



MINUTES
Committee on Public Safety
Monday, October 14, 2016 @ 3:30 p.m.
City Hall, Council Conference Room

CALL TO ORDER

The meeting called to order at 3:33 p.m.

ROLL CALL

Councilmember Carol Wood, Chair

Councilmember Adam Hussain, Vice Chair

Councilmember Kathie Dunbar, Member- arrived at 3:36 p.m.

OTHERS PRESENT

Sherrie Boak, Council Staff

Jim Smiertka, City Attorney

Nancy Mahlow

Mary Ann Prince

Elaine Womboldt, RSL

Steve Green

Elvis Ott, resident

Harold Taylor, resident

Susan Stachowiak via phone

Mark Dotson, Deputy City Attorney arrived at 3:36 p.m.

MINUTES

Discussion and action on the minutes will take place at the next meeting.

PUBLIC COMMENT

Councilmember Wood stated that if the public wished to make comments at the beginning of the meeting they could otherwise they could make comments as asked questions during the presentation from the City Attorney.

Ms. Mahlow asked for the update on the complaints, and spoke that is important that when complaints are file they are handled in a timely manner. Without that information it appears as if nothing is being done.

Discussion/Presentation

City Attorney Presentation on Medical Moratorium Complaints

Mr. Smiertka distributed a spreadsheet breakdown from the Office of City Attorney (OCA) and one from the Planning & Neighborhood Development Office (PND). He stated that Law met

with Zoning and created their spreadsheet which is combination of purposed violations of the moratorium and neighborhood complaints. PND spreadsheet addressed neighborhood complaints due to odors and traffic. PND stated they had not received any moratorium complaints, those were directed to Law. In the In the status column for the PND report, their "Resolved" meant they inspected and there was no current evidence of smell, so nothing further was done.

Councilmember Wood distributed a spreadsheet based on the complaints she had. These had been forwarded to both PND when neighborhood complaints and Law.

Mr. Dotson detailed the steps that OCA takes when receiving a complaint on the moratorium violation. This includes logging the address, tracking the owners, and determining if the information provided meets the requirements that represent they have been active before the moratorium. If they find they started after the moratorium, they are sent a letter.

6347 Beechfield was on the OCA spreadsheet three (3) times. Law stated they investigated immediately along with a Code Compliance investigation. Councilmember Wood reminded Mr. Dotson of an email from the realtor who has a unit next door and the tenant vacated because of the smell. The information on the log does not show that the Code Officer entered that vacant apartment and she asked for additional follow-up.

Mr. Smiertka confirmed the PND spreadsheet shows the address is an ongoing problem. It was also requested by the Committee that if there are multiple complaints on one address the spreadsheet should be reflective of that so it does not appear to be 3 separate complaints, but continued complaints on the same property. Mr. Dotson confirmed that his office did just put the spreadsheet together this week, so they can format it anyway the Committee wishes.

224 McGarry Drive logged a number of violations and a raid. Mr. Otis was present to speak to his concerns. Law stated their log noted that Code enforcement did not detect an odor, so it was noted as resolved and no need to follow up. Mr. Otis confirmed the property was raided approximately two months prior and red tagged for a short period of time. However a month later the same people were back and traffic began to pick up, and an air purification system was installed and runs mainly after 5:00 p.m, but there is still a smell coming for the house. Mr. Otis state he also called the prosecuting attorney office to find out where the case was with regards to the raid.

Councilmember Wood noted an email that was sent to Law on this property and asked if there were any charges made, and if they tested the material they found from the raid. Mr. Dotson stated they are still waiting on the answers on the testing to determine the charges. There are no pending charges, so Mr. Smiertka asked Mr. Dotson how long ago the testing was done and Mr. Dotson could not provide a timeline.

Ms. Womboldt spoke about her concerns with regards to those who grow in neighborhoods with no regard for their neighbors. How bad the effects are especially with someone who has asthma or allergies it can make your life debilitating.

Ms. Prince asked for copies of the spreadsheets the Committee was reviewing. Councilmember Wood noted that the Committee themselves had just gotten the spreadsheets, and they would be provided to the public before the end of the meeting.

