



MINUTES
Committee on Public Safety
Thursday, November 17, 2016 @ 3:30 p.m.
City Hall, Council Chambers

CALL TO ORDER

The meeting called to order at 3:30 p.m.

ROLL CALL

Councilmember Carol Wood, Chair

Councilmember Adam Hussain, Vice Chair

Councilmember Kathie Dunbar, Member- arrived at 3:34 p.m.

OTHERS PRESENT

Sherrie Boak, Council Staff

Jim Smiertka, City Attorney

Mark Dotson, Deputy City Attorney

Debbie Garvey

Otto Graesser

Vern Frailey

Mary Ann Purificato

Steve Green

Angie Stevens

Kelly Brown, Nicholas Law Firm

Gary Calkins

Judy Davis

Elaine Womboldt

Kathy Miles

Jon Miles

Mary Ann Prince

Harold King

David Saglimbene

Robert Ovalle

Melea Bullock

Sam Johnson

MINUTES

MOTION BY COUNCIL MEMBER HUSSAIN TO APPROVE THE MINUTES FROM NOVEMBER 4, 2016 AS PRESENTED. MOTION CARRIED 3-0.

Councilmember Wood apologized for miscommunication at the last meeting where statements were made regarding the documents that would be consider for verification that the business was open before the moratorium. She referenced earlier meeting minutes and offered them to Mr. Johnson, noting she had misunderstood him at the last meeting, confirming clarification on his statements that the rental lease was one of the multiple documents that would be considered.

RESOLUTION – MAKE SAFE AND DEMOLISH- 1517 PATTENGILL

Mr. Sanford stated that the property has a \$46,000 SEV, but the estimate to repair is at \$139,300. The property has gone through the demolition process and the hearing Board. Proper notification was made but no one showed for the hearing.

Mr. Smiertka and Mr. Dotson stepped away from the meeting at 3:33 p.m.

Councilmember Wood confirmed that there was no one present at the public hearing before Council. She then asked Mr. Sanford, whether the property qualified for 30 day Make Safe order. Mr. Sanford stated it was not fire damaged so it does have to be 60 days.

MOTION BY COUNCIL MEMBER HUSSAIN TO APPROVE THE RESOLUTION FOR MAKE SAFE AND DEMOLISH FOR 1517 PATTENGILL. MOTION CARRIED 2-0.

Mr. Smiertka and Mr. Dotson returned to the meeting 3:34 p.m.

RESOLUTION – MAKE SAFE AND DEMOLISH – 2915 TURNER

Mr. Sanford informed the Committee that the SEV on this property was at \$27,800 with and estimated cost of repair at \$85,500. The Demolition Board also recommends demolish of this property in 60 days and there was proper notification and no one showed for the hearing. This property was not fire damaged. Councilmember Wood added that at the public hearing on November 14, 2016 before Council there was no one present.

MOTION BY COUNCIL MEMBER HUSSAIN TO APPROVE THE RESOLUTION FOR MAKE SAFE AND DEMOLISH FOR 2915 TURNER. MOTION CARRIED 2-0.

PUBLIC COMMENT

No public comment at this time.

DISCUSSION/ACTION:

Code Compliance Information on Lead Information Requirements on Rentals

Councilmember Wood stated that the Committee had a report from the Ingham County Health Department on lead issues in our community. One of the suggestions from this meeting was an ordinance requiring Lead Testing as part of rental registration.

Mr. Sanford acknowledged they had been reviewing the proposals with other municipalities, and there is a \$2.3 million grant that could do an estimated 150 units, with an estimated \$400 per unit. In a review of the Lansing housing, there are 8,036 single family homes, including duplexes, and that would be an assessment cost of \$3.4 million, abatement costs based on 78% average, would be about \$51,626,000. In multi-family there is \$7.1 million assessment and \$6,981,000 abatement. Any administrative costs for Lead Safe Lansing include personnel, fringe and 42% of the costs.

Mr. Smiertka and Mr. Dotson stepped away from the meeting at 3:41 p.m.

Mr. Sanford outlined the positive impact, building safety and OSHA practices, with .03% testing positive in Lansing.

Mr. Smiertka and Mr. Dotson returned to the meeting at 3:42 p.m.

Mr. Peffley confirmed on behalf of LBWL that there is only one (1) lead surface line left in the City of Lansing.

Mr. Sanford outlined impacts which included increased costs to tenants, impacts on affordable housing, and landlords will avoid registering because there is legal liability for landlords. Lastly, Mr. Sanford pointed out to the Committee that this would be an unfunded mandate, so the City will have to institute a fee to cover the costs. Councilmember Hussain spoke on the current program as it is, because every part is voluntary.

