



MINUTES
Special Meeting of the Committee on Public Safety
Tuesday, August 13, 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- arrived at 10:15 a.m.

Council Member Adam Hussain, Member

OTHERS PRESENT

Sherrie Boak, Council Staff

Lisa Hagen, Council Legal Analyst

Amanda O'Boyle, Assistant City Attorney

Heather Sumner, Deputy Chief City Attorney

Jennifer Smith – Zande, Clerks Office

Minutes

MOTION BY COUNCIL MEMBER HUSSAIN TO APPROVE THE MINUTES FROM AUGUST 6, 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

The Committee began on page 43, lines 1069-1076 of draft #1.

Council Member Wood asked for on what 1300.14 was actually stating and Ms. O'Boyle noted it is addressing a new type of license per the State; Designated Consumption Establishments.

Council Member Wood asked if in a marihuana establishment, whether medical or recreational, if they can consume in that location. Ms. O'Boyle stated this is not saying that, it is saying certain types or locations can obtain a license to consume for certain purposes.

Council Member Wood then asked if the City has to permit the consumption at a location, and Ms. Sumner acknowledged that the question will keep coming up, and the answer is unknown. They have spoken to LARA and the police advisor for the Governor, asking if a municipality can opt out or opt in to only certain types, and they are being told the State will not put forth their interpretation, but will wait on a court of law to tell them. Council Member Hussain suggested banning this type and then address it if the City gets sued. Ms. O'Boyle admitted there is a legal argument as to why they should have in the City. Through the voter initiative

they can allow the use, but prohibit it in public. There are certain groups of residents who are not allowed to use in their residence, such as Section 8 housing, rentals or tourists, so this would allow them to consume. If the City prohibited this type of license they would not provide a place for them to go, and in turn they will then use unlawfully elsewhere. Ms. Sumner noted that this is the only license type that regulates odor. If it paired with another license, they can address odor. Council Member Hussain asked how intoxication is tested, and the OCA stated it is a saliva test by the MSP and the results are either positive or negative. Council Member Wood asked if the City approves 1300.14 it would entitle all that have a license currently and ones that are part of the new ordinance would have the ability to apply for a consumption license. Ms. O'Boyle informed the Committee that as it is currently worded yes, but the City could elect to limit that to "paired with only certain license types" or limit the number. Council Member Wood asked if it could be limited to one (1) per Ward, and was told by the OCA it would have to be justified. Council Member Hussain noted three (3) in the whole City, because if it is noted one (1) in each Ward, that is not competitive for the Wards. Ms. O'Boyle stated more research would have to be done. Ms. Sumner added that one (1) is never advisable, because one is a monopoly. If the Council wanted to do by Ward that could require further research. Council Member Wood referenced commercial space in the ordinance, and there are licenses for "micro-business", "lounge" and "dispensary", so when talking about consumption in 1300.14 does that also encompass all of those locations or just encompass "dispensaries". Ms. O'Boyle clarified that "lounge" and "social clubs" are the same, and 1300.14 can be paired with other license types. Ms. Sumner stated that their opinion is that it would be realistically paired with a "provisioning center". Council Member Wood recapped a meeting with the Mayor who stated there are two (2) new licenses and one is "micro-business". Ms. O'Boyle assured her that a "micro-business" is limited to only that type and cannot be paired. A "micro-business" cannot be paired with a "grow", "processing", "retail", or "secure transport", however could be paired with consumption.

Council Member Spitzley arrived.

