



MINUTES
Committee on Public Safety
Tuesday, May 2, 2017 @ 3:30 p.m.
City Hall, Council Chambers

CALL TO ORDER

The meeting called to order at 3:34 p.m.

ROLL CALL

Councilmember Adam Hussain, Chair
Councilmember Carol Wood, Vice Chair
Councilmember Tina Houghton, Member- arrived at 3:35 p.m.

OTHERS PRESENT

Sherrie Boak, Council Staff
Jim Smiertka, City Attorney
Heather Sumner, Assistant City Attorney
Mark Dotson, Deputy City Attorney
Mary Ann Prince
Jody Washington, Council Member
Jason Durham
Rev. Jeremy Hall
Steven Monty
Brant Johnson

MINUTES

MOTION BY COUNCIL MEMBER WOOD TO APPROVE THE MINUTES FROM APRIL 5, 2017 AS PRESENTED. MOTION CARRIED 3-0.

MOTION BY COUNCIL MEMBER WOOD TO APPROVE THE MINUTES FROM APRIL 18, 2017 WITH THE CHANGE TO PAGE 3, 4TH PARAGRAPH, 2ND SENTENCE TO STATE "MAY 22, 2016". MOTION CARRIED 3-0.

PUBLIC COMMENT

No public comment at this time.

DISCUSSION/ACTION:

ORDINANCE DRAFT #6c Medical Marihuana Licensing

Council Member Hussain recapped for the public, the last meeting progress of vetting Draft 6B section by section, and the goal for this meeting being to address questions and concerns of the Committee. The next step, Council Member Hussain, had planned was to pass all those corrections back to the City Attorney office for Draft 6D. The Committee will review those

changes at the May 17th meeting, and plan to take action to pass a resolution out of Committee to introduce and set a public hearing for the May Introduction and setting of public hearing at the May 22, 2017 Council meeting for the June 12, 2017 meeting. Two points made by Council Member Hussain at this time, that will be addressed include the correction to the distance being 1,000 for parks to 500, and the discussion from the last meeting that the "Commission" aspect was to be the wording from Draft 7 which removed the "Commission" and changed it to Clerk.

Council Member Wood started the questions, with comments on page 9, line 42, stating in Draft 7 it stated "complete application" and asked if it should be changed to reflect that. Ms. Sumner stated based on the direction from the last meeting, the City Attorney office went back to Draft 6a, and "complete" was not in that version. Council Member Wood asked if it would make it more comprehensible to add "complete". Mr. Smiertka admitted that when doing a draft-by-draft comparison she would notice grammar and style changes, however if the Committee chose to add it back it, it can be added. The Committee consensus was to keep it as written in the most recent Draft 6c.

Council Member Wood moved onto page 12, line 38 item (21) and read the language from Draft 7; "Verification, with copies of actual bank statements, showing that the applicant has tangible financial capital in the applicant's name in the amount sufficient to complete the medial marihuana establishment and to fund the business plan and other plans required by this section 1300.5". She then asked the other Committee members if they were okay with the language in Draft 6c or would consider going to what she just read from Draft 7. Council Member Hussain agreed to stay with what is present in the recent Draft 6c because that was the original language that was already vetted by the Committee in 2016. Council Member Houghton asked if Law had anything to add to the explanation why it was changed from 6a to 7. Ms. Sumner stated that the wording in Draft 7 did not set an amount, and there was nothing in the State statue to refer to. Council Member Wood did point out the State does comment on financial sustainability, but they have not determined their rule yet. Mr. Smiertka added that under Draft 7 it also asked for a business plan. Council Member Houghton stated that based on the information provided, she would prefer the language read by Council Member Wood from Draft 7. The consensus of the Committee was to revert to Draft 7 language for (21).

Council Member Wood referred the Committee to page 20, (Q) where "park" is not listed. Council Member Hussain directed law to add it back it, and Ms. Sumner stated that where ever it is noted a 500' setback "park" will be added back in. Ms. Sumner also asked the Committee to consider the removal of "public or private elementary or secondary" on line 15. The consensus of the Committee was to approve those changes.

