



MINUTES
Special Meeting
Committee on Public Safety
Tuesday, August 6, 2019 @ 10:00 a.m.
City Council Conference Room, 10th Floor

CALL TO ORDER

The meeting was called to order at 10:02 a.m.

ROLL CALL

Council Member Carol Wood, Chair
Council Member Patricia Spitzley, Vice Chair- arrived at 10:53 a.m.
Council Member Adam Hussain, Member

OTHERS PRESENT

Sherrie Boak, Council Staff
Lisa Hagen, Council Legal Analyst
Jim Smiertka, City Attorney
Amanda O'Boyle, Assistant City Attorney
Heather Sumner, Deputy Chief City Attorney
Brian Jackson, Deputy City Clerk
Nathan Kelps, Intern Clerks Office
Mary Ellen Purificato

Minutes

MOTION BY COUNCIL MEMBER HUSSAIN TO APPROVE THE MINUTES FROM JULY 30, 2019 AS PRESENTED. MOTION CARRIED 2-0.

Public Comment

No public comment at the time.

DISCUSSION/ACTION

DISCUSSION: Ordinance Amendments to Chapter 1300 Marihuana Establishments/Operations

Council Member Wood first referenced the spreadsheet in the packet which listed the items from the last meeting that were still pending or had continued discussion. The OCA submitted an organization flow chart and definition of "building". Council Member Wood then stated that regarding updates of the Ordinance, the Committee will go through the complete document before moving into the next draft. The Committee then began the review of draft 1, picking up where they left off August 1st on page 12, line 293.

Page 12, lines 293- 301; Line 298 Mr. Smiertka asked Ms. O'Boyle to explain the new language of "as permitted by law". Ms. O'Boyle stated that under State law applicants can apply for co-licensing and those licenses can be co-located.

Lines 301-303; no comments

Page 13, Lines 304-312; Lines 310-312, which was a new section, Council Member Wood asked if that was a recommendation from the Clerk or the OCA. Ms. O'Boyle stated they were expanding upon information already requested and reorganizing for clarity.

Lines 313-328; Line 317 remove "of" before "for". Council Member Hussain asked if the LPD was no longer doing a background check. Ms. O'Boyle clarified that when the City adopted the current ordinance, the MSP was not doing the background checks, but now they have taken on the task of doing the background checks. The applicants have to apply to the MSP for their State license, and will then get the report from MSP and submit to the City. Lines 320-328 were struck because the State is doing the verification now.

Page 14, Lines 329-331; it was verified this information was moved to elsewhere in the ordinance.

Lines 335-344; Ms. O'Boyle stated these lines were struck out because the City determined it was not helpful in determining who gets a license and who does not, in addition those requirements were not asked for in any other license type. Council Member Hussain voiced his concern in removing (8), lines 335-336, and asked the Deputy City Clerk it was figured into the scoring. Mr. Jackson confirmed it was, but in areas where it is open to interpretation it was unclear.

Lines 345-354; Council Member Wood asked if "establishment" was removed on lines 345 and 347 because every reference is not "operation". Ms. O'Boyle confirmed and also referenced the flow chart the Committee received at the beginning of the meeting.

The OCA was asked why lines 351-358 on page 15 were struck. Ms. O'Boyle stated that marketing is now covered in the State law. Regarding "capital investment" in line 353, she stated that is addressed later in the document. The Committee referenced "or entity" on line 348 and it was determined to remove it since it was removed earlier in the document on page 5, line 102. It was noted that ";and" should be removed from line 350.

Page 15, Lines 359-370; The OCA was asked why lines 364-368 were struck from the document. Ms. O'Boyle stated there is language later in the ordinance that would indicate. The Committee decided to return to lines 364-368 for a continued discussion.

Lines 369-370; The Committee asked why these were removed. Ms. O'Boyle explained that the language was not clear, it raised enough concerns and was hard to evaluate. Council Member Wood asked if under xi. line 370 there were issues where people were buying grace in the community.

Lines 371-380; The Committee members voiced a concern the OCA struck out the security plan requirement on lines 375-380. Ms. O'Boyle stated the wording was specific in the State law for recreational. Council Member Hussain asked for the details on security in the State law. Council Member Wood asked to add the language back in on line 375 to state "A description of the security plan for the marihuana operations pursuant to the State Rule 35" so that City applicants would know to refer to that rule and there would be no assumption that the City was not asking for a security plan. Ms. O'Boyle recommended adding at the end of that sentence "as amended from time to time". She then read a few of the items listed in the Rule for Council Member Hussain which included monitoring, digital archive, color printing, still photos, video, 24 hour continued recording, and specifics on image resolution and other details.