Council Member Wood inquired into the standards for "micro-business" and was referred to page 6 lines 145-150 in draft #1, and page 39 lines 975-977 in draft #1. Council Member Wood voiced her concerns that under 1300.14 it appears that anyone with a micro-business or dispensary license can have a license to consume. She asked if there was the ability to say no, or set a limit. Council Member Spitzley asked if there could be a limit to state only consumption in lounges, and was corrected by the OCA that designated "consumption" and "lounges" are all in the same. Ms. O'Boyle advised the Committee they can change the zoning designation to restrict, but right now it is written to allow in all zoning areas where other uses are permitted. Council Member Spitzley asked if the ordinance can be written to state only license two (2) "lounges" in the City. The OCA confirmed there is a standard where the City is prohibited to making a business unreasonable, and someone could argue it is unreasonable for two (2) in a City with this population. Council Member Spitzley supported a total of two (2). Council Member Hussain noted that it is not clear why a municipality can opt out, but if they opt in they can't designate what they opt in for. The OCA noted the municipality can regulate itself but even with a strong argument, they could lose in court. If the City decides to cap it, the reasons they cap it will be scrutinized or any stereo-type. Council Member Spitzley acknowledged the need for an outlet, however did not support 28. The OCA asked if the Committee considered making it competitive and sing the same competitive system set up for "provisioning centers" or do they wish to create something different. Council Member Wood pointed out the Council did not create the system, the Clerk made that determination on criteria for licenses. The Council is setting the limit and the Clerk makes the determination on how to do it. She suggested one (1) per Ward, and she has heard from residents that after Council adopted Chapter 1300, they had wished the Council would have set limits per Ward. Ms. O'Boyle noted that since it will be limiting, it has to be competitive, so

she asked the question of the Committee if they follow for “retailer” and “provisioning”. Council Member Spitzley suggested whatever is already in the ordinance. Council Member Wood asked if it is one (1) per Ward, if that would include “retail” and “micro-business”, and was told she was correct. She then asked if the “micro-business” can be in the competitive for the four (4) and was told that a “micro-business” is an all in one; grow, process, sell and already limited to the most restricted industrial. Council Member Spitzley asked the OCA for the maps they asked for at the last meeting, and Ms. Sumner stated that IT had not completed them yet. So Council Member Spitzley asked that the zoning for micro-business be noted so they can determine if there is that zoning in all four (4) Wards. Council Member Wood asked if the 28 locations include the “micro-business” and was told no, those are different licenses. Council Member Wood recommended limiting, based on her communication with the City Clerk who stated there are 68 establishments, and some have stacked licenses bringing the total to 80. Council Member Spitzley asked that the map include the number of licenses in the industrial zoned areas, along with including the conditional approvals. This would allow Council to visually show where the locations are where establishments can go. Council Member Wood suggested limiting the number of commercial areas that have consumption to one (1) per Ward, totaling four (4). Then under “micro-business”, limit that to four (4); one (1) per Ward. These would be limited to “H” and “I” zoned districts.

Page 43, lines 1077-1083. On line 1080 “the” should be removed before “this”.

Page 44, lines 1084-1089; no comments.

Lines 1090-1098. Ms. O’Boyle confirmed that area was modified to adjust the fees for a license when it is paired with another license, reducing the fee to \$2,500. Council Member Spitzley was not in support. Council Member Wood pointed out that in the past the City Attorney has stated the current fees are not high enough now to cover what is getting done. Ms. Sumner admitted they are currently doing a fee study, and it appears they are going too far exceed. If the ordinance is changed based on the recent discussion and making licenses more competitive, Ms. Sumner admitted there will be more time spent.

The Committee agreed to deleting “If an application is submitted with another license type the license application fee shall be \$2,500.” in lines 1090-1092.

In lines 1093-1095 the Committee reviewed the renewal fees and determined the best way to address it would be to eliminate “of \$2,500.00” in line 1094 and add in “set from time to time by Council by Resolution.” Ms. O’Boyle confirmed both changes are legally defensible.