Council Member Wood asked the Committee to look at line 44 on page 20, and asked Law for consistency when stating the compliance with "the Medical Marihuana Licensing Board and the Department of Licensing and Regulatory Affairs."

Council Member Wood then referred the group to Draft 7, page 19 which was Section 1300.9, and Draft 7 had "(K) Licensee shall not display any sign, or signage, or message, that is prohibited under local laws and local regulations or state law and state regulations." And "(L) Licensee is prohibited from displaying or distributing in any manner, physically or electronically, advertising material that is misleading, deceptive, or false, or that is designed to appeal to minors." The question was asked of Law on why those two items were removed from Draft 6c. Ms. Sumner stated again that they were directed to go back to Draft 6a, and those items were added in Draft 7, so not in the recent Draft 6c. The consensus of the Committee was to add those two items back in under Section 1300.9

Council Member Wood pointed out that “shall” was missing from page 21, line 12 (5).

Council Member Wood pointed to the same page, line 29-30, where in Draft 7 it referenced other government authorities. Mr. Smiertka confirmed it could be added in to state “from the City and other applicable governmental authorities.”

On page 23, line 34, “MTA” was included, along with on page 24, line 30.

Council Member Wood asked to add “and regulatory affairs as they may be amended from time to time” on page 24, line 31, but Mr. Smiertka recommended it not be added, and the consensus of the Committee was not to add it.

On page 25, line 1 the Committee consensus to change “or” to “and/or”. On the same page, there was a question on if “secure transporter” should be added to (8) on line 22 and (11) on line 37. Mr. Smiertka stated it would not hurt to add, but it may not be applicable. The consensus of the Committee was to put it in both places.

Council Member Wood moved onto page 27, line 11, where the consensus was to remove “park” in line 11 and add to (2) and also remove “public or private elementary or secondary” n (1). In addition, remove “park” from line 44 on page 27 and add it on page 28 under (2)

The Committee reviewed the fact that in Draft 7 there was a (c) under 1300.13 “No Medical Marihuana Provisioning Center shall be located within another business.” But removed from Draft 6c, and should be added back.

Council Member Wood asked if on page 28, line 38 “license” should state “licensee”. The consensus was to keep it as written, “license”.

Council Member Wood referred the group to Draft 7, page 25, lines 15-22 which did not appear in Draft 6c. Mr. Smiertka acknowledged it was removed because the charge the City Attorney office received from the Committee was to go back to Draft 6a, and those two items in lines 15-22 in Draft 7 were not in Draft 6a. Council Member Wood asked why it was added to Draft 7. Mr. Smiertka stated it was added because it was recognized there may be an issue. The only unzoned property in the City is the State Capital which is what lines 15-17 speak to, and lines 19-22 speak to ACT 425 parcels which are in other jurisdictions. The consensus of the Committee was to add those two items into the recent draft.

Council Member Wood had not further comments, and Council Member Houghton had no comments at this time.

Council Member Hussain referred the Committee and Law to the minutes from the last meeting April 18th, page 2 in paragraph 2 and 3 where it stated the Committee discussed and agreed to have the Clerk evaluate the licenses and deal with the appeals. Council Member Hussain read the minutes; *Council Member Hussain began the discussion on the “commission”, and asked in terms of the Committee on Public Safety, if the consensus was to have a “commission”. Council Member Wood stated her opinion that after seeing the changes in draft 7 with the Clerk and provisions for the Clerk to have adequate staffing and ability to hire people to vet those applications, she was now comfortable to repeal that section on “commission” and keep it as a RESERVE for the future.*

Council Member Houghton asked for a history on what the discussion was in 2016 and what the public thought. Council Member Wood told her that it was put in to be consistent with the State Legislation at that time, and they did not hear any angst from the public when it was

removed. Council Member Houghton stated her agreement to having it removed. Mr. Smiertka stated that since draft 6a had the Commission, the current draft 6b refers to the Commission, so his office will have to make the changes to reflect draft 7 references to the Clerk and not the Commission. Council Member Wood asked if there will be a hearing process similar to the Cabaret License process. Mr. Smiertka confirmed that the process currently written has the appeal to Council. The consensus of the Committee was to follow the same process as Cabaret License. Mr. Smiertka recapped the suggested changes, those being to take out "Commission", have the Clerk handle everything, and in the case of denial or revocation the Clerk can appoint a revocation officer and report back to the Clerk. Council Member Wood asked that any denial, revocation or appeal go through a hearing officer then that recommendation come to Council. Mr. Smiertka confirmed he would amend the ordinance to reflect that, and asked if the Committee wants to review on the record or review with no ability to offer new evidence. The consensus was for review only by Council and on the record.