Council Member Wood asked for clarification on violations, and if there is a violation of the State law, does the State pull the license, does the City revoke or do both have to take action. Ms. O'Boyle replied that the language in the City ordinance states that if they fail to comply with City or State rules, the City can revoke. Council Member Wood then asked how the violations are follow up on, and Ms. O'Boyle stated it is case by case based on the violation.

Mr. Smiertka added that page 40 line 987 speaks to revocation. After a brief review of page 40 lines 1005-1009 the Committee asked that it be expanded on, and it was marked for future further discussion.

Page 16, Lines 381-392 Council Member Hussain asked for the explanation on why lines 386-387 were struck from the document. Ms. O'Boyle stated it was an effort to clean up the document and it goes back to advertisement standards set by the State for signage, along with the current City signage ordinance as a tool that could apply as well for enforcement. Mr. Smiertka suggested that lines 386-387 could be amended to state "any proposed text or graphical materials to be shown on the exterior of the proposed marihuana operation would be in line with the standards of the State law."

Line 388 should have a comma after "1300.10". On line 391, the Committee asked how the distance of ¼ mile was being measured. Deputy Clerk Jackson confirmed the Clerk's office uses the zoning map and measures from the property lines.

Line 393-402 On lines 393-399 it speaks to sanitation and Ms. O'Boyle stated that language was removed because it is covered in the State law.

Council Member Wood asked if there is a scanning system for the medical license to document what people are buying and how often. Ms. O'Boyle stated under the MMA, the licensed is being reviewed by the retailer, but the OCA could not speak to what is done after that. Ms. Sumner added there is not State daily limit on purchase.

Council Member Wood referenced line 402 and the words "obligation to the City", and asked if the Treasurer is also researching with the County on unpaid taxes for those that go unpaid at the City and then are sent onto the County, making the City whole. There was no confirmation on what the Treasurer does when reviewing the applications for unpaid taxes.

Lines 403-404; the Committee asked why it was removed. Ms. O'Boyle assured them that it was removed because the Clerk developed additional forms that speak to financial obligation that would put it in a more equal format, and that could be found on page 19, lines 457-460 item (15).

Page 17, Lines 405-407 The OCA stated it was removed because it is addressed later in the ordinance.

Lines 408-420; no comments.

Lines 421-430; Ms. O'Boyle explained that these items were removed because it is covered by the State at this point.

Page 18 Lines 431-435 Ms. O'Boyle explained that lines 431-433 were struck because it is addressed at the State level, and lines 434-435 which address cultivation, the City cannot mandate this requirement.

Lines 436-445; OCA noted the changes were made for clarification.

Lines 446-456 Mr. Smiertka asked the Deputy Clerk if they were successful in getting surety bonds. Mr. Jackson confirmed they have been successful in having a few.

Page 19, Lines 457-466 It was noted by the OCA that most of the page was new language based on items that were struck earlier in the document and referred at the time "later in the document".

Line 462 "establishment" should be changed to "operations" as reflected elsewhere in the document.

Lines 465-466 Council Member Wood pointed out that Council has been told in the past that they cannot address odors, however the OCA is now proposing the applicants submit an odor plan. Therefore the question was asked of the OCA as to why. Ms. O'Boyle noted that they can still ask for a plan, and that some plans include discussions on filtration, etc. The Clerk cannot mandate it she stated, but they can score and evaluate it. She concluded that the State law does not address it, with the exception with the license is the designated consumption area. Council Member Wood then asked the OCA, when receiving an odor

complaint, reaches out to the City Clerk to review the plans. Ms. O'Boyle admitted they do not, and that in the Court of Appeals they are prohibited in mandating standards above the State requirements, so the City has no enforcement arm for odor. Ms. Sumner added to the discussion that if the applicant provides a plan and lies implementation of the plan, that would be a cause for revocation. Council Member Wood reiterated that would be the reason to review the plan with the Clerk. Ms. Sumner stated that if they got a complaint they could go to the site and ask to evaluate the plan and procedures and if not allowed in would need an administrative warrant, however it would be hard to get one of those warrants. Ms. O'Boyle referenced a case in Warren which dealt with odor, and in that case law it states the City cannot mandate it under the current medical marihuana law. Mr. Smiertka asked if the City is pre-empted on recreational marihuana as well, and Ms. O'Boyle stated yes, with the exception on designated consumption. The Committee then discussed the impact of odors and the Farm Act. Council Member Hussain asked the OCA what the threshold was on a public nuisance in the terms of odor. Ms. O'Boyle stated with looking at the facts, and complaints, it would need to be proven it is hindering their ability of living or working nearby on their own property. Ms. Sumner added that in the cases of big industry, the courts usually side with the person releasing the omissions. Council Member Hussain asked if it cannot be regulated, if the City can look at the complaints and odor during their renewal. Ms. O'Boyle reiterated Ms. Sumner's statement from earlier that if the applicant indicates they are going to do something, and they fail to do so, then it would revocation.