Mr. Smiertka asked Mr. Ott to meet him after the Public Safety Meeting in his office to further discuss 224 McGarry.

3301 Capital City Blvd. was a complaint filed by the owner because a complaint was filed against him. The information that was provided by Mr. Johnson as the owner confirmed he was open before the moratorium. Councilmember Wood asked that those complaints be clarified because they are misleading.

4646 Eastlawn should be changed to the correct address of 4822 Eastlawn. Mr. Smiertka confirmed their spreadsheet shows pending, but PND shows resolved. Ms. Stachowiak noted it appeared it was a nuisance violation for growing the product in the frontyard; therefore her office did not address it. Councilmember Dunbar referred to the Medical Marihuana Act which stated there were restrictions on growing and included it had to be in an isolated, locked and inaccessible location. Mr. Dotson could not confirm or deny that was true for this complaint. Ms. Stachowiak stated to the Committee she had informed Law this violation should be turned over to the Police but if there was a consensus for her office to review it she would do that. Mr. Smiertka asked her to pursue and if it was found a violation they could file a civil court action. Ms. Stachowiak stated she drive by the location on Monday.

2308 Sunnyside, Law stated this was a repetitive situation and so Councilmember Wood asked Law to continue to pursue it. Ms. Stachowiak stated it was "resolved" on her spreadsheet because her inspectors went on site and did not find a violation and her office did not receive any further complaints. Her office does send a letter when they receive the initial complaint, however if they do not get any further complaints they are under the belief their letter accomplished the compliance on the nuisance. In the case of complaints on odor Code compliance has been going out on the site.

134 E Edgewood Mr. Dotson stated is a gym that the complainant stated had a separate area where they were dispensing and selling. Mr. Dotson stated he went to the site on October 13, and it was not occurring. Councilmember Hussain stated it was advertised on their website and he would provide that to Mr. Dotson.

3711 Jolly Road, known as Pure Cannabis, has been in operation since the first of year, and Law has asked for an electrical bill for proof but has not gotten it yet. Law will follow up.

910 Southland, Ms. Stachowiak stated it was not on her list because she was advised to hold off on the complaint and investigation. She was advised they were seeking an opinion from Law on if they could do enforcement. Mr. Doston asked Ms. Stachowiak to resend that request. The group briefly discussed the location and two uses, one which is a church and one a herbal farmers market. Mr. Green stated the church uses traveling location. Ms. Stachowiak stated their website is misleading because the website does not lead you to believe it is a church. Councilmember Wood asked Mr. Dotson and Ms. Stachowiak to follow up on the situation. Mr. Dotson's opinion was that this was more of a flea market, so owners were not dispensing it, but making available for people to come in, and share. Councilmember Wood reminded Mr. Dotson that was against the MMA, so if it's proven as an issue then prosecute.

3001 S. Washington Ms. Stachowiak stated was brought to her attention by and electrical inspector. A letter was sent and they requested a rezoning to commercial. The application was sent onto the Planning Board and once they review it their recommendation will go to Council. She explained it would be very unlikely that staff will support the rezoning. Councilmember Wood asked Mr. Smiertka, that since this was opened after the moratorium went into effect, the rezoning doesn't matter it should cease. Mr. Smiertka asked Mr. Dotson if a letter was sent to them to cease, and it was confirmed, so the item on the spreadsheet was the complaint by the owner, Mr. Green, stating he was there before the moratorium. Ms.

Stachowiak confirmed that while the application is pending, there is a stay of enforcement against them.

1202 S Washington, Mr. Dotson confirmed was another location that was in operation prior to the moratorium. Ms. Womboldt stated it was a different name then. Councilmember Wood stated that based on the moratorium if it is the same person they can continue to change their name. Mr. Dotson stated he would confirm it has been the same person.

Councilmember Wood referenced the list she had distributed noting that items 3, 4, 5, 6, 7, 8, 10, 12 were sent to Law earlier but did not appear on their spreadsheet.

