



MINUTES
Committee on Public Safety
Friday, August 12, 2016 @ 2:00 p.m.
City Council Chambers, 10th Floor City Hall

CALL TO ORDER

The meeting called to order at 2:00 p.m.

ROLL CALL

Councilmember Carol Wood, Chair
Councilmember Adam Hussain, Vice Chair –arrived at 2:08 p.m.
Councilmember Kathie Dunbar, Member

OTHERS PRESENT

Sherrie Boak, Council Staff
Jim Smiertka, City Attorney
Mark Dotson, Deputy City Attorney
Michael Morofsky
Jeanne Day-Labo
Michael Brogan
Elaine Womboldt
Steve Green
Lee Klein

MINUTES

Action on the minutes will be taken at the next meeting.

PUBLIC COMMENT

Mr. Morofsky spoke on behalf of the residents of Colonial Village that contacted him, stating that they want to make sure the ordinance did not allow for dispensaries in neighborhoods.

Discussion/Action:

Medical Marihuana Dispensary Ordinance

The Committee continued its review of the ordinance on page 16, Section 1300.0.
Mr. Smiertka reminded the Committee that these sections we are reviewing are not currently legal under State law. He has proposed that it be included in the City ordinance because there are provisions under consideration in Bills before the Senate and if adopted it will allow the City to license the different activities. All provisions in this ordinance must be compliant with the Michigan Medical Marihuana ACT. Lastly it was noted that when the review is complete, Draft #5 will be before the Committee on August 19th.

Referred back to page 15, where Mr. Smiertka noted that is where he will add the information on the *pesticide disclosure* standard.

Page 16 continued the topics covered under Minimum Operational Standards for Provisioning Centers which included storage, barriers, any usable medical marihuana in a provision center when not in operation shall be secured, licensing, disposal etc. Councilmember Wood made note that many of the standards are already in the current ordinance that was adopted by Council.

Councilmember Dunbar asked what packaging and labeling is currently required by State law, and if the City can institute something different. Mr. Smiertka acknowledged that the State does not have anything; however this ordinance standard is done with the contemplation it will stay in the new statute that the legislature is looking at now. Councilmember Wood referred the Committee to the current City Ordinance, Section 1300.05 (J) which has this provision in it. Councilmember Dunbar asked the reasoning for doing something that requires a standard more than the State. Mr. Smiertka admitted that the requirement would depend if the State statute would preempt the local law from going beyond it, he confirmed he would look further into that topic.

Councilmember Hussain asked in what situation or event would there be no restricted area required. The Committee determined to remove “and if no restricted limited area is required, then promptly upon entering the medical marihuana provisioning center.” In “(M)”.

Councilmember Dunbar suggested changing line 40 on page 16 to state “License must require the patients....” And remove “all registered patients..”

The Committee moved onto page 17 with a discussion on advertising and displays that may advertise the business within the property vicinity. The topic on testing on page 17 will be addressed further in the ordinance, which will speak to where it occurs and the earlier comment of testing in Lansing locations.

Councilmember Dunbar asked what the use of “misleading, deceptive” in (P) was a protection for and who make that determination. Mr. Smiertka admitted that a lot of these provisions were recommendations from different groups that provided input. There are differences between convincing and misleading with false statements vs marketing. To over regulate is not possible.

The discussion moved onto 1300.10 which address standards for Medical Marihuana Grower Facility. Mr. Smiertka was reminded of an earlier meeting discussion that there needs to be a better definition for “greenhouse”.

Councilmember Hussain asked about the hours of operation for item (4) for inspections. Mr. Smiertka noted there is no mandatory piece when facilities can or can't be open for the inspection, it is the “stated” hours they are open for business, so that will then be open for inspections.

Mr. Smiertka asked that lines 20-24 on page 18 be given more time for examination by his Department.

Line 37 has a typo, should state “they”; and line 38 should state “and fertilizers *are stored*”

Councilmember Dunbar asked how other greenhouses in the City are regulated and if this ordinance will mirror that language. Councilmember Wood noted that the other ordinances use the International Fire Code, and this intent is the same.

Councilmember Dunbar asked that if this ordinance is significantly different the Committee should see those differences.