The Committee decided to return to lines 465-466 for a continued discussion.

Lines 467-470; this is the new location from language that was struck earlier.

Lines 471-481 Line 474 was corrected from "a" to "an". Line 478 was amended to include "of the date of change" after "7 days".

Page 20, Lines 482-488; Council Member Hussain asked why the Fire Department was eliminated from line 486. Ms. O'Boyle explained that at the State level they designate the State Fire Marshall. Council Member Wood pointed out that the City adopted the International Fire code which speaks to the storage of chemicals. Ms. O'Boyle went on to explain that the Fire Department expressed difficulties in carrying this function out, and the Fire Marshall and the department would still have basic requirements with a new or change of use, and the State Fire Marshall will inspect on certain chemical types which the LFD does not have an interest in doing. Ms. O'Boyle concluded that it is already mandated due to the State code that the City has adopted.

The Committee decided to return to line 486 for a continued discussion.

Lines 489-502; Council Member Wood noted that if Building Safety is doing an inspection and have a concern they can call in the Fire Marshall. Line 493 was noted to be excluding the option for variances.

Lines 494-495; A discussion was held on taxes owed to the County and how to rectify the task of verification. Ms. O'Boyle noted she was not sure what process the Treasurer takes, they might be calling the County. Mr. Smiertka suggested and the Committee agreed to add to line 495 after "City" the words "including the non-payment of released taxes to the County."

Line 496; Council Member Wood asked if the LPD is getting the background check from the MSP. Ms. O'Boyle clarified it would be provided by the applicant and they will review for verification. Line 497 removal of "s" in "employees".

Lines 500-502; already discussed.

Lines 503-506; Line 504 should be corrected to stated "his or her" in place of "his".

Page 21, Lines 507-512; Line 507 there is typo with "evaluated"; should be changed to "evaluated".

Lines 513-530; Council Member Wood asked the Deputy Clerk if there was a metric laid out on how the Clerk scores and makes their determination, at which Mr. Jackson confirmed there is and it is available on the website.

Line 530; The Committee requested a change from "if the scores" to "any scores". It was determined the Committee would return to line 530 for a continued discussion.

Lines 531-535 on page 22; The Committee discussed the possibility that all five (5) licenses could be given in one area of the City, and the options the Clerk has to address that based on access, and area. Council Member Spitzley asked about the “marihuana retailers” in line 532, and asked if it should be separated out. Ms. O’Boyle stated that the retailers anticipate having both medical and recreational.

Page 22, Lines 536-554; Ms. O’Boyle confirmed these were all struck because it is addressed on line 513, Section 1300.05 (c).

Lines 555-559; Ms. O’Boyle explained that “testimony, written and oral comments from the” was removed because it is addressed in the blanket of “public feedback”.

Page 23 Lines 560-563; The Committee discussed the change from 25 to 28 in line 560 and determined they would come back and discuss this further.

Lines 564-578 Ms. O’Boyle these stated were updated because phase 1 and 2 is done.

Lines 579-586; no comments.

Page 24, Lines 587-594; On 594 the time line should be changed from “30” to “28” because the Clerk requested a calendar in 7 day increments for easier mailings.

Line 597 was also changed to reflect “28” days.

Lines 595-608; Mr. Smiertka recommended a change to line 604 to state “office, zoning administrator and other City departments.”

Page 24 Line 609 – Page 25 Lines 610-622; Council Member Spitzley asked if they anticipated no inspections, and Ms. O’Boyle noted that there will also be a separate building department procedure for site plan review. Council Member Wood pointed out that this section was under 1300.06 License Renewal Application, so they should have been there. The Committee consensus was to amend line 611 to state “and/or approved proposed site plans”

The Committee decided to come back to line 618 “in default to the City” for further discussion.

Lines 623-634; On lines 628-630 Ms. O’Boyle noted that this section would address if the applicant is not in compliance under their renewal, so they would not get their licensed renewed.

Page 26, Lines 635-641; Line 636 should remove “and the City Clerk” because it was duplication. Line 637 a comma should be added after “fee”.

Lines 642-660; Line 653 should not have a strike through “office”. Line 655 should remove “such” after “each”. Line 659 should state “applicants” not “applications”.