Ms. Sumner stated she did not remember the conversation on this change, and Mr. Smiertka confirmed he remembered the conversation, and reiterated that if the Committee wants to make the change then the "Commission" will need to come out of all the document, and it will now note that the application will run through the Clerk's office, and if denied or revoked under the grounds of the ordinance, the Clerk will appoint the hearing officer. The hearing officer will make the decision which will go to Council. Ms. Sumner referred to the 25 items under 1300.5 and if those were not met then per 1300.6 it will be decided by the Clerk. Council Member Hussain confirmed, and also confirmed for Council Member Houghton that this change will take this similar to Draft 7.

Council Member Hussain stated the Committee will review the next draft at the May 17th meeting, at which point will plan to move out of Committee and send to Council to introduce and Set the Public Hearing.

Council Member Wood asked the Committee about the rest of the ordinance as it speaks to the number of facilities, or capping facilities, or limiting the type of facilities. Council Member Hussain stated his opinion that he prefers to move as it is written, because it was already vetted in 2016 as Draft 6a and it will strike a balance. He continued by acknowledging that once the full Council reviews it, there will be more input. Council Member Hussain stated again he is okay with how it is written with all five (5) uses, the zoning, and no cap limitation on certain types. Council Member Houghton agreed she too was comfortable the way it is currently written. Council Member Wood stated she had a concern with grow facilities, and asked Mr. Smiertka if the ordinance went through without setting caps, are there any regulation that would stop the Council from setting caps later. Mr. Smiertka reminded the Committee that once the ordinance is passed, it has to be filed with the State, so he would prefer amending the ordinance to make it cleaner. The consensus of Council Member Houghton and Hussain to not make any changes to the topics just brought up by Council Member Wood until they hear from all Council Members and the public at the hearing.

Council Member Hussain asked when Law could have Draft 6D to them prior to the next meeting. Ms. Sumner stated she could have it to the Committee by the end of day on May 5th.

Medical Marihuana Moratorium

Council Member Hussain called Mr. Dotson to the table and began the discussion on the policy of enforcement on dispensaries after the moratorium was placed into effect. The questions included if the moratorium allowed for transfers of ownership, and if it allows a business to close and move to another location. Mr. Smiertka answered that Law would allow a transfer, but not two locations for one business owner. He added it is a matter of interpretation, and can be changed. Mr. Smiertka stated the intent of the moratorium was to

control the number of dispensaries. Mr. Dotson concurred that the concern was with the number of operations popping up, so the moratorium takes into consideration that the number of new could not increase. In regards to a transfer from one location to two, Mr. Dotson stated that would be in violation because that would increase the number of establishments in operation. Mr. Dotson continued by stating that if a business transferred from one location to another, that would not increase the number and therefore Law believes that would not be in violation of the moratorium. Council Member Hussain asked for clarification again on the situation where a business owner moves his business to a new location, and if that is permitted. Mr. Dotson confirmed that is allowed if the first one is shut down, also it is permitted if a transfer of ownership is continuing operation. Mr. Smiertka quoted the Ordinance 1202 "The City Council has determined that (c) A moratorium on new medical marihuana establishments starting operations after the effective date of this ordinance, until the City has completed its study of the Michigan Medical Marihuana Act and its implications for the City, is in the best interest of the public health, safety and welfare." Definitions "(2) Medical Marihuana Establishment means any nonresidential land use involving the growth, distribution, storage or use of marihuana." (3) "New means any medical marihuana establishment that began operating after the effective date of this ordinance."

