MINUTES
Committee on Public Safety
Wednesday, February 1, 2017 @ 3:30 p.m.
City Hall, Council Chambers

CALL TO ORDER
The meeting called to order at 3:36 p.m.

ROLL CALL
Councilmember Adam Hussain, Chair
Councilmember Carol Wood, Vice Chair
Councilmember Tina Houghton, Member- arrived at 3:40 pm

OTHERS PRESENT
Sherrie Boak, Council Staff
Jim Smiertka, City Attorney
Mark Dotson, Assistant City Attorney
Kathy Miles
Jon Miles
Mary Ann Prince
Richard Williams
David Kenney
Stan Shuck
James Carter
Steve Green

MINUTES
MOTION BY COUNCIL MEMBER WOOD TO APPROVE THE MINUTES FROM DECEMBER 16, 2016 AS PRESENTED. MOTION CARRIED 2-0.

PUBLIC COMMENT
Moved to the end of the meeting until agenda items have been addressed.

DISCUSSION/ACTION:
ORDINANCE – Home Occupation; Amendments to Chapter 1460
Councilmember Hussain explained as the Chair of Public Safety we are dealing with issues from the previous year and one is the Home Occupation; Amendments to Chapter 1460. Councilmember Hussain proceeded to read the introduction of the Ordinance. In to the record.
"An Ordinance of the City of Lansing, Michigan to add Section 1460.04, Home Occupation registration and inspection, to Chapter 1460 of the Lansing Codified Ordinances to provide for

the registration and inspection of any building or structure in a residentially- zoned district where the operation of a home occupation within such building or structure utilizes electricity that exceeds 3500 KWH(kilowatt hours) per month or where the operation emits gasses, fumes, smoke or odors outside of the building or structure and across the building or structures property line; and to provide civil infraction penalties for noncompliance with Section 1460.04."

The Committee ask law to draft the ordinance which would help with some of problems created in neighborhoods with regards to Home Occupations. Law in turn worked with the BWL, the Lansing Fire Department and this Committee to address the intent. The intent is to protect neighborhoods from fires, odor, etc. It was noted that the LFD does state the whether a fire is the result of home occupation, but that they were electrical fires from large usage that exceed what wattage that was coming into the house. This ordinance would apply to any home occupation that exceeds the wattage listed in the Ordinance. Councilmember Hussain continued by outlining the dates when the Committee started working on this in 2016, then the Public Hearing on January 30, 2017. If the Committee has no objections, Councilmember Hussain's intent is to have the ordinance move to Council for adoption on February 13, 2017.

Councilmember Wood asked Mr. Smiertka how the ordinance would be enforcement. Mr. Smiertka noted it would be investigated with the LFD and LPD, and they would determine if there were public safety dangers because of a Home Occupations based on the use of electricity or smell and odors. The current ordinance dealing with Home Occupations references noxious odors which is still an issue so that was also incorporated into the ordinance. He noted that if there is any Home Occupation that exceeds that 3500 KWH there should be an inspection for safety reason, and that is what this ordinance is about. The only penalties would be if there is a failure to register. This is for all Home Occupations per the definition of the code. This will be complaint driven or found under a fire or other inspection. The complaints will come to the City Attorney office, and then they contact the owner of the property/landlord, and determine if there needs to be an inspection. Based on a probable cause of reasonable suspicion it would then go to a Judge. Councilmember Wood asked about obtaining administrative search warrants for code complaints, and Mr. Smiertka agreed that is the standard practice.

Councilmember Houghton asked questions on registration, addressing a complaint on exceeding the wattage, and what to address if the home owner states they have no Home Occupation. Mr. Smiertka reiterated that enforcement will be complaint driven which could include fire, police, building and zoning departments, etc. The facts and circumstances would be considered for each case, and if someone states they do not have a Home Occupation Law would ask for a voluntary inspection to verify. The registration is for the purpose of inspection for safety purposes. The registration would stay with the home, so if they move they need to apply for the new home. Lastly Councilmember Houghton asked about the sunset clause of 5 years, and why.

Councilmember Wood answered that was the request of the Fire Department and BWL for 5 years to re-evaluate to see if the needs had changed.

