



MINUTES
Committee on Public Safety
Friday, August 26, 2016 @ 2:00 p.m.
City Council Chambers, 10th Floor City Hall

CALL TO ORDER

The meeting called to order at 2:02 p.m.

ROLL CALL

Councilmember Carol Wood, Chair
Councilmember Adam Hussain, Vice Chair
Councilmember Kathie Dunbar, Member- arrived at 2:07

OTHERS PRESENT

Sherrie Boak, Council Staff
Council Member Spitzley
Jim Smiertka, City Attorney
Mark Dotson, Deputy City Attorney
Elaine Womboldt
Jessica Wilson
Jeremy Wilson
Roberta Wiborn
Lee Klein
Mary Ellen Purificato
Jon Miles
Nathan Dupry
Steve Green
Richard Williams
JM Fryer
Elvis Malcolm
Robin Schneider
Shelly-Mary Forrester
Carol Siemon

MINUTES

MOTION BY COUNCIL MEMBER HUSSAIN TO APPROVE THE MINUTES FROM AUGUST 5, 2016 AS PRESENTED. MOTION CARRIED 2-0.

MOTION BY COUNCIL MEMBER HUSSAIN TO APPROVE THE MINUTES FROM AUGUST 12, 2016 AS PRESENTED. MOTION CARRIED 2-0.

The process for the meeting was outlined and the group was referenced to Draft 5c, which had yellow highlights for the changes. Law had reviewed the draft diligently in preparation for this meeting, and apologized for the late distribution.

PUBLIC COMMENT

Public comment take after the presentation.

Discussion/Action:

Resolution – Ingham County Appointment to the Ingham County/City of Lansing Community Corrections Advisory Board

Councilmember Wood outlined the resolution, and noted the City just affirms the Ingham County appointments just at Ingham County affirms the City of Lansing appointments.

MOTION BY COUNCILMEMBER HUSSAIN TO APPROVE THE RESOLUTION FOR THE APPOINTMENT OF JACQUELINE STRAUB. MOTION CARRIED 2-0.

Medical Marijuana Dispensary Ordinance

Mr. Smiertka went thru the changes in the draft 5c. The ordinance was written to meshes with current bills before the Senate, so if it passes there would be very few changes needed in the future. The City is following the Senate bill, and the City will focus on the language, zoning and process on licensing and regulations. Some changes recommended language changes by Law Department reflect the recent Court decisions and cases before State Supreme Court. The ordinance regulation is being placed in Zoning and replacing the prior ordinance, and with exclusionary zoning means not allowing a use to exist anywhere. Mr. Smiertka also acknowledged there were changes made to reflect council intent, and receiving information regarding fees from other Departments involved with the processing of the application and license. Currently, Finance is still computing costs and estimates. Councilmember Wood informed the public that in regards to the fees, there are place holders; \$5,000 for the application, and \$5,000 for licenses in this draft, with the possibility in being changed.

The review began on page 1, and changes that were reflect to what is required.

Page 2 was changed to reflect recommendations from law, using the State Supreme Court case. No comments from Committee.

Page 3, addition of lines 20-22; no comments from the Committee.

Page 4, line 27-28, "Medical Marijuana Caregiver Center was added to *Provisioning Center*. There were also changes to lines 29 and 44 to add "operate", which was done to be consistent with Senate bill. Mr. Smiertka reminded the group that the local ordinances regulate the business location and the license is regulated by the State. Therefore the applicants will have to show proof of licensing from the State when they apply to the City.

Page 5 reflected only grammatical changes and there were no comments from the Committee.

Page 6 outlines the establishment of the Commission member. This now includes three ex-officio members; LPD, LFD and Planning and Neighborhood Development. Councilmember Wood pointed out the other change, located on line 26 which now states the Ward member would be a recommendation by the Council Ward Member to the Mayor. The Committee had no further comments.

Page 7, line 23-24 added Planning and Neighborhood Development as ex-officio. Further on the page, line 37 which clarifies that no license for an establishment is a public nuisance, similar to other license activities. Councilmember Wood asked for clarification on what Department would be point person for Commission and if that too would be the discretion of

the Mayor. Mr. Smirtka confirmed it would be since it would be under the executive branch. There were no further comments.

Mr. Smiertka informed the group that on page 8, line 3 was eliminated in past revisions, so it was not added back in. This referenced 1300.05 which speaks to applications, and payment of a fee in order to not be considered in violations.

Councilmember Dunbar brought up the question of the process if there are currently three businesses in one location, would it be given to the first one who applied and the other two would be denied. Mr. Smiertka noted that topic is addressed later in the ordinance.