Council Member Wood asked the OCA if there is a way to limit the number of “grow operations” and licenses in the current ordinance. She was informed by the OCA that these amendments are following the original language on limiting. Council Member Spitzley asked if it was legally defensible if the cap grew, and was told by the OCA that it would have to do a competitive process. Council Member Spitzley suggested language that state something that would tie to “on or after November 1st, 2019 any new applications for licenses will be limited to” a certain number. This would not affect any of those currently in the process. Ms. Sumner stated it would be difficult to transition into this process, and “grow” and “processors” have never gone through the competitive process. The Committee and OCA discussed capping, grandfathering and renewals. Council Member Hussain inquired into the renewal process for “provisioning” and Ms. Sumner admitted they were not sure how it would go because it has not occurred yet, however in the current ordinance there is a 30 day window. Council Member Wood stated to the Committee and OCA that her vision is to see at some point the number decreasing. The example she provided would be if there are 80, and someone leaves town or their license lapses because they do not renew, that license would no longer be available and the number would go to 79. Council Member Hussain noted he did not have an issue with stacking licenses, there should be a focus on locations. The OCA requested more time to research and consider the option suggested by Council Member Wood on lowering the number over time. Council Member Spitzley added that they should also consider in that number if a license does not get approved by the State, thus not having a license to operate,

the license will go away and the number will get lowered again. Council Member Wood added that if someone moves she does not want the license to follow them, however the OCA noted that the way the ordinance is written there are two types of transfers allowed; one is location to location with minimal review and one is a change in owners. If the Committee is looking at limiting a transfer of a license they would need to address. Ms. Sumner added that if the City does ban a transfer in her opinion people will find a loop hole. Ms. Smith –Zande added to the conversation that a business has to physically close before they can open the next one. Council Member Hussain opinion was that he understood if they move outside the City, not to transfer with them. Council Member Spitzley noted she was considering something similar to liquor licenses, where there are only a certain number allowed in the City limits. The Council could set a limit of 55, and there would be no new ones until the number gets below 55. Ms. Sumner stated they could attempt to craft something that reflects this, and Council Member Spitzley asked the OCA at this time if that was defensible. The OCA noted they could not confirm at this time, they would need time to review the ordinance, State Law, Emergency Rules, etc. It was recapped that the ultimate goal would be down to 55 and to do that it would be by if they chose not to renew or left the City, got denied or if the transfer goes away. The Committee did not have a consensus on the “transfer” issue, so the OCA was asked to research. Ms. Smith-Zande noted that under the current ordinance the license goes with the person not the location.

The OCA confirmed that Draft #1b reflects the notes from the first two meetings. The Committee reviewed the “Items for Further Discussion or to be Resolved” spreadsheet from the last two meetings. The first and second items on page 3 and 4 were addressed with the submission of the definition from OCA on “Building”. Item 3 was resolved during the discussions at the meetings. Item 4 was discussed at earlier meetings because it was questioned if there should be separate ordinances; one for medical and one for recreational; however OCA determined there is currently only a need for one, and the State will eventually merge as well. Page 2, items 1 – 4 were resolved during the discussions today along with changes made in draft #1b. Item 5 on page 2 was discussed again with the topic of a cap of 28. The OCA noted it was the Mayor that suggested 28 and with 3 new locations there is a potential of 31 total. Council Member Hussain supported 28, and Council Member Spitzley supported what was done for the “grow”, however a focus of “micro-business” at one (1) per Ward. Ms. Smith-Zande confirmed the Clerk’s office has added “geographic disbursed” in his overall criteria. Ms. Sumner assured the Committee that the maps they have asked for will have all current licensed locations on them, at which point the Committee asked for an additional map based on the earlier request by Council Member Spitzley. Council Member Wood asked the OCA, if they are speaking to 28 licenses, and none of the medical dispensaries ask for one of the Recreational Licenses, does that mean there is an additional opening. Ms. O’Boyle replied that it was all about the locations; they are limited.

Council Member Wood recapped that the OCA need to clean up the last pages of draft #1 based on the discussion today, and the only other outstanding items would be the pending maps discussed at this meeting and at the last meeting. The next two (2) meetings will be Tuesday August 20th and August 27th @ 4 p.m. The targeted deadline to get to the Planning Board would be their meeting of September 3rd. There was a request made by Council Member Wood to inform Economic Development & Planning this would be coming.

ADJOURN

Adjourned at 11:35 a.m.

Submitted by Sherrie Boak,

Recording Secretary

Lansing City Council

Approved as presented: August 20, 2019