MOTION BY COUNCIL MEMBER WOOD TO MOVE THE ORDINANCE TO COUNCIL FOR CONSIDERATION AT THE FEBRUARY13, 2017 MEETING. MOTION CARRIED 3-0.

DISCUSSION – Ordinance Amendments to Chapter 1460;

Concerning payment of back taxes in connection with rental certificate

Councilmember Hussain noted that the amendment is in an existing code, therefore the only addition is on page 1, line 14-15; "appropriate fees have been paid and verification that real

property taxes are not delinquent." Councilmember Wood added that the changes were brought on by comments from the public and discussions during the 2016 Ad Hoc on Housing meetings as well of questions of other licenses given by the City. All other licenses require the applicant to be current with the City on taxes.

Mr. Smiertka referenced a case law from Muskegon, and cited " Landlord and Tenant; Constitutional and statutory provisions; Encouraging prompt payment of property taxes to minimize fiscal problems associated with delinquent taxes on rental properties and promoting appropriate maintenance of rental properties with legitimate governmental objectives and ordinance requires, as condition for issuance of certificate of compliance allowing renal of residential dwelling, that all past due property taxes must have been paid was rationally related to those objectives; thus ordinance did not violate equal protection, even though other businesses that had to register to do business in city were not required to pay real estate taxes before securing certificates of registration, where residential properties were disproportionately delinquent compared to other classes of property."

MOTION BY COUNCILMEMBER WOOD TO SET A PUBLIC HEARING FOR FEBRUARY 27, 2017 FOR THE ORDINANCE AMENDMENTS TO CHAPTER 1460. MOTION CARRIED 3-0.

Councilmember Wood asked for confirmation that once the ordinance goes into effect it will apply to all new rentals registration and at the time of renewals. Mr. Smiertka confirmed.

ORDINANCE – Draft #6A- Medical Marihuana Licensing

Councilmember Hussain read the Legislative Intent of the Ordinance.

"The purpose of this Chapter is to exercise the Police, regulatory, and land use powers of the City of Lansing by licensing and regulating medical marihuana provision centers, medical marihuana grower facilities, medical marihuana compliance facilities, and medical marihuana processor facilities to the extent permissible under State of Michigan and Federal laws and regulations and to protect the public health, safety, and welfare of the residents of the City of Lansing; and as such this Chapter constitutes a public purpose.
The City finds that the activities described in this Chapter are significantly connected to the public health, safety, security and welfare of its citizens and it is therefore necessary to regulate and enforce safety, security, fire, policing, health and sanitation practices related to such activities and also to provide a method to defray administrative costs incurred by such regulation and enforcement.
It is not the intent of this Chapter to diminish, abrogate, or restrict the protections for medical use of marihuana found in the Michigan Medical Marihuana Act or in the Lansing City Charter at Section 8-501."

Councilmember Hussain continued with an overview of the work that was done over the last few years, including multiple attorneys working on it, and recent changes to the State law. The current version in front of the Committee was the last version (Draft 6A) this Committee approved. In October, 2016 the Committee sent that version to the Planning Board for their review on the zoning and recommendations on such. At that time the City Attorney asked for 60 days. The Planning Board tabled the ordinance, and since that time the Public Safety Committee had pulled back the ordinance to this Committee. The current agenda item on this topic is to get an update from the City Attorney office. Councilmember Wood added that a public hearing was not set for the Draft #6a.

Mr. Smiertka provided his update. This began with the clarification that that ordinance was sent to the Planning Board because State law requires they respond to and review zoning changes. This proposed ordinance is a mix of licensing and zoning. So will be in the zoning

