

**MINUTES OF THE SPECIAL MEETING OF THE PORTAGE CITY COUNCIL
OF DECEMBER 12, 2017**

Mayor Patricia Randall called the meeting to order at 7:00 p.m. The following Councilmembers were present at the meeting: Councilmembers Chris Burns, Richard Ford, Lori Knapp, Claudette Reid and Terry Urban, Mayor