Page 19 was reviewed by the Committee. There was a brief discussion on (11) Hygienic Practices, and whether the Health Department should be regulating those. Mr. Smiertka this use is different than a restaurant, this uses has no requirement from the Health Department, therefore they will not have inspections from them to regulate. Councilmember Wood noted that this section is currently being considered by the legislature, which could require to be adopted by the Health Department.

Page 20 went on to address products produced for consumption, with notes taken that with the pending bill in legislation; the growing facility only has the right to grow.

Section 1300.11 is not currently regulated under the MMA. Mr. Smiertka referred the Committee back to the definitions on page 4 of the Ordinance that spoke "Grower Facility" as a commercial entity located in the City that is licensed by the State. That means they must comply with all MMA and LARA requirements, which prohibits consumption on site.

Page 21, Section 1300.12 also referred back to the definitions on Processor Facility. Line 35 "cultivation" was changed to "processor". Law confirmed that the City will be licensing the facility and the state will issue the license for the processor.

Councilmember Wood referred back to page 4, and lines 45-46 which should also include the "Safety Compliance Facility" shall be located in the City.

Back on page 21, Councilmember Dunbar asked about the processing definition for uses in edibles. Councilmember Wood noted that this part was worded as such that anything that will be allowed if the State passes legislation to allow it. Councilmember Dunbar pointed out that the difference is that the "grower" grows, and the "processor" extracts, and this section speaks to "processor".

Line 40 was changed to state "The premises shall be open for inspection."

Page 22 discussion began with questions on identification, then a question on why "greenhouse" was listed for this section which is "Processor Facility". Mr. Smiertka noted it would be for storage, but the Committee determined to remove "greenhouse" from line 14.

Councilmember Dunbar asked about processing on the same site as they grow. Councilmember Wood noted that currently what is proposed at the State is they cannot grow at the same place they process. Councilmember Dunbar then asked if they can take from a grow location to a process location then to a dispensary, and if all must be licensed and provide security. Councilmember Wood answered that the application is a standard and they must apply and meet all requirements, with a security guard only at the provisioning center.

Page 22, lines 17-46 are similar to what was seen in the other use standards.

Section 1300.13 on page 23 – 24 were reviewed and noted that it is the same section as what is in the current ordinance for provisioning centers. Mr. Smiertka noted that the Planning & Neighborhood Development Department is reviewing this section and Section 1300.14

Councilmember Hussain asked what the current ordinance states to setbacks from uses. Councilmember Wood read Section 1300.06 of current ordinance which states they cannot be located within 1,000 ft. from schools, colleges, playgrounds, churches, religion services, child care, substance abuse prevention services and rehab, and quoted the Public Acts. It also states they cannot be within 1,000 ft. from any other medical marihuana establishments. It was noted that the same restrictions will be in 1300.13 and 1300.14.

Councilmember Dunbar encourage eliminating one Section if the restrictions will apply to both. She then questioned the restrictions on locations of the centers, referring to the section that stated they could not advertise what they were. Councilmember Wood asked verification on the statue on the growing. Mr. Smiertka confirmed he could combine the two sections.

Councilmember Hussain referred to the section in the 2011 Ordinance that noted the uses were specific to F and F-1, and H and Industrial, and questioned locations for the opening of a new one. Mr. Smiertka noted that in 2011 the zoning was changed to accept them in four (4) districts; commercial and industrial. Councilmember Wood asked for more research on the zoning categories for "growing" for zoning use.

Page 24, line 43 the word "denial" was removed.

Page 25,. Lines 19-23 item (4) will either be reworded or removed.

Councilmember Dunbar asked if the Clerk will be considered the judicial body when it comes to (B) where a license will be denied or revoked. Mr. Smiertka stated that Law can build in a procedure, notification and opportunity for the applicants to be heard. They could build in a layer to go from the Clerk's decision to the Commission, than the next step would be in Circuit Court. Another option would be for a procedure for the Commission to review, then that next step would be for applicant to go to Circuit Court. Councilmember Dunbar voiced her concern with a citizen review Commission granting or denying the license. Councilmember Wood asked Law to review the option of the Clerk reviewing the evidence and then present to Council for approval similar to liquor licenses. Mr. Smiertka added that they could also build in an appeal process.

Councilmember Dunbar asked Law to review and rework the language on page 13, (11) because it appears subjective. She continued with an appeal on the amount of funds that are required in the applicant's bank, \$50,000, nothing that banks will not allow funds from an illegal business in their bank. Mr. Smiertka again stated it was up to the Committee on this decision, but it was not the intent to have them keeping cash, but to show substantial proof. Councilmember Dunbar reminded the Committee that it is not required for any other business. A business will close if it is not making money.

Councilmember Hussain's statement clarified it verifies their viability to do business. Councilmember Dunbar suggested a \$1 million liability policy instead. Councilmember Hussain asked that the requirement be left in the draft currently until Council has an opportunity to speak to residents. Councilmember Wood asked Mr. Smiertka to review the option of an insurance option.

Section 1300.16 was reviewed and it was determined (A) should also be noted at the top of the same page with a cross reference.

Page 26 (D) lines 10 should be corrected to state "establishments" not "facility".

Line 32 Mr. Smiertka acknowledged that there are no vested rights under the zoning ordinance for failing to comply with the ordinance, therefore this confirms there are no vested rights.

Mr. Smiertka added that he will be adding “Medical Marihuana Establishment is deemed a public nuisance” and add in injunction actions at the bottom of page 26.

Law was asked to provide Draft 5 to Council staff by Thursday, August 18th.

Councilmember Hussain asked for confirmation on what the Committee decided for a Commission, and it was confirmed at one from each ward, one with business experience, one that represents a caregiver advocate, and then the Director of Planning and Neighborhood Development. The Committee then held a discussion on the role of the PN & D Director with Councilmember Hussain asking for the position as ex-officio, and Councilmember Dunbar in favor of as stated in the Ordinance. Mr. Smiertka stated he could write in a revocation process thru Council if there were appeals.

Councilmember Dunbar asked what the status would be if there is someone open now legally, and have been operating successful and passed all criteria. Mr. Smiertka stated in that case Law will advise the Commission and possibly make the recommendation.

Public Comment

Ms. Day-Labo spoke in opposition to the licensing fees and record search noting her opinion of Civil Rights violations which included regulating what advertisements they can use. Ms. Day-Labo volunteered to serve on the Commission and asked for a Section on Commission hearings. Lastly she asked for section 10 and 11 on page 19 to be replaced with section 7 on page 21. Councilmember Wood reminded the public that the section on the fees are place holders only, the Departments and law are currently reviewing each step that will be involved to determine the costs.

Mr. Brogan asked how many licenses will be addressed, and will there be separate licenses for the provisioning center.

City Attorney Smiertka left the meeting at 4:00 p.m.

Councilmember Wood confirmed that the City Ordinance is currently following the court statue. Mr. Brogan continued to speak in opposition to costs, and security guards.

Mr. Green spoke in opposition to the currently proposed ordinance, and asked the Committee to consider adding a section on variances or variations.

Mr. Klein spoke as retired attorney on behalf of multiple clients who have concerns with the ordinance covering items that will get addressed only if the State passes the bill or statue. It was noted that the current State law does not have anything that covers growers or processors, so his opinion was that there is no meaning under the ordinance. Again he asked why the Committee would consider passing something that is conditional. Mr. Klein pointed out his opinion that there are 15 provisions in the ordinance that would not pass as being constitutional, and it is questionable that business owners could afford litigation. Mr. Klein supported a study to make reasonable related fees not the proposed \$5,000 and \$10,000.

Mr. Dotson informed Mr. Klein that his research shows that dispensaries are currently legal, if they operate in conformity with the Michigan Medical Marihuana Act, and referenced the McQueen case. He continued by stating that there is no transport between grower; no

property transport for processors, no property transport between dispensaries. The proposed State legislation provides for secure transport. Councilmember Wood suggest Mr. Dotson speak to Mr. Klein after the meeting.

Ms. Womboldt acknowledged the Committee on their effort, and spoke in support of limiting the number of dispensaries. Ms. Womboldt then quoted an article in the Detroit News from August 12, 2016 that announced a decision that medical marihuana is still on the list of high potential for abuse, and Federal law deemed it still illegal.

The next meeting will be August 19, 2016 @ 2:00 p.m.

ADJOURN

The meeting was adjourned at 4:45 p.m.
Submitted by, Sherrie Boak,
Recording Secretary Lansing City Council
Approved: August 26, 2016