



MINUTES
Special Meeting
Committee on Public Safety
Tuesday, July 30, 2019 @ 10:00 a.m.
City Council Conference Room, 10th Floor

CALL TO ORDER

The meeting was called to order at 10:00 a.m.

ROLL CALL

Council Member Carol Wood, Chair
Council Member Patricia Spitzley, Vice Chair
Council Member Adam Hussain, Member

OTHERS PRESENT

Sherrie Boak, Council Staff
Lisa Hagen, Council Legal Analyst
Heather Sumner, Assistant Deputy City Attorney
Amanda O'Boyle, Assistant City Attorney
Elaine Womboldt
Mary Ellen Purificato, Fairfield Condominium Association
Jennifer Smith- Zande, Clerks Office
Jan Fleck
Charles Fleck
Nathan Kelps, City Clerk Intern
Jinging Lin
Kevin McKinney
Linda Appling

Public Comment

Ms. Womboldt spoke on concerns that the base of this ordinance on medical marihuana. She continued with her comments by speaking on recreational marihuana. She spoke in opposition to selling of recreational marihuana in neighborhoods, and social clubs in neighborhoods. She concluded by asking for reasonable and accountability standards in the City. Comments submitted in writing.

Ms. Purificato agreed with the comments made by Ms. Womboldt.

Ms. Fleck spoke in support of the comments made by Ms. Womboldt and asked for protection of the youth and the youth in the schools.

DISCUSSION/ACTION

DISCUSSION: Ordinance Amendments to Chapter 1300 Marihuana Establishments/Operations

Council Member Wood stated the Committee will go through the amendments line by line, and noted that Council was told by OCA that if the ordinance is not passed, anyone who has a license in the State could get a license in Lansing, therefore she sees an urgency in have a regulatory ordinance in place. Ms. O'Boyle confirmed, noting that some licenses do have other factoring nuances.

Page 1, Lines 1-13; no comments; noted that the new word "Marihuana Operations" would be defined in the definitions section. In lines 8 and 9 it was noted that any spelling of "chapter" will now be "Chapter". Council Member Spitzley questioned leaving in "constitutes a public purpose" in line 8, and Ms. Sumner stated they use that language in court to prove why the ordinance is valid.

Lines 14-15; no comments

Council Member Hussain asked for public comment, and Council Member Wood stated that would occur again at the end of the meeting on the topics the Committee has discussed.

Lines 16-23; Council Member Spitzley asked if lines 19-20 as stated diminish their rights, and Ms. Sumner confirmed that changed is to identify the MTRMA.

Lines 24-32; no comments

Page 2, Lines 33-38; Council Member Spitzley noted this addresses no interference into the medical marihuana.

Lines 39-45; Deals with medical marihuana, and on line 42 Ms. O'Boyle stated that there are two spellings now of marihuana. The new language under the State is "marijuana" in a more common sense or both medical and recreational and "marihuana" when it is in an official legal document.

Lines 46-49; which is all new is for recreational to be in line with LARA.

Lines 50-52; no comment.

Page 3, Lines 53-59; it was questioned why "and is not intended to, nor shall it, create a property right" was stricken, and Ms. O'Boyle stated because it was a redundancy with line 59.

Lines 60-66; Council Member Hussain referenced page 4, lines 100-101 and the potential duplicate with "License Application". The Committee consensus was to remove lines 100-101 on page 4 and amend line 61 to state "Application/License Application". Council Spitzley asked if there will be a distinction between a medical application and a recreational application, and was told by OCA there will be one application.

Lines 67-77; Council Member Hussain asked how OCA constitutes a "building". Ms. O'Boyle stated the State defined it, and the City adopted this in conformity with the State. They have permitted names such as "greenhouses" to allow for recreational grow, and that was documented in case law. In the terms of outside growing, it is permitted to use mesh and fencing and secured with a lock. Council Member Wood asked if someone could grow in their back yard with just a fence, and Ms. O'Boyle stated it has not been explored yet, but the LPD is enforcing that the top of the area has to be covered also. Council Member Wood noted that the definition of "Building" will have a further discussion at a later meeting.

Page 4, Lines 79-85; Council Member Hussain asked for clarification on if a church is a use in a suite of building, do the buffer requirements from the suite exist since the definition speaks to "church means an entire building...". Ms. O'Boyle noted that it is what is listed under the S and Ms. Sumner added that under definitions you could argue that a suite is a building. Council Member Wood asked if there is a conflict with "church means an entire building" or with just the word "entire". Ms. O'Boyle noted that the issue might be "building". The OCA was asked to research use of "space" or "building". Council Member Spitzley suggested considering removing the word "entire".

Lines 86-90; Ms. O'Boyle clarified for the Committee that these lines were all removed because they are defined by the State law and were duplicates of other definitions. She recapped that when the City Council adopted Chapter 1300 initially, the State law was not

adopted, therefore the City created the ordinance in anticipation of what the State law might not address.