Councilmember Wood asked Mr. Sanford if the inspectors are looking at peeling paint with rental inspections. Mr. Sanford confirmed, and stated the landlords are then cited if they find some.

Councilmember Wood then asked if there had been any testing of soils at the locations of the homes that were removed under the Blight Funding with the City and County. Mr. Sanford acknowledged Code has not, but they do partner with the Development Office. Councilmember Wood asked if they inspect for lead on the "Make Safe and Demolish" properties. Mr. Sanford confirmed that it is not required under the demolition process so they do not. Councilmember Wood asked Law to add it to the requirements.

Councilmember Dunbar asked Mr. Sanford what the cost would be for the unfunded mandate he mentioned earlier. Mr. Sanford did not have any figures. Councilmember Dunbar asked what recommendations or inspections they perform if they find chipped paint. Mr. Sanford stated they recommend to the owner to cover it and directs them to the Development Office to have the property tested.

Councilmember Wood provided Mr. Sanford of the address of 1515 Denora to check on.

City Attorney Update on Medical Marihuana Moratorium Log

City Attorney Update on Medical Marihuana Moratorium Criteria

Mr. Dotson distributed an updated spreadsheet. The first one highlighted on the spreadsheet was on page 3, "Lansing Tribute", where Mr. Dotson stated he had spoken to the owner on November 16th and they informed him they had been in business since November, 2015. Currently his office is waiting on the lease, utility bill and affidavit attesting to operations before the Moratorium.

Councilmember Dunbar asked for clarification on the criteria, because with no sign, and them stating they were open, does not mean they were doing business. There was a question on what the actual affidavit would be. Mr. Dotson stated they are accepting a signed affidavit from the businesses, and also a utility bill which is evidence they were paying and open. Councilmember Dunbar pointed out that a signed affidavit could be perjury, and asked if Law is looking at advertisements. Mr. Dotson confirmed there is no limitation on what they can look at.

Mr. Dotson then referred to the last page at the last item dated November 14th. These items have represented they are opening soon, but not in operation now. Another one is "Hello Wellness" who is also stating they will be operating soon, but nothing currently.

Councilmember Wood asked if Law has sent letters to those businesses telling them if they open they will be in violation. Mr. Dotson stated that at this time he is not even sure they will

be Medical Marihuana establishments, but once they open Law will send the letters because Law does not believe it would be appropriate to send the letters now.

Mr. Dotson then referred the Committee to the last three entries, which are residential complaints. Councilmember Wood asked those stay on the spreadsheet. Mr. Smiertka asked if those should be separated out, and Councilmember Wood asked they stay on the spreadsheet and place all residential in one location, and the commercial entities that may be in violation of the moratorium in another location. Mr. Dotson agreed to make the changes and pointed out that they had removed names and addresses for the residential complaints.

Home Occupation Ordinance

Councilmember Wood informed the public that in July Mr. Smiertka stated he was working on two ordinances; the Medical Marihuana Dispensary Ordinance for commercial entities and the Residential Ordinance. The Committee has been waiting for the completion of the Residential Ordinance. Mr. Smiertka had stated at previous Committee meetings he was working with BWL on details. The week of November 7th there was an announcement that Mayor had a Residential Ordinance. This is the ordinance Law completed and it was passes along to the Mayor, and she appreciated the support of the Mayor.

Councilmember Hussain asked for confirmation that the Ordinance in front of them at this meeting is the same one Law was working on for the Committee on Public Safety. Mr. Smiertka confirmed Law had been studying the Medical Marihuana situation, performed research and held discussions with police, fire and outside groups, in addition to try to understand how to address the concerns in the neighborhoods. This lead to asking if any Home Occupation might have issues, concerns could cause for building safety, exhaust fumes and level of electrical use. These discussions lead to the development of this ordinance, and what is the level where electrical usage can cause a danger. After a discussion with BWL, it resulted in ordinance wattage of 5,000 KWH. Mr. Smiertka added that since the first release of the draft ordinance, he was now recommending to add "per month" after "5,000 KWH".

Councilmember Hussain asked again if this was the Ordinance Law was working on since July 2016 for this Committee. Mr. Smiertka stated yes it is. It also provides for enforcement on all home occupations that emit fumes into neighborhood. He stated that the new Ordinance would require any Home Occupation has to register with the Building and Safety office and in turn requires an inspection.

Councilmember Wood asked if all home occupations now have to register, because in the past Home Occupation Ordinance did not require that. Mr. Smiertka confirmed they would, and Mr. Dotson added only if they meet a certain threshold. Mr. Smiertka agreed, noting only if they emit fumes and gases in neighborhood or use 5,000 KWH per month. If the Law office gets a complaint they will send a letter, then talk to owner and see if they are emitting gases. The City will also have the ability to have administrative search warrants. It should be noted that this ordinance is on the building, there are items that reserve the privacy of the individuals. This process will be a registry. Mr. Smiertka made it known that the number was determined on discussions with BWL on the dangers in the wattage loads that are continuous.