Page 27, Lines 661-673 Line 671-673 was questioned as to why it was removed. Ms. O’Boyle confirmed it was a redundancy from prior sections.

Lines 675-685 The Committee asked if under line 684 as a retailer they can also consume on site. Ms. O’Boyle confirmed the State created the license type and says they can co-locate with designated consumption.

Page 28, Lines 686-701 The OCA noted that all surveillance information was part of the section added earlier in the document that was amended to state “pursuant to State law”, page 15 line 375.

Lines 702-710; Lines 702-703 spoke to odor detectable, and falls under operational standards.

Line 708 was correct to not remove “marihuana operation”.

Line 709 was addressed earlier in the document.

Page 29, Lines 711-732; The OCA noted that all these areas are removed because it is covered under the State standards and so the City pre-empted.

Lines 733-735; no comments.

Page 30, Lines 736-749

Council Member Spitzley stepped away from the meeting at 11:29 a.m.

Council Member Wood asked if they can require licenses be posted. Ms. O’Boyle confirmed that is stated already on page 29, line 707.

Council Member Spitzley returned to the meeting at 11:30 a.m.

Lines 750-759; on line 755 "medical" needed to be removed.

Page 31, Lines 761-785; the OCA noted it was all removed because it was noted earlier.

Page 32-37, 786-933; all removed because it is covered earlier in the document.

Page 38, Lines 935-948; in line 936 there should be a "s" after "retailer".

Line 941 "public playground equipment" was removed, and the word "public" was added to line 942 before "park" reflecting back on the definition now of "public park" on line 207. The Committee discussed the distance of buffered uses and determined, as a Committee, that they wanted 1000' from all uses. Before the final determination would be made they ask the OCA to obtain a map from the City GIS Department depicting what 500' and 1000' would be from public parks, commercial child care, churches and prevention centers. It was noted to the Committee that if the buffer distance is changed to 1000' the licenses that have currently been issued will be grandfathered at 500'.

The committee will come back to continue the discussion on lines 941-948 after receiving the map.

The Committee then held a brief discussion on the total number of licenses that would be offered with the change from 25 to 28. It was determined and confirmed by the OCA that there is the potential of six (6) licenses at three (3) locations.

Lines 949-960; no comments.

Page 39, Lines 961-970 Line 966 was changed to state "a buffered use".

Lines 972 – 985

Council Member Spitzley stepped away from the meeting at 11:49 a.m.

No comments on lines 972-985

Page 40, Lines 987-1004; no comments.

Lines 1005-1009; as stated earlier the Committee will review again to expand on it.

Page 41, Lines 1010-1027

Council Member Spitzley returned to the meeting at 11:50 a.m.

Line 1011 was corrected to state "are" not "is".

The Committee asked if there was no longer a hearing officer, and was told by the OCA that there would not be, but for a reconsideration it would be a paper hearing. This would still allow for process.

Lines 1029-1033; on line 1030 "operation" should not be removed.

Page 42, Lines 1034 –1044

The meeting recessed briefly at 11:53 a.m. and began discussion again at 11:56 a.m.

Council Member Spitzley inquired about the removal of the tiered penalty. Ms. O'Boyle noted that the new State law says the maximum penalty a City can enforce is a \$500 civil infraction. Ms. Sumner noted the ordinance should state who would be enforcing and writing the ticket. The Committee determined they would come back to lines 1034-1040 for further discussion.

Council Member Wood asked the OCA to discuss with the courts these new changes, and Mr. Smiertka stated they could reach out to Judge Alderson.

Lines 1045-1059; no comments.

Page 43, Lines 1062-1067; Council Member Wood stated she was not in support of consuming in a public place. Ms. O'Boyle clarified that this is strictly outlining that consumption is prohibited. After discussions on the language, the Committee changed lines 1064-1067 to state "Consumption of marihuana in any public place within the City is prohibited unless pre-empted by the State law." The remaining language on lines 1065-1067 was removed.

Council Member Wood determined that at the meeting on August 13th they would begin on page 43 line 1069. She asked the OCA at this time to take the changes made to this point, and create the next draft, leaving 1069-1139 as is until they review it at the next meeting.

Other

Council Member Wood informed the Committee that there is a discussion with the City union representatives on the recent strikes by Reith Riley, the asphalt contractor and its impact on projects in the City. She noted the strike could cause a delay at Cesar Chavez and the MLK project.

ADJOURN

Adjourned at 12:04 p.m.

Submitted by Sherrie Boak,

Recording Secretary

Lansing City Council

Approved as presented: August 13, 2019