Council Member Wood referred the group back to 2010 when the City did not have a registry, and when holding discussions on a moratorium in 2016 Mr. Abood with the City Attorney office told Council they could not have a registry, because it would list an illegal operation without a license. Mr. Smiertka stated it is a policy issue, however that has been an interpretation and if Council wants a new policy it can be changed. Council Member Hussain asked if changing the policy would open up to any legal implications. Also noting that the moratorium put tools in place for the administration to check the businesses, and his understanding that if they were open in that location with operations before the moratorium they stayed and it would not allow them to transfer ownerships or move. Mr. Smiertka confirmed that there was nothing in the 2016 moratorium that discusses new locations for a business after the moratorium and no mention of a transfer of ownership. He again read the definitions in the moratorium ordinance noting, it speaks to "new uses" and "new establishments", so his interpretation was that a transfer of location is not prohibited. Council Member Wood asked if a new establishment moved to a new location if that would be considered a new establishment. Mr. Dotson stated the ordinance prohibits against "new" operations. Mr. Smiertka again read the Ordinance 1202. Council Member Hussain and Wood both confirmed they believed when voting for the ordinance it was clear no transfers of ownership or location. Council Member Houghton admitted the language was vague and suggested the possibility of specific language on transfers. Mr. Smiertka admitted that to make changes, it would be up to the Committee to change the policy on how the Law Department enforced how someone already operating can move to a new location. He added that the Law Department has been allowing transfer to ownership, but the can change that policy. Ms. Sumner asked what the effect of a City Attorney opinion would do. Mr. Smiertka stated he was providing his opinion at this moment, and the best interpretation would be that one owner can move locations, but no new businesses and no transfer of ownership. Council Member Hussain asked what the unintended consequences would be if opening up the Ordinance on Memorandum to change the specifics of it. Mr. Smiertka gave his opinion that they should stay with the Ordinance as written, the policy can be changed for no transfer of ownership, but he was hesitant on disallowing a current business to transfer to a new location. Mr. Smiertka then confirmed that new policy was effective from this moment forward. Mr. Smiertka then clarified to the Committee that the basis of the Ordinance on Moratorium is the presumption that these locations are operating within the parameters of the MMMA. There are no licenses being granted under that, no buying a license, or purchasing of a business. Council Member Houghton agreed with leaving the Ordinance on Moratorium as it is and encouraged Law to do their best to enforce what they can, with a Committee focus on the pending Medical

Marihuana Ordinance. Mr. Smiertka concluded the discussion assuring the Committee that the Law Department has been enforcing on one view point and after hearing the recent discussion, they can change their viewpoint. The Committee had consensus on the new policy.

Council Member Hussain moved the discussion to the pending list of items directed to Law at the last meeting. The first was if the department was generating letters on the establishment and if there was a list. Mr. Smiertka stated that there were 5 locations in question, and based on the investigation, 3 were clearly in existence prior to the moratorium, and the remaining 2 they do not have enough info to make a determination. Mr. Dotson added details on KOLA, which he stated the reviews pre-date the issuance of the moratorium; Superior Genetics was confirmed with a call to the owner, reviews that pre-date the moratorium and invoices from the weed app that predate the moratorium. Mr. Dotson was still working the owner of MMMP on Miller, who stated he was operating with a few patients prior to moratorium, but just recently put up a sign. He confirmed he has not done any construction and the property and offered to provide patients records, which Law is still waiting on. Mr. Dotson added that MMMP is a popular name, and admitted there is more than one, but not all under the same owner. Lastly Mr. Dotson stated the MMMP on Grand River near the airport he has not been able to make contact with.

Council Member Hussain voiced his frustration in the process.