Lines 91-99; specific to line 97, Council Member Spitzley asked if these sections were only for medical marihuana. Ms. O'Boyle answered that under the State law "facility" speaks to medical, and using the word "establishment" means recreational.

Page 5, Lines 102-103; Council Member Wood asked why "entity" was not defined in the chapter but used in this "Licensee" definition. Ms. O'Boyle stated that "entity" is meant to be broad, and could be any type of business type or arrangements. The Committee decided they would discuss "entity" again. Later in the meeting, while on page 9, Lines 209-210 definition for "Person", it was determined that "entity" on page 5 line 102 can be eliminated.

Lines 104-114; Ms. O'Boyle stated they were struck because they are defined in the State law and so these are duplicates.

Lines 115-120; New section. It was noted there was a typo on line 118 "relatiler" should be "retailer". The Committee discussed specific bans, opting out and then open to litigation, therefore the thought is to have licensing structures for all uses. Council Member Hussain asked if the City has the ability to opt in and set a cap or opt in and exclude a certain type of facility. Ms. O'Boyle said the difference is medical can cap or limit but with recreational it does not have the clear law or guidance. Only says if they do limit they have to have a clear competitive process. Council Member Spitzley voiced her concern with the language if there is a potential for a lawsuit. Ms. O'Boyle acknowledged that litigation is a possibility any time they limit anything. Ms. Sumner confirmed the City has had 16 lawsuits on the medical marihuana Chapter 1300 and won all litigations.

Lines 121-124; defined by the State, therefore struck because of duplication.

Page 6, Lines 126-137; defined by the State, therefore struck because of duplication. On line 131-132, Council Member Wood noted that this was struck on a recommendation from the Mayor and Clerk, and asked the OCA to explain why. Ms. O'Boyle noted the Commission is a secondary appeal process, which caused a delay in processing of the applications. The Mayor and Clerk determined that one way to make the licensing process go smoother was to eliminate the secondary appeal, and after the appeal with the Clerk the applicant can go to court. Council Member Wood asked OCA how long the process was taking. Ms. O'Boyle pointed out that the ordinance was adopted in 2017 and they just issued their last license in 2019. Ms. Sumner added that there is 30 days to appeal and most applicants took all 30 days, then the hearing officer did the review, then it went to the Commission which could take 2 weeks to schedule. Ms. Sumner stated in an OCA opinion, that there could be appeals make it to Circuit Court, however they believe that with a single level review, and the continued good process created by the Clerk they can continue to up hold the ordinance in court. Council Member Wood then asked why just 30 days ago the administration recommended an appointment to the Commission that the OCA has written out of the ordinance. Ms. Sumner acknowledged that the Clerk is in Phase 2 of the licensing and appeals. So the last five (5) licenses will be going through the appeals process of the current Chapter 1300. Council Member Wood inquired into the possibility that if these amendments are adopted in September with immediate effect, and the appeals process is not started or done on those five (5) what occurs. Ms. O'Boyle stated the law cannot apply retroactive. <s. Sumner added that they have applied prior to this amendment adoption, so they would be heard under the old ordinance. Council Member Wood then discussed a similar situation with a moratorium, and that it was placed in effect on licensing during the process of the current ordinance. She encouraged a moratorium until Council is through this process. Ms. Sumner stated the OCA would do more research. Council Member Wood asked the OCA to come back to the next regular meeting of the Committee on August 1, 2019 with a draft document for the Committee to review. If needed, she suggested a special Council meeting August 5th after the regularly scheduled Committee of the Whole meeting.

Lines 138-144; Line 143 was referenced and Ms. O'Boyle confirmed it was eliminated because it is duplication of the State law.

Lines 145-150; Council Member Hussain asked for confirmation or denial that a Microbusiness means they can grow, process and sell, and the OCA confirmed. It was also confirmed they can sell to another safety compliance facility, but not another retailer. Council Member Wood questioned why they would sell to another facility, and Ms. Sumner explained there are different “strains” and one facility could be creating a special “strain” of the product. Council Member Wood asked if the City chose not to allow Microbusinesses, can they be eliminated in the Ordinance. Ms. O’Boyle stated that if they do that, it goes back to limiting and the City would be sued. Council Member Spitzley asked about not issuing licenses for any facilities. Ms. Sumner stated that if they do not have them, they do not have to be “competitive”, if the City ordinance sets a cap, then it has to be competitive. Council Member Spitzley asked why they can’t stay at cap of 25, and Ms. Sumner stated the OCA opinion is that at 25 they would lose if challenged in court. The Committee decided to return to lines 145-152 for a continued discussion.