Committee recommendations on the City Attorney spreadsheet were to incorporate residential complaints in one area, and commercial in another. Mr. Smiertka confirmed those changes can be made, and Mr. Dotson encouraged only listing the street name and block number not entire address.

Councilmember Hussain noted his frustration with the City Attorney office on the information and research provided since the moratorium began May 13th; however Law admitted they did not put anything together until the week of October 10th. He reminded Mr. Smiertka that the Moratorium was recently discussed at the Council meeting on October 10th as the example for why Council should not repeal the current medical marijuana ordinance; however the City Attorney spreadsheet does not show any evidence of following up on these matters in a timely fashion.

Councilmember Dunbar asked if there was a comprehensive list of locations where there are facilities at this point, so Council can start pointing to them. Councilmember Wood noted the closest they had was what the LSJ had published which is an interactive map. When doing the moratorium the Interim City Attorney Abood had recommended not doing a list because then Council would be giving legitimacy to an illegal act. Councilmember Dunbar offered to have her intern research and provide a list, however Councilmember Wood advised her to be careful in assigning that task.

Mr. Green stated his belief there were 63 dispensaries as of October 3rd, based on the advertising job he had at the City Pulse.

Ms. Womboldt spoke to the repealing of the current 2011 ordinance that fail at Council Meeting of 10th, and asked why if there is an ordinance on the books since 2011, why the Clerk cannot start licensing and use it now, and the City Attorney using it as it was passed by enforcing it. Ms. Womboldt reminded the Attorney office that had stated at the October 10th Council meeting it could be used.

Councilmember Wood asked Law why the business on Mt. Hope was told to close because they were not zoned appropriately; however they are allowing Mr. Green remain open if he is not zoned appropriately. Mr. Smiertka acknowledged he was not aware of the zoning in the 2011 ordinance, however each in the main zoning ordinance each classification has a separate area medical marijuana can be. Currently no licenses are being issued because of the moratorium. Law will look at each zoning classification to determine whether distances are also spelled out in those classifications. With the current ordinance on the books, and the whole reason to stop licensing was the fact it was against the State law, and now that the State law has changed they can start licensing. Mr. Smiertka continued that since the ordinance was first adopted, that was pre-Supreme Court case of McQueen, and it was that case that Law drafted the regulations based on. That ordinance is a licensing ordinance, and once the McQueen case came in it put a stall on that concept, allowing only for a relationship

with a Caregiver and patient. People who argue it is unenforced fall under licensing relationship under the MMA of the primary caregiver and patient. In the MMA there are privileges and immunities. Those are exempt from licensing, permitting, and criminal prosecution. However, he continued there is the Trebeack Case where we are licensing the premise and address for safety, fire, and health. That decision has not been tested yet. Mr. Smiertka's opinion is that if the City has a case they would rather have an ordinance in place then not have one. If nothing were to be done with the current draft, it would have to be tweaked and there is potential case law that could change again. Councilmember Wood asked again why Law does not require the Clerk to start licensing. Mr. Smiertka admitted they have legal issues, and violations of MMA if doing a traditional caregiver relationship.

Mr. Dotson clarified that the McQueen case did not say dispensaries were illegal, but dispensing was illegal. You can regulate, but the regulations have to be reasonable. Ms. Prince asked Mr. Dotson what was wrong with the Draft 6A the Committee passed. Mr. Dotson stated he was under the belief that they can impose regulations and zoning on the operation side, and there is no that says you can't and that was the case when the municipalities tried to eliminate them all together. Under the MMA there are circumstances that could draw into questions.

Mr. Green stated he is currently protected by immunity and affirmative defense.

Councilmember Wood noted there would be no Committee meeting on October 28th, but they will meet on October 21st and the 4th. The Office of the City Attorney should be prepared to update the Committee on October 21st on the discussion during this meeting.

Mr. Dotson asked for all moratorium complaints to be directed to him. Councilmember Wood advised him also speak to Mr. Abood in his office for past moratorium issue that were sent to him.

ADJOURN

The meeting was adjourned 4:58 p.m.

Submitted by, Sherrie Boak,

Recording Secretary Lansing City Council

Approved: October 21, 2016