

CITY OF MEDICAL LAKE
City Council Regular Meeting

6:30 PM
March 21, 2023

MINUTES

Council Chambers
124 S. Lefevre Street

NOTE: This is not a verbatim transcript. Minutes contain only a summary of the discussion. A recording of the meeting is on file and available from City Hall.

COUNCIL AND ADMINISTRATIVE PERSONNEL PRESENT

Councilmembers

Don Kennedy
Chad Pritchard
Art Kulibert (via Zoom)
Bob Maxwell
Ted Olson
Tony Harbolt

Administration/Staff

Terri Cooper, Mayor
Sonny Weathers, City Administrator
Roxanne Wright, Admin. Assistant
Sean King, City Attorney
Scott Duncan, Public Works Director
Steve Cooper, WWTP Director

1. CALL TO ORDER, PLEDGE OF ALLEGIANCE, ROLL CALL

- A. Mayor Cooper called the meeting to order at 6:32 pm, led the Pledge of Allegiance, and conducted roll call. Councilmembers Pritchard, Kennedy, Maxwell, Olson, and Harbolt were present in person. Councilmember Starr was not present. Due to technical difficulties with Zoom, councilmember Kulibert was not present until 7:10 pm.

2. AGENDA APPROVAL

- A. Additions to agenda
- i. Add to Section 9 (D) Resolution 23-582 Consent to Assign with Ziplly Fiber. Motion to add made by councilmember Kennedy, seconded by councilmember Pritchard, carried 5-0.
 - ii. Add to Section 8 (B) Action Item Groundwater Investigation Grant Letter of Intent. Motion to add made by councilmember Olson, seconded by councilmember Kennedy, carried 5-0.
 - iii. Add to supporting documents the 2009 E & H Engineering Master Agreement since it is referenced in Resolution 23-577 and was not included in the agenda packet. Motion to add made by councilmember Pritchard, seconded by councilmember Maxwell, carried 5-0.
 - iv. Motion to accept all additions made by councilmember Olson, seconded by councilmember Harbolt, carried 5-0.

3. INTERESTED CITIZENS: AUDIENCE REQUESTS AND COMMENTS

- A. Tammy Roberson resident of Medical Lake – Shared concerns over the recently passed Critical Areas Ordinance. See attached.

- B. Judy Mayulianos resident of Medical Lake – Shared that she believes the CAO should be repealed and reviewed again. Asked about senior yoga.

4. ANNOUNCEMENTS / PROCLAMATIONS / SPECIAL PRESENTATIONS

- A. West Plains Groundwater Presentation
 - i. Erin Toulou, student at EWU, shared presentation on groundwater.
 - ii. Councilmember Pritchard addressed questions regarding the proposed groundwater grant Letter of Intent.

5. REPORTS

- A. Council Comments
 - i. Councilmember Pritchard – attended a Regional Lakes conference this weekend. Also attended the Spokane County Housing and Community Development Advisory Committee (HCDAC) meeting.
 - ii. Councilmember Kennedy – Finance committee met and reviewed claims. Attended Spokane Transit Authority (STA) meeting last week. There was much excitement regarding their City Line, and they are working on planning a gala event to mark the opening.
 - iii. Councilmember Maxwell – Public Works committee report: library roof will be repaired on April 29th and 30th. The Multihog is being used and Public Works is hoping to add a brush hog attachment to clear weeds. The city's compost trailer is set to open on April 10th but if the nice weather continues, they may open sooner.
 - iv. Councilmember Olson - no report
 - v. Councilmember Harbolt - no report
- B. Mayor – no report
- C. City Administrator & City Staff
 - i. FD3 report – Gave call statistics: January 67 calls, February 53 calls for a total of 120 calls so far this year. Medical Lake comprises about 25% of call volume for entire district. April 22nd is the annual Fisherman's Breakfast, 4am-noon.
At this point in the meeting, it was discovered that the meeting was being run in the wrong Zoom room. Meeting and recording were stopped at approximately 7:06 pm. Changed to the correct Zoom room and allowed guests to enter. Councilmember Kulibert signed on at 7:10 pm.
- D. City Administrator, Sonny Weathers – shared that he attended the West Plains Chamber of Commerce Annual Meeting and the Bezos Academy Stakeholder Meeting.
- E. Mayor Cooper – attended EWU ROTC dining out event. Also met with Legislators and House Representative. Attended Women's Healing and Empowerment Network fundraiser. Shared that the Spokane region has highest terabytes of downloaded child sex images on the internet. The problem is so serious that an FBI task force has been sent to Spokane. Reported that for the National Hotline for women trying to escape trafficking, 86% of calls come from Spokane.