code and will also have a “facility licensing” provision. The Planning Board can review and making recommendations to the public body. The Committee does not have to adopt the changes. He confirmed that the Planning Board did send comments to Law to address certain issues, mainly about their concern with exclusion features of the ordinance. The Planning Board will meet again on February 7, 2017 at which point Mr. Smiertka state he would provide them with recently updated maps for their zoning review only. Mr. Smiertka did acknowledge that he had recently (the night before this meeting) completed the most recent draft of this ordinance, however was not ready to present it to this Committee. He noted the new draft of the ordinance mirrors many of the provisions or syncs with the State law. There is an expanded definition put in hold-harmless to alleviate concerns with Federal law violations, and they did look at other cities. When reviewing other cities they looked at other city distance requirements, but in addition looked at comments from the City of Lansing, public, neighborhoods, and reached out to caregiver groups. Mr. Smiertka stated that the City Attorney office intent is now to have the Planning Board look at distance setbacks and report back to Committee. Again he noted that the Committee is no bound by their comments. A provision in the ordinance is for the Clerk’s office to handle the licenses, however the Clerk has informed his office that they will need 4 months to get ready to license. It should be noted, Mr. Smiertka stated that the State has a Licensing Board now, and no one can be given a license in the City of Lansing, unless they have a License from the State. Procedurally they have to have a State license before the City is effective. Mr. Smiertka clarified again that the City can no allow unless the State has issued their license.

Councilmember Wood asked if Mr. Smiertka planned to provide the most recent ordinance to the Planning Board, because her opinion would be that this Committee should see it first. Mr. Smiertka stated he could only provide the Planning Board with the zoning maps to review. Councilmember Hussain agreed noting that it is the best practice is to allow Council to deliberate first.

Mr. Dotson stated his opinion that the City could issue licenses since the City ordinance will be in effect before the State is up and running their program, which he believes would be 2018. And then once the State has their program working the applicants would have two licenses. Mr. Smiertka informed the group that his understanding is the State already has their Commission have met once.

Based on Mr. Dotson’s comments the Committee was confused on if the City issued a license now, and then the State denied what the City could do about it. Mr. Smiertka reiterated that the City will not issue unless the State has issued a license, and that is all addressed in the recent version he mentioned earlier that he had completed the night before this meeting. There is a provision that states they must have a State license. The City will synchronize the effective date with the ability of a license of the State. The applicant can apply with the City if the process is ready before the State; however it will not go into effect until the State license is obtained. Mr. Smiertka added that under the new ordinance, the City will license all operations. If one opens with no license, the LPD or County Prosecutor would investigate to see if it is in compliance and/or protected. If not, then the issue would be if the Prosecutors Office wants to enforce the State Marihuana Law. It would all depend on the facts and circumstances.

Councilmember Hussain asked Mr. Smiertka when the recent version of the Ordinance he keeps referencing would be available to the Committee. Mr. Smiertka admitted his office was still proofing and performing an analysis. He hoped for within a week. He confirmed again he would only take the zoning map to the Planning Board. Councilmember Hussain asked that the City Attorney office provide the recent draft he referenced for the next meeting, and not minutes, hours, but at least 48 hours. He was asked if he could provide it one week before the

meeting so it could be in the Committee packet, and he stated he could. Councilmember Houghton asked if it wasn't provided it would be moved to a later agenda, and Councilmember Hussain noted that Law had stated they could provide in a week for the packet, so it should be done.

Public Comment

Ms. Miles spoke in support of passing ordinance as soon as possible, then questioned if the moratorium was being enforced. She stated and Council Member Wood confirmed that two properties were report by Nancy Mahlow and will be forwarded to Law.

Mr. Shuck spoke in opposition to the proposed Medical Marihuana Ordinance citing his opinion that it violates HIPPA, that there needs to be further research on scientific evidence, and then voiced a concern on the enforcement of the odor portion.

Mr. Williams spoke in opposition to the earlier amendments to the Ordinance on rentals, citing his belief that the taxes are always collected by the treasurer collects. Council Member Wood informed Mr. Williams that the hearing was set at this meeting, but it will be back to this Committee before passage.

Mr. Carter spoke in opposition to the medical marihuana ordinance and felt it is taking rights away. He then spoke in opposition to odor inspection and complaint process.

Mr. Green spoke in opposition to the medical marihuana ordinance and cited the state law.

Council Member Hussain asked Mr. Dotson if he had received any recent complaints, and Council Member Wood stated she had not provided him with the newest ones mentioned earlier. Mr. Dotson had no response.

ADJOURN

The meeting was adjourned 4:59 p.m.
Submitted by, Sherrie Boak,
Recording Secretary
Lansing City Council
Approved: February 15, 2017