Mr. Smiertka moved onto the next pending question which spoke to lists. In 2010 the ordinance had a list of establishments as part of it, but the 2016 Ordinance on Moratorium did not have a list. Law has obtained two lists from pre-moratorium 2016. He admitted he was not aware of the source and it was compiled prior to May 2016 and did not include anything in the 4th Ward. They also obtained an anonymous list three weeks ago from the medical marihuana industry that was dated May 9, 2015. Mr. Smiertka stated his office has combined those lists and created a new list and currently has staff cross checking it to determine the veracity of the combined list. Currently there are 54 establishments on the list. Ms. Sumner stated her opinion that Law is assuming all establishments are operating under the MMMMA. Council Member Hussain reminded Law that in 2016 the Committee was told they could not establish a list but that is why Committee keeps asking for the list. Mr. Smiertka pointed out that there is still the discussion to be had on zoning. Council Member Wood asked if they are located in an improper zoning district if they are being addressed. Mr. Smiertka answered that if matters like that come to planning and zoning, they are addressing those matters. Council Member Wood informed Law and the Committee that she was told that the department is being told not to address anything that is in the wrong zoning. Council Member Hussain added to her comment, that there is a question on the table on it the City is closing them down due to improper zoning, are they and can they asked to be rezoned.

Council Member Hussain asked Ms. Sumner for an update on the signage questions from the last meeting and restricting to less than 20% coverage. Ms. Sumner stated she had not new information and had not done any work on the topic.

Mr. Dotson referred the Committee back to the ordinance discussion, noting the financial responsibility is for the State requirements, and \$100,000 would cover personal injury and could be satisfied by cash or insurance. Mr. Dotson also asked for me clarification on if two businesses can be combined, such as a grower and dispensary in one location. Council Member Hussain stated the current draft is clear. Council Member Houghton stated her understanding was that the use could be in with other kinds of businesses but not together.

Council Member Hussain referred to the last meeting where Ms. Sumner stated restricting signage would be a violation of freedom speech, and asked why tobacco advertisements are not allowed to advertise. Ms. Sumner stated the restrictions on the tobacco industry were a Federal case, and at this time a City would lose if they tried to limit signage the same way with marihuana.

Council Member Wood asked Council Member Hussain to invite Mr. Macon with the Police Commissioners to the May 17th meeting to discuss the Citizen Investigator Position. She reminded the Committee that there is an ordinance that speaks to the position, and the former employee has retired, but continuing to do the work under contract and also working for HRCS. Council Staff was directed to invite Mr. Macon to the meeting.

PUBLIC COMMENT

Rev. Hall spoke in opposition of the ordinance. The Reverend asked the Committee what the purpose of the ordinance was and questioned what expertise the Committee had.

Mr. Durham introduced himself as the Council candidate for the 4th Ward, and spoke in support of allowing drive-thru and grow facilities. Mr. Durham concluded by offering his assistance to the Committee if they need it.

Ms. Womboldt acknowledged Council Member Wood for her work on comparing all drafts of the ordinance. Ms. Womboldt then voiced her confusion with the process and enforcement of the moratorium ordinance, and then quoted an article and her opinion that there is a conflict of interest with a planning board member and his personal interest with the industry.

Mr. Monty asked the Committee to consider a City tax to be incorporated into the ordinance.

Mr. Monty asked the Committee to listen to their constituents and understand the broad spectrum.

Mr. Johnson stated his opinion that the ordinance does not cover grower facilities, transporters and those that want to participate. Mr. Johnson also asked the Committee to lift the moratorium.

Council Member Wood answered the question on the City taxes, stated that there is an ordinance that does require property taxes to be paid, and incomes taxes have to be paid for any employees. In regards to the statement on lifting the moratorium, once the ordinance is adopted, the moratorium will be lifted and the business will have a time slot to apply.

Council Member Hussain spoke in support of the Committees efforts, noting they do more than just attend meetings, but do resident and business outreach and engagement.

Mr. Aereizie asked questions on the processing of edibles and restrictions, because they will not be open to sell to the public and neither would a testing center. He questioned why they would be subject to distance requirements since there are no products disbursed from use. Mr. Smiertka stated the language is from the Federal level, and a State provision on the Drug Free Zone. Council Member Hussain assured the resident that the topic will be a discussion point at the Council level also.

ADJOURN

The meeting was adjourned 5:35 p.m.

Submitted by, Sherrie Boak,

Recording Secretary

Lansing City Council

Approved: May 17, 2017