6. WORKSHOP DISCUSSION

- A. Complete Streets Ordinance
 - i. Mr. Weathers shared a presentation and explained what a Complete Streets ordinance is and how it could function for Medical Lake. Council reviewed proposed language for the ordinance and discussion was held. Public Works Director, Scott Duncan, shared his opinion on the proposal and gave an example of how it could be utilized.
- B. Garbage Fund and Rate Review
 - i. Koss gave presentation and council held discussion.

C. MLMC Chapter 2.6 Amendment Establishing a Salary Commission

- i. Mr. Weathers shared the current code and proposed amendment. Discussion was held and it was decided that an Ordinance will be brought forward at the next meeting.

7. EXECUTIVE SESSION – None scheduled.

8. ACTION ITEMS

A. Consent Agenda

- i. Approve **February 21, 2023**, (with corrections from last meeting) and **March 7, 2023**, minutes.
 1. Motion to approve corrected February 21, 2023, minutes made by councilmember Pritchard, seconded by councilmember Harbolt, carried 6-0.
 2. Motion to approve March 7, 2023, minutes made by councilmember Olson, seconded by councilmember Maxwell, carried 6-0.
- ii. Approve **March 21, 2023**, Payroll Claim Warrants **42250** through **42257** and Payroll Payable Warrants **20191** through **20196** in the amount of **\$141,187.29** and Claim Warrants **42258** through **42300** in the amount of **\$118,900.29**.
 1. Finance committee reviewed. Motion to approve made by councilmember Kennedy, seconded by councilmember Harbolt, carried 6-0.

B. Groundwater Investigation Grant Letter of Intent

- i. Motion to approve made by councilmember Kennedy, seconded by councilmember Maxwell, carried 5-1 with councilmember Pritchard abstaining due to possible conflict of interest.

9. RESOLUTIONS

A. 23-577 E & H Engineering Agreement

- i. Motion to approve made by councilmember Pritchard, seconded by councilmember Olson, carried 6-0.

B. 23-579 TransAlta Grant Agreement

- i. Mayor noted that the city's legal counsel has reviewed and approved the language that was questioned in the last meeting. Motion to approve made by councilmember Kennedy, seconded by councilmember Pritchard, carried 6-0.

C. 23-580 Asset Management Policy

- i. Motion to approve made by councilmember Kennedy, seconded by councilmember Harbolt, carried 6-0.

D. 23-582 Consent to Assign with Ziplly Fiber

- i. Motion to approve made by councilmember Kennedy, seconded by councilmember Maxwell, carried 6-0.

10. PUBLIC HEARING / APPEALS – No items listed.

11. ORDINANCES – No items listed.

12. EMERGENCY ORDINANCES – No items listed.

13. UPCOMING AGENDA ITEMS

- A. Ariane Schmidt with Spokane County Broadband will provide an update at the next meeting.

14. INTERESTED CITIZENS: AUDIENCE REQUESTS AND COMMENTS

- A. Tammy Roberson – asked what council is going to do regarding her earlier comments. Mayor Cooper addressed and further discussion was held.

15. CONCLUSION

- A. Motion to conclude meeting made by councilmember Pritchard, seconded by councilmember Maxwell. Motion carried 6-0 and meeting concluded at 8:09 pm.


Terri Cooper, Mayor


Koss Ronholt, Finance Director/City Clerk

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March 21, 2023

*Admitted in Washington and Idaho

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RE: UNRESOLVED PROBLEMS WITH THE 2023 REVISION TO THE MEDICAL
CRITICAL AREAS ORDINANCE

February 2, 2023

Dear Members of the City Council:

My name is Trevor Matthews, and I represent Tammy M. Roberson, a citizen of Medical Lake. I am, yet again, writing on her behalf about the City's ordinance updating the Medical Lake Critical Areas Ordinance ("CAO"). As you may recall, I sent comments on February 3, 2023 and February 17, 2023 making suggestions for amendments to the proposal. Ultimately, the Council—in a divided vote—approved the ordinance without amendment. Which, in Ms. Roberson's well-considered judgment, was a mistake.

In the days since the Council voted on the ordinance troubling facts have come to light. In Ms. Roberson's opinion, these facts call into question the text of the updated Critical Areas Ordinance, as well as the process that enshrined it into law.