On page 9, (4) on lines 5-13 was added to address the age requirement of 18 years of age and disqualified of any felony to be an applicant and the word "employee" was removed. Councilmember Dunbar pointed out that if the applicant is allowed to get a caregiver card from the State, they are cleared, so that is the State enforcing. There were no additional comments.

Page 10 now addresses the distance requirements between public and private college, community college or university, churches and playgrounds. This will also require a map, and Mr. Smiertka stated to the Committee that those maps will be provided at the next meeting. There was no consensus from the Committee on the changes to page 10, and will be reviewed again.

Page 11 changes the original amount of funds to \$25,000. In addition Law added to line 45 the requirement that the testing would be done by an International Organization Standardization Accredited Testing Facility.

Mr. Dotson stepped away from the meeting at 2:25 p.m.

Councilmember Dunbar spoke in opposition to the \$25,000 requirement, and asked if that was suggested by an establishment. Mr. Smiertka stated it was not. Councilmember Dunbar went on to point out that the City does not require capital operating funds for any business that is viable, and if they do not have funds, they will close eventually. Additionally she pointed out that it is well known that in Colorado it has proven that until the drug is not a federal schedule 1 drug, it is illegal to put any capital gains through transactions from the drug sales into a bank. Therefore she did not support (21) on page 11. Mr. Smiertka acknowledged it would be a policy decision, not a legal requirement. There was no consensus from the Committee on the changes to page 11, and will be reviewed again.

Mr. Dotson returned to the meeting at 2:31 p.m.

On page 12 an insurance provision was added (24), and the fees on line 32 were changed to allow it to be determined by resolution. Under line 45, law also added that the LPD will be included in the vetting process. Councilmember Dunbar added that law also made the change to line 13, which eliminated "greenhouse" and changed it to "building" based on the last meeting discussion. The Committee had consensus to the changes on page 12.

Page 13 reflected changes to add LPD into the background check and security plan. Councilmember Wood pointed out that this was similar to the check lists on liquor licenses. At the last meeting the Committee determined that this function was the responsibility of the Department not the Commission. Line 33 also notes that law removed all criteria from the Commission responsibility. The criteria still exists, Councilmember Wood pointed out, but not under the Commission requirements, but on page 15 through the Departments. These changes also address the earlier concern of personal information, and it will not be submitted to the Commission.

Councilmember Spitzley referenced page 13, and asked for clarification on what is required, and how to measure negative impact of character to neighborhood. Mr. Smiertka pointed out it could be measured, and if the Commission thinks it would be a significant factor. Councilmember Wood asked if these would be similar to a Special Land Use (SLU), and Mr. Smiertka confirmed. Councilmember Dunbar referred the group to line 31 stating it would not be necessary for a panel to review if the City Departments did their job when vetting it. She spoke in opposition to the item, because if left open for far too much conflict. Councilmember Wood gave an example of liquor licenses and if items aren't signed off, they get referred back to the Clerk without passage to the Commission.

Councilmember Dunbar pointed out to the Committee that if this is subjective there has to be a criterion that is spelled out. Mr. Smiertka noted that for example if the building was new, it will be a new building in a Commercial District. With the special land use and flow of traffic it could be determined if it will fit there. If it is an existing building, the historical nature of the site would show if this used would fit. Councilmember Wood added that with a SLU there are certain things the Committee has to articulate and point out to deny.

Councilmember Dunbar asked that they need to codify in the ordinance what that criteria is, and how do you make a determination on a person's character. Councilmember Wood explained the Commission will not be looking at the information blind but will have basic information. Councilmember Dunbar asked again about a blind. Mr. Smiertka confirmed that law could put in details but that the document already offers the Commission the opportunity to make changes. (Page 7, line 18). The Committee held discussions on similarities to the Board of Zoning Appeals, and standard in licensing. Mr. Smiertka added there could be case law on character they could find. Councilmember Dunbar spoke in opposition to the Commission role in character. Councilmember Hussain acknowledged that the Committee already vetted this section that stated the Commission would vet the applicants, and then referred to page 13 line 2 (E) which states no application shall be submitted to the Commission unless items were addressed. Councilmember Dunbar did not confirm to the changes and reserved the right to make changes.

Councilmember Spitzley asked how a blind review would work, because the Commission has to know the name, address. Those items are known on other licenses, so there needs to be consistency.

The Committee had consensus on page 13.