Mr. Peffley confirmed that 5,000 KWH was proposed to them by the City, and the BWL measures electric KWH over a period of a month. Mr. Peffley noted that that City also asked if they read peak loads. It was noted that 552 KWH load per month is normal. Mr. Peffley did inform the Committee that the BWL has been responding to overheated electrical boxes where fires were caused by loads over 5,000 KWH. That level of a read would also mean the electrical service in the house would not be sufficient.

Councilmember Wood asked what kind of business would cause that spike in KWH. Mr. Peffley answered that it could be small retail store or a party store. However in those cases, it should be noted that those small business services are designed for that. It was noted in their research they could not specifically find a property with 5,000 KWH usages where they weren't running a high load usage. It should be noted that a typical residential usage is 525 KWH per month.

Councilmember Hussain asked Mr. Peffley, that if 5,000 KWH was suggested by the City and the spirit of the ordinance is to protect, is 5,000 appropriate. Mr. Peffley stated a lower number should be taken into consideration; however he did not have that specific number to suggest. If BWL had a peak monitoring system in place they might be able to propose something, but right now they can only look at an average. BWL believes lower is possible and they have offered to study and have an engineer look into it.

Councilmember Wood asked if a resident had a pool and giving swimming lessons would that fall under home occupation for this ordinance, and Mr. Smiertka stated it would.

Mr. Peffley continued by stating it is easy to detect how much a house is using, however at this time they were not asked to do that.

Councilmember Wood asked what the determination was used to come up with 5,000 KWH, and if they had looked at lower number. Mr. Smiertka confirmed that there is data out there that the usage is lower for growing, and probably 5,000-8,000 KWH would be on continued bases for 72 plants. The 5,000 KWH was originally given to Law by outside groups familiar with this growing practice. Law is still open for discussion.

Councilmember Dunbar asked Mr. Peffley if the house fires he mentioned had a cross reference and a baseline for their grow facility. Mr. Peffley offered to do that, however it had not been done on those fires because they knew it had exceeded and caused the fire. Councilmember Dunbar asked what the new rating would be, and Mr. Peffley stated that when they look at KWH, that is the total use over a month, and trying to figure out hour by hour, and not being familiar with growing, they have to look at usage over 5,000 KWH with a 100 amp service. Councilmember Dunbar asked if this is causing a drain on electricity on the house, or potential in the area. Mr. Peffley admitted a cluster in an area is an issue, but not an issue on the BWL system in total. If there is a cluster on one street it is a safety issue. If a customer wants to use 5,000 KWH, BWL can upgrade for a fee. They would then also have to upgrade their service in their house.

Mr. Smiertka reviewed the proposed ordinance line by line.

Line 2 – 12 is a summary of the ordinance and line 8 should be amended to include “per month” after “hour”).

Section 1 – line 16 – outlines home occupation as defined as a term in Zoning.

Councilmember Wood asked if it will need to go before the Planning Board for review and public hearing, and Mr. Smiertka stated it would not because there are no zoning issues, just a reference term in the ordinance but no zoning implications. Once the Committee has a final draft, there will only be a five (5) day notice for public hearing and passage.

Line 17- 29 expresses the intent of the ordinance, that there is a finding that the home occupation uses electricity that exceeds 5,000 KWH on a peak or continuous basis. In line 19 “per month” was added after “KWH”.

Councilmember Wood asked about odors in the nuisance ordinance, and the consideration of purchasing equipment to measure odor to assist the enforcement officers, and if that has been used as part of the matrix. Mr. Smiertka admitted there is equipment, and that it would be case by case and it would be objective evidence.

Mr. Dotson stepped away from the meeting at 4:28 p.m.

Mr. Smiertka continued with the ordinance on line 22- 23 where the City of Lansing in there general offense criminal code has a similar code as what is noted here. Mr. Smiertka then continued by reading lines 24-35.

Councilmember Wood asked if everyone has to register, or only if there is a violation found. Mr. Smiertka stated it addresses that anyone in charge has the obligation to register. If there is any home occupation and they are doing the things described in the ordinance, they must register. This will get triggered when the City receives complaints on the odor.

Councilmember Hussain asked if it would be a civil infraction if they fail to register. Mr. Smiertka confirmed that if the City finds they have a violation of the ordinance with home occupation, that they were doing these things, then there would be a civil infraction for failure to register.