The City Failed to Carefully Consider Salient Comments from State Agencies

The process of amending the ordinance began many months prior to the City voting to adopt the updated CAO. As part of that process, The City sent a draft version of the ordinance to state agencies for comment. Tricia Sears from the Washington State Department of Natural Resources was one such official who commented on the draft ordinance. On an email dated Friday, September 23, 2022 Ms. Sears wrote to City Planner Elisa Rodriguez:

In keeping with the interagency correspondence principles, I am providing you with draft comments on the City of Medical Lake's proposed update to its Comprehensive Plan (Commerce ID# 2022-S-4342). I looked at the entire proposal but did not do a detailed review of areas outside our purview. There is no language regarding geologically hazardous areas.

This means that the City had notice of a defect in the Critical Areas Ordinance nearly five months before the ordinance came up for a vote. I echoed these same concerns to the City on Ms. Roberson's behalf in my second letter in February. I suspect, but have not confirmed that other agencies made similar comments. I personally spoke with an official from the Department of Commerce who confirmed that the same problem exists in the updated CAO for aquifer recharge areas. The problem was not and has not been addressed or fixed.

City and State Law Require Protections for All Types of Critical Areas

State law explicitly requires Medical Lake to regulate critical areas under the growth Management Act. RCW 36.70A.170(1)(d) requires "each county and each city" to designate critical areas, which RCW 36.70A.030(6) defines as "(a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas." In turn, RCW 36.70A.060(2) explains, "[e]ach county and city shall adopt development regulations that protect critical areas that are required to be designated under RCW 36.70A.170."

The Medical Lake Comprehensive Plan acknowledges this duty. It states:

The State of Washington identifies five primary types of critical areas requiring consideration and protection including:

- o aquifer recharge areas
- o fish and wildlife habitat areas
- o frequently flooded areas
- o geologically hazardous areas
- o wetlands

[. . .] Medical Lake's location on the West Plains places it in a unique situation because of the multiple critical areas found within its city boundaries and influence area. The community's topography and surface waters increase public environmental awareness of these areas in the community. It is important to identify and recognize those critical areas so that they may be preserved and protected.

The City's Has Wrongfully Repealed Protections for Geologically Hazardous Areas

Lest the Council think that this problem is a mere oversight, I would like to devote a moment to explaining significance of the error. The problem is not that the City has failed to *update* a passage of the law. In passing the new Critical Areas Ordinance, the City has *repealed without replacing* critical areas protections that existed in the previous law. The present version of the CAO contains protections for Geologically Hazardous Areas at § 17.10.130. The new law removes §17.10.130 without adding another section on the subject. In addition, the previous version of the CAO fails to address aquifer recharge areas. The new CAO does not address them either.

The City's Failure to Address Agency and Citizen Comments Makes It Vulnerable to Appeal

Pursuant to RCW 36.70A.280 and .290, interested parties may file a petition for review to the Growth Management Hearings Board requesting an order finding that the City is not in compliance with the Growth Management Act. Because the City's version of the Critical Areas ordinance is not in compliance with the law, an appeal is likely to succeed. The law contains potential sanctions for governmental bodies found to be in noncompliance with State law at RCW 36.70A.340.

The City's Failure to Address Comments Calls the CAO Update Process into Question

In sum, the Growth Management Act clearly requires the City—as an agency engaged in comprehensive planning—to address five types of critical areas through local ordinances. The previous CAO addressed three of those types of areas, but the new CAO *repeals* protections for geologically hazardous areas. Worse yet, the City has been repeatedly warned of this problem since at least September of 2022. Despite this fact, City Administration failed to address these comments at any time. As a result, the City Council passed a CAO “update” which fails to address required subject matter and exposes to the City to a risk of appeals before the Growth Management Hearings Board and the potential sanctions that could ensue from such an appeal.

In Ms. Roberson's view, these oversights paint a damning picture of the process that sent this version of the code to the Council for a vote. The City *knew or should have known* that the draft CAO update does not fulfill its obligations under the Growth Management Act. The City knew or should have known that the code was incomplete, but made no effort to correct errors that commenters raised on multiple occasions.

These facts suggest that City Administration failed to adequately consider and amend the ordinance before putting it before the Council for a vote. Council Members and Planning Commission members likely had frequent assurances that the draft CAO is well-written and carefully considered in light of Growth Management Act requirements. Experience is showing that any such reassurances were potentially misleading. For example, during debate on the ordinance, it is my understanding that the Mayor told council members that the CAO complied with the requirements of state law and covered all required subjects. Ms. Roberson believes that the Mayor knew or should have known that assertion was false because State agencies had submitted comments to the contrary. Ms. Roberson suspects the Council and Planning Commission were misled on other occasions as well.