Page 7, Lines 153-156; Council Member Spitzley asked if there is an already “Marihuana Establishments” why put “non-medical” before “establishments” on line 153-154. Council Member Wood referred back to page 5, lines 115-120 “Marihuana Establishments” and now on page 7 lines 153-156 speaks to the same labeled “Marihuana Operations”. Ms. O’Boyle explained that the ordinance is adopting the term, so in the rest of the ordinance it can be referred to “Marihuana Operation” and would apply to both types of licenses. The State chose to do two (2); 1- medical and 1- recreational. The OCA has attempted to link the two (2) so there is no confusion. Council Member Wood asked if both “establishments” and “operation” are needed and Ms. Sumner confirmed they are both needed because they define both.

Lines 157-164; Line 160 had a typo, “or” should be “of”. Line 162 had a typo, “otherwises” should not have the “s” on the end.

Council Member Wood asked if there are specifics on packaging as there were in the current Chapter 1300. Ms. O’Boyle replied that it is pre-empted by the State, so no. They cannot regulate packaging or infused products to the extent of how, quantity or purity. Council Member Wood asked if they can limit, and Ms. O’Boyle confirmed they can dictate license location and operation of business in a timely manner, but not able to regulate the content of the product.

Lines 165-175; Council Member Wood asked if a business is licensed to sell medical and want to sell recreational, if they have to separate the products in the facility. Ms. O’Boyle stated the inventory can be co-mingled; the State regulates from seed to sale. Ms. Sumner concurred that once the business is open for non-medical patients anyone can walk in and purchase the item. If they have a medical card they can pay less than the person who does not have a card. The business could regulate to sell only to medical card holders, but can also just tax differently. Council Member Spitzley asked if the ordinance can separate and Ms. Sumner stated no, but the OCA could research into the exact nuance.

Page 8, 176-187; Line 178 spelling of “Marijuana” was confirmed as correct. Line 183 had a typo, “lincensed” should be “licensed”.

Line 188-201; Council Member Wood asked what the difference was between lines 188-197 “Medical Marihuana Provisioning Center” and lines 182-201 “Medical Marihuana Facility”. Ms. O’Boyle offered to do an umbrella chart for the next meeting to better explain what falls under each item.

Page 9, Lines 202-210; Council Member Wood referred to lines 209-210 which spoke to their legal entities, then back to page 5 line 102 the word “entity”, and again asked if they need to define “entity”, since there is for “person”. The Committee consensus was to eliminate “entity” on page 5, Line 102.

Line 207; a hyphen (-) after Council was confirmed as correct punctuation.

Lines 211-214; Ms. O’Boyle stated this was removed because it is defined on page 7, lines 157-164 “Marihuana Processor or Medical Marihuana Processor Facility”.

Lines 215-219; Council Member Wood suggested to the Committee to remove entire definition for “Public Playground Equipment”, and use the City park list, because it will still be defined by

the City Parks list, even though some may not have equipment. The Committee consensus was to remove lines 215-219 "Public Playground Equipment" from the ordinance. Line 220-222; "Restricted/limited access areas", the OCA confirmed it is struck out because it is defined by the State law. Lines 223-228; "Safety Compliance Facility or Medical Marihuana Safety Compliance Facility" is struck because defined on page 7, lines 171-177 "Marihuana Safety Compliance Facility or Medical Marihuana Safety Compliance Facility". Page 10, Lines 229-231; no comments. Lines 232-236; the OCA stated the language in line 235-236 "Or Marihuana Establishments" was added for recreational marihuana. Lines 237-240; no comments. Lines 241-251; no comments by the Committee, and it was noted that 1300.03 was completely eliminated, therefore page 10 line 245 to page 12 line 281 were completely struck. Page 12 283-292; no comments.

The August 6th meeting will begin with the discussion on page 12, line 293.

Public Comment

Ms. Appling spoke in support of the legalization of marihuana, but also supported the City in opting out because if they do not, then her tax payer dollars would be spent on defending the ordinance.

Mr. Fleck returned to the draft document, line 229 and asked if day care fell under the definitions of "School", then referenced property at 3230 S. Pennsylvania that he believed was a grower, and they had issues with the odor on. Council Member Wood asked the Clerk's office staff present to check into the address and report back. Ms. Boak quickly checked the City website and was not able to find that specific address on S. Pennsylvania on the Licensed Grower list. Regarding "day care" Council Member Wood stated that a request could be made with the OCA to add "day care" to the "School" definitions, and Ms. O'Boyle confirmed it is already in the State law and defined in the buffering distance requirements. A discussion will be held at a later meeting on buffering when the Committee gets to that portion of the ordinance.

Ms. Womboldt spoke on the process and asked for two ordinances; one for medical and one for recreational. Council Member Wood stated that at the August 6, 2019 meeting they will discuss with the OCA why they are proposing one ordinance.

Ms. Fleck asked if the City can still opt out or missed their deadline. Council Member Wood stated they could, however she did not believe there are enough votes at Council to pass the resolution to opt-out, and if they did the Mayor could still veto that action.

ADJOURN

Adjourned at 11:34 a.m.

Submitted by Sherrie Boak,

Recording Secretary

Lansing City Council

Approved as presented: August 6, 2019