a difference if it was a six month period or forever. If the person is going to be mayor for ten months, we may want to pick that person from the current Assembly. If the deputy will only be there for a short period of time, that would be different.

Ms. Sheinberg said it made sense that if it was less than six months to the next election, the deputy mayor becomes the mayor until the next regular election, or if it is more, the deputy mayor steps in as mayor until a special election.

MOTION, by White, modified her motion, that the deputy mayor succeeds to the office of mayor, whether it is a regular or special election.

Ms. Troll said she would like to de-politicize the decision about the special election and supported Ms. White's motion.

Ms. Gladziszewski said she always thought that the deputy mayor should step in to be the mayor, and she thought there was also merit to having another member possibly step in as mayor.

Ms. Becker said the Assembly does pick the person who becomes mayor - the Assembly elects the deputy mayor. Typically this has been done by seniority, but not always. People in the community have said to her, when she was deputy mayor, that she would need to be ready to be the mayor if something happened.

Mr. Kiehl said that having the deputy mayor succeed was the least political choice.

Hearing no objection, the modified motion was approved.

Mayor Becker said she agreed the term of service should be until the next regular election. The public has to feel that you have made such a horrible mistake about who you chose as deputy mayor to hold a special election. It is a huge effort on the part of the staff. When we don't have minutes to review we can blame the special election. She hoped this decision was never before the Assembly again. She asked the Assembly what they thought the mayor could possibly do that would be so all powerful.

Ms. Troll said the holding of an election was not just about the money. We need to respect the vote of the people. The time was longer than six months and this is what other communities have done. \$35,000 in a \$300 million budget is not an exorbitant expense and the downside of missing a set of minutes in order to allow the public to have their say as to who is to be mayor, she thought it was worth the cost. She perceived people want to be able to vote for who is mayor. She did not support Mr. Nankervis' wording.

MOTION, by Gladziszewski, to conduct a special election for Mayor if the vacancy is longer than six months.

Mr. Nankervis said the odds were 50/50 that it would be more than six months. He had faith that Mary and Jesse could fill the void until the next election. He believed it is satisfactory to wait to the next regular election.

MOTION, by Gladziszewski, to amend her motion to use "eight months."

Ms. Becker disagreed with the need to say to the public, "we have to have another election, because we have to elect our mayor." She was elected four times. Perhaps the mayor has some connotation but the position is an Assemblymember, and she found this personally insulting. She was elected as an Assemblymember and the mayor is an Assemblymember serving as the mayor.

Mr. Kiehl said there can be a situation in which there is two years and eight months or just 8. In the longer time it makes sense, but in terms of the case at the end of a mayoral term, eight months makes more sense.

MOTION, by Becker, to amend the motion to say "may" call a special election, rather than shall.

Ms. Troll objected because the word may did not achieve "de-politicizing" the decision.

Mr. Nankervis objected for the same reasons.

Roll call:

Aye: Becker

Nay: Bursell, Jones, Gladziszewski, Kiehl, Nankervis, Sheinberg, Troll, White.

Motion failed, 1 aye, 8 nays.

Ms. Mead clarified the timeline being based on the remaining time in the mayoral term, as in Anchorage, or as the other communities which the time frame to the next regular election.

Mr. Kiehl restated the motion on the floor to be if a vacancy occurs in the office of mayor with 8 months or more before the next regular election, a special election shall be called.

Ms. Sheinberg appreciated Ms. Becker's comments and she would vote for this motion because it made sense that the position of Mayor be elected and it was important to make the distinction.

Ms. Gladziszewski wanted to codify a process so hard feelings were avoided, and she felt bad that Ms. Becker felt bad.

Roll Call:

Aye: Bursell, Gladziszewski, Kiehl, Sheinberg, Troll

Nay: Jones, Nankervis, White, Becker

Motion passed 5 ayes, 4 nays.

Ms. Mead said she suggested that for the refilling of the deputy mayor position, that the code be amended that provides for interim succession so that it applies to both in cases when the mayor and deputy mayor is absent and in the case when the deputy mayor succeeds to the office of mayor. The intent of the current code was only to apply when the mayor and deputy mayor were

both absent from a meeting - to determine who would provide over a meeting. This same provision could be used for the filling of the office of deputy mayor when the deputy mayor succeeds to the office of mayor.

MOTION, by Nankervis, that upon succession of the deputy mayor to the office of the mayor, the Assembly shall fill the vacancy of deputy mayor by a majority vote of the body. Hearing no objection, it was so ordered.

Mr. Kiehl said he was still confused about the return of the deputy mayor to the office of mayor. Ms. Mead said that was a remaining question which was not in current code. Most other jurisdictions provide that if a seated Assemblymember succeeds to the office of mayor, they must resign from their seat. CBJ could provide, as we did in January, where the deputy mayor can go back. We would need to provide for two different scenarios for the filling of an Assemblymember's seat. When there is a vacancy in the office of an Assemblymember - not the Mayor, one is as it is in current code where you elect someone by majority vote and that person serves until the next regular or special election. Then we would also have to provide for something different, in the case of filling of an open Assemblymember seat, when it is open because the deputy mayor has succeeded. Either resignation or return to seat, in which the person filling the seat serves until the next regular election or the deputy mayor returns.

Ms. Mead asked if the Assembly wished to retain the ability to hold a special election for a vacant Assembly seat that is not the Mayor.

MOTION, by Gladyszewski, to draft language to allow the deputy mayor to get their seat back, if they choose not to run for mayor. Hearing no objection, it was so ordered.

MOTION, by White, to determine that appointing an Assemblymember until the next regular election was sufficient, rather than holding a special election for a vacancy on the assembly other than the mayor. Hearing no objection, it was so ordered.

Ms. Troll acknowledged the work of Mary Becker in stepping up in this difficult situation and it has been a difficult time for all and she thanked her for her work as Mayor.

V. COMMITTEE MEMBER / LIAISON COMMENTS AND QUESTIONS

None.

VI. ADJOURNMENT

There being no further business to come before the committee, the meeting adjourned at 9:04 p.m.

Submitted by Laurie Sica, Municipal Clerk