The City Should Repeal the CAO Pending Further Update, including the Eight Amendments Proposed by Ms. Roberson.

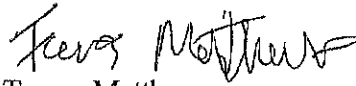
It may be tempting to the Council and City Administration to rush and make corrections to the CAO to attempt to bring it into compliance with the law and conceal any deficiencies in the adoption process. This, in Ms. Roberson's view, would be a grievous error. The City's sloppy work in drafting the updated CAO and responding to comments on its text is precisely what has created the present debacle. The City would be better served to withdraw the law and take the time to make necessary corrections and amendments to it.

The interests of Medical Lake and its citizenry are better served by careful deliberate government than by a rush to hide errors. Ms. Roberson and other interested parties will no doubt have

comments on any proposed changes to the law. This would also give the City Council time to properly consider, debate and—hopefully, adopt—Ms. Roberson’s proposed amendments to the law. Ms. Roberson continues to believe that her proposed amendments are essential to protecting Medical Lake’s environmental resources and guarding against past mistakes made by the City in administering the CAO.

Ms. Roberson thanks the Council for their active attention to this important matter and encourages them to act quickly to protect the City’s environmental resources.

Sincerely,

A handwritten signature in cursive script that reads "Trevor Matthews".

Trevor Matthews
Phillabaum, Ledlin, Matthews & Sheldon, PLLC
Attorneys for Tammy M. Roberson

March 21, 2023 City Council Meeting (1st Interested Citizens Comments)
(As Of: 21Mar 2023)

Dear Mayor, City Council Members and City Officials.

In days since the Council voted on the ordinance, troubling facts have come to light. These facts call into question the text of the updated CAO as well as the process that enshrined it into law.

- 1) The City failed to carefully consider pertinent comments from State Agencies:
 - As part of the CAO update process, the City had sent a draft version to State Agencies for comment.
 - Ms. Sears from Dept of Natural Resources (DNR) wrote in an email dated 23 Sep 2022 to the City Planner that “There is no language regarding geologically hazardous areas.”
 - This means that the City had notice of a defect in the CAO nearly 5 months before the ordinance came up for a vote. These concerns were echoed to the City Officials and to the City Council back in Feb 2023 and it was also in the January 21st City Council Agenda packet.
 - According to the Dept of Commerce, the same problem also exists for aquifer recharge areas.
- 2) The City Has Wrongfully Repealed Protections for Geologically Hazardous Areas
 - The problem is not that the City has failed to **update** a passage of the law.
 - In passing the new CAO, the City has **repealed without replacing** critical areas protections that existed in the previous law (i.e., Geologically Hazardous Areas at 17.10.130).
- 3) The City’s Failure to Address Agency and Citizen Comments Makes It Vulnerable to Appeal:
 - Because the City’s version of the CAO is not in compliance with the law, an appeal is likely to succeed.
 - The law contains potential sanctions for governmental bodies found to be in noncompliance with State law (at RCW 36.70A.340).
- 4) The City’s Failure to Address Comments Calls the CAO Update Process into Question:
 - The City knew or should have known that the draft CAO update does not fulfill its obligations under the GMA.
 - The City knew or should have known that the code was incomplete, but made no effort to correct errors that commenters raised on multiple occasions.
 - These facts suggest that City Administration failed to adequately consider and amend the ordinance before putting it before the Council for a vote.
 - Council Members and Planning Commissioners likely had frequent assurances that the draft is well-written and carefully considered in light of GMA requirements.
 - Experience is showing that any such reassurances were potentially misleading. For example: The Mayor told council members that the CAO complied with the requirements of state law and covered all required subjects.
 - The Mayor knew or should have known that declaration was false because State Agencies had submitted comments to the contrary.
 - The Council and Planning Commission is suspected to have been misled on other occasions as well.
- 5) The City Should Repeal the CAO -- Pending Further Update (to include the previously eight proposed amendments):

- It may be tempting to the Council and City Administration to rush and make corrections to the CAO to attempt to bring it into compliance with the law and conceal any deficiencies in the adoption process.
- This would be a grievous error...
- The City's sloppy work in drafting the updated CAO and responding to comments on its text is precisely what has created the present fiasco.
- The City would be better served to withdraw the law and take the time to make necessary corrections and amendments to it. CAO has not been published yet (23 Mar 2023).

May God's grace be with all wetlands and the future of Medical Lake. With God, all things are possible.

Thank you for your attention and time.

Tammy M. Roberson
424 W Brooks