Councilmember Dunbar asked, outside of marihuana, what other home occupations would use 5,000 KWH. Mr. Smiertka suggested a tanning bed. This is not a medical marihuana ordinance; this is registering any home occupation. It is defined in the zoning ordinance with different qualifiers. Mr. Smiertka read lines 35-36 which spoke to "compliance".

Councilmember Dunbar asked that the ordinance be amended to include the language in lines 7-8 of the ordinance anywhere in the ordinance where 5,000 KWH is referenced.

Line 42 spoke to annual inspections. Councilmember Wood asked if there was a cost determined for the inspection. Mr. Smiertka admitted there was no discussion on the fee at this point, but it can be looked at and handled as a typical housing or building inspection.

Line 48-66 intends to protect the privacy of home occupations in medical marihuana for safety reasons. Councilmember Wood added that this section would also cover a caregiver because of the HIPPA no name can be given.

Councilmember Wood asked how annual inspections would work. Mr. Smiertka referred to the rental registration inspections, however if they are protected under HIPPA or the MMA their names will not be listed. Councilmember Dunbar noted that in that case, any address without a name is going to be known to be a medical marihuana facility. How will they maintain privacy issues if there is a FOIA list on inspections. The question was asked if someone is growing for themselves and might have smell, using a LED system with low heat and a less chance for fire, if they don't cross the thresholds do they have to register, and Mr. Smiertka confirmed they do not.

Councilmember Dunbar suggested creating educational brochures for caregivers on how to use lower usage, better ventilation, etc.

Mr. Smiertka moved back to the Ordinance, line 60 which spoke to municipal civil infraction. Councilmember Wood asked that a line be added that states "A fee will be established by Resolution and can be changed by Resolution." It was also requested that the fees be obtained by Code Enforcement for the next meeting.

Mr. Dotson returned with a flyer on a smelling meter and distributed that to the Committee. A piece of equipment would still require a person to use it, and there is still the question on odors being emitted at night or weekends when there is no Code inspector working. Councilmember Wood asked if research had been done on any device that can be set in a location for taking periodic samples. Mr. Dotson admitted he had not researched that, and therefore was asked to do so by Councilmember Wood. Councilmember Dunbar asked if a group of volunteers could be organized to do enforcement. Councilmember Wood admitted this was considered, however there would be a potential for an issue if the case went to court.

Councilmember Wood informed the public that the next meeting on the topic would be December 2, 2016 at 3:30 p.m. to review Draft #2.

Mr. Dotson stepped away from the meeting at 4:56 p.m.

Public Comment

Ms. Garvey spoke about one property particularly, 1733 S. Hollywood, stating her opinion that the odor from the property is extreme and she are asking for the property to be monitored for excessive wattage usage.

Mr. Dotson returned to the meeting at 4:59 p.m.

Ms. Purificato asked Mr. Peffley to take into consideration condominiums when they research and consider wattage usage. The opinion is that condos are not all individual units but are attached with multiple units in a building.

Mr. Green referenced the Michigan Medical Marihuana Act, Section 7 e. which he recited as "all other Acts and parts of Acts do not apply to the medical use of marihuana in this Act." Mr. Green continued referencing "person" including employee, contract or state agency, local government that discloses private information as punishable.

Ms. Stevens referred to the State law that does not allow anyone into grow areas, including inspectors. Her opinion was that the proposed ordinance was an attack on the medical marihuana industry. Ms. Stevens did ask what the cost of an inspection fee would be.

Ms. Brown spoke in opposition to the ordinance, with her opinion that it was an attack on business and caregivers. Ms. Brown asked for the number of complaints.

Ms. Davis spoke in support of getting further information and the need to clarify that some cases are an outside grow.

Ms. Miles spoke in opposition to the 5,000 kWh because it was too high and asked the Committee to consider a lower number.

Ms. Prince spoke in opposition to allowing the growing of medical marihuana. Councilmember Wood clarified that the State allows, it is not the City.

Ms. Womboldt spoke in opposition to the 5,000 kWh, and questioned line 21 of the proposed ordinance and setback from the property line.

Councilmember Dunbar referenced the first section in the ordinance where it states the odor is leaving their property and entering another. The questions are if the violation is leaving the property, as in a street side, or entering onto another property which could be the neighbors.

Councilmember Wood asked that Mr. Smiertka and Law review the former Home Occupation Ordinance which outlined the definition.

Councilmember Wood clarified that the Committee will meet again on December 2, 2016 at 3:30 p.m.

City Attorney Clarification on Enforcement of Commercial Zoning setbacks for Medical Marihuana Establishments

Not addressed.

ADJOURN

The meeting was adjourned 5:21 p.m.

Submitted by, Sherrie Boak, Recording Secretary Lansing City Council

Approved: December 2, 2016