The Committee moved onto page 14 which addressed the annual fee and adding the LPD to the vetting process. Councilmember Dunbar referenced line 4 (3) which spoke to the "good character of applicants and stakeholders". Mr. Smiertka admitted that if it gets challenged, there would be a question if the decision was substantial and competent. Mr. Dotson pointed out this also part of State Law. Councilmember Dunbar pointed out to the group that if review and experience is done as part of the State law for the license, the City ordinance would be redundant on the fact. Councilmember Wood stated that currently the State law is not in effect. Councilmember Spitzley asked if the ordinance could be changed to reference the State law. The Committee did not have a consensus on page 14 (3) but on everything else. Page 15- line 26-27 was changed from 45 days to 60 days. The Committee had a consensus on page 15.

Page 16 addresses transfers with the addition that "the medical marihuana commission has determined that the proposed location meets the requirements of 1300.6 (B) (2).

Councilmember Spitzley went back to page 15, line 39 asking for clarification on moving a business. Mr. Smiertka confirmed the license is for the location.

Back on page 16 the Committee reviewed the process, use of the product on site, provisions when transferring of the license, and criteria. Councilmember Spitzley encouraged the same criteria for the second party when a license is transferred. Councilmember Wood referred back to page 15 which outlined the requirements, 1300.08 Licenses. Councilmember Dunbar objected to the requirement of funding for both parties, and objected. Committee had consensus to page 16 except to the requirement for funds in the bank.

The Committee briefly reviewed what was clarified in the Charter, and Mr. Smiertka stated it all would depend on a definition in the Charter on if it was a resident or private building, currently after review it does not say "public place". (8-501 of the Charter) The Charter specifically says "private". Councilmember Hussain asked for clarity on as regulated by this new ordinance. Mr. Smiertka confirmed these locations will be private property. The discussion then moved onto if a car is considered public or private, and Mr. Dotson stated public. The Committee had consensus of page 16.

Mr. Dotson stepped away from the meeting at 3:20 p.m.

The Committee held discussions on public usage in the locations, and entry into the location. It was noted that since the entry has to be granted by the caregiver, it is not open to the public. In the operation standards, you have to have a registered card to get in.

Page 17, line 40 was added to clarify that all packaging would be labeled as provided by state laws and the ordinance with specifics that continued onto page 18.

Councilmember Hussain asked about the drive thru option. Councilmember Wood stated it is not part of the original ordinance, so the proposed ordinance thought it was important to have the patients enter the facility. This was reflected on page 17; line 24-25. Councilmember Spitzley stated that she had no concern with a drive thru, providing the example of a pharmacy. Councilmember Hussain spoke in opposition to a drive thru, and Councilmember Dunbar agreed with Councilmember Spitzley.

Mr. Dotson returned to the meeting at 3:30 p.m.

The Committee had consensus on page 17 except lines 24-25.

Page 18 line 27-28 addressed the earlier issues of smoking in an area. Councilmember Dunbar referred to line 39 on page 18, and asked who would decide on the advertising. Mr. Smiertka stated it would be a case by case. It could be referred to the Attorney General Consumer Protection Act. The Committee had consensus of page 18.

The Committee had consensus on page 19, and since there were no changes to page 20-22 there was also consensus.

Page 23 – line 25 – same provision – this is dealing with the processing facility, which is currently not legal under state law. Change line 32, during hours of operation for inspection.

There were no changes to page 24 therefore consensus by the Committee.

Page 25, 1300.13 spoke to the footage from property lines and Mr. Smiertka confirmed that law reviewed this section for the best placement and to withstand judicial scrutiny. Currently

the Planning and Neighborhood Development is mapping based on the ordinance where facilities could be located. Mr. Smiertka concluded that the Law Department recommendation is for distance between certain locations is 500 ft. and also allowing in facilities in G-2 District.

Councilmember Wood pointed out that in the beginning the ordinance had 1,000 ft. from State licensed daycares, elementary and secondary schools. There was a request to add additional locations such as churches, substance abuse centers, abuse centers and parks. By adding these additional uses, they limited spatial requirements where one could actually be located. Therefore Law made a recommendation to provide more flexibility, to use distance from day cares and schools, but not the other items. These will be represented on the map that was discussed earlier at the September 2, 2016 meeting.

Councilmember Dunbar asked for two maps, one with 1,000 ft. distance between locations and one with a 500 ft. distance between. Council Member Hussain stated he was not comfortable with this page and section without the map and the study. Councilmember Spitzley concurred with the school distance requirement, but pointed out with the universities in the downtown area, as an example, this study would strongly effect the downtown. The Committee did not have consensus on page 26, and would be reviewed later after the maps have been presented.

Page 27 adds G-2 Wholesale to the zoning districts they are allows. Councilmember Dunbar asked that a map be created with an overlay of where the dispensaries currently are. Is was explained that may be impossible since the City does not have a list of the current dispensaries locations in the City.

Page 27 also addressed the appeal process mentioned at earlier meetings by adding (C) where they have 14 days to appeal to the Clerk. The next step would be circuit court. The Committee did have a consensus on the appeal process.
The Committee had consensus on page 28.
The Committee had consensus on page 29.

Councilmember Wood focused on the highlighted questioned areas:

Page 10 no consensus; line 38-45

Page 11 no consensus; line 24-28

Page 14 no consensus

Page 17 no consensus; line 24-25

Page 24- 27

These include minor clarifications, and Law should not make any changes other than ones indicated. Draft 6 should be presented at the September 2, 2016 meting along with maps, fees and licensing.

Public Comment

Ms. Schneider spoke on topics including smoking on private property, her concern with the ordinance being based on the State law passing, if the law passes it will ban smoking on premise, so they could lose their license. The Commission language is a boiler plate language, similar to the gaming law, liquor law, there are Commission's in other communities also. In regards to determining good moral character, Ms. Schneider believes there would have to be evidence, and there should also be a score card for them to use for a rating system. Lastly Ms. Schneider asked about a map that was used in earlier meetings that highlighted the facilities in the City, so that the zoning determination and the distance can be shown. Her opinion was that 500 ft. is reasonable, but not in the case of schools, those need to be 1,000 ft.

Mr. Dotson left the meeting at 4:13 p.m.

Mr. Malcom referenced page 18, line 19-22 asked if there is safety concern with a drive thru, then why ask for about the business address on the labeling of products. He agreed with an emergency phone number on the label. Councilmember Wood confirmed the address would be the dispensary address. Mr. Malcom moved onto pages 23-27 which spoke to the standards, and made note that if there are any operating stores now they have 30 days to fill out applications, so these could be used against them.

Mr. Miles spoke about the character of applicants.

Mr. Klein inquired as to why the ordinance is being addressed if it will not take effect unless the State statute current or revision is acted upon. Councilmember Wood clarified it is for the Provisioning Centers, the rest of the ordinance will take effect if the State passes the law. Therefore Provisioning Centers and Caregiver Centers will take effect immediately. Mr. Klein then stated in his opinion that people will not attend these meetings because they did not want to give their name, and his opinion is that the whole purpose behind the ordinance is to prohibit the sale of marihuana. Mr. Klein continued with objections to the limit in the City causing for potential litigation, violations of HIPPA law, and stated his general observation the ordinance is deplete of standards. He urged the Committee to relook at the complete ordinance, and no need to pass with no State statute to be enforced.

Mr. Dotson returned at 4:25 p.m.

Mr. Klein continued with his comments on the negative impact, and there are no studies to regulate. Councilmember Wood encouraged him to contact the Law Department, so they can look at his comments. As to dispensary owners, she informed Mr. Klein that there have been many that have come to the meetings. Mr. Klein was also informed that the ordinance does already state in many definitions "in accordance with state law or where state law requires".

Councilmember Dunbar clarified for Mr. Klein that the caregiver has to keep a list, and that information is not turned over. Mr. Klein was also recommended to make an appointment with the City Attorney's office.

Mr. Wilson, a former resident of Colorado, made suggestions from what he witnessed in Colorado. Regarding page 11, lines 25-28, on verification, this would suggest high fees, if they lower those fees; it would make the business patient focused, instead of encouraging them to obtain out of state money. Page 26-27, with the change in 500 ft. distance requirements, there was a similar situation in Durango, and this grouped churches with schools, so a cancer patient location had to move. Mr. Wilson recommended instead a distance requirement for each specific use, with 1,000 ft. for schools, 500 ft. churches as an example, and so if it changes in the future it would not be a blanket change. On page 14 that spoke to "character", Mr. Wilson suggested set definitions more specific on what back ground checks would entail. Lastly his suggestion was requiring opaque packaging material. The Committee was acknowledged for the testing and cleanliness requirements.

Ms. Womboldt spoke in opposition to drive thru at dispensaries, and the 500 ft. distance requirement but could support 750 ft. for churches and substance abuse centers.

Ms. Forester referred the Committee to page 9, line 30, and spoke in support of denial if no experience, spoke in support of the drive thru, and asked about the disposal process. Councilmember Wood noted that the disposal process is something still be considered, and Mr. Smiertka added it would need to be adequate, a bag at the curb will not be adequate.

There was a question asked about odors from the smoking, and the public was reminded of the complaint form on this nuisance on the City Attorney page.

ADJOURN

The meeting was adjourned at 4:47 p.m.

Submitted by, Sherrie Boak,

Recording Secretary Lansing City Council

Approved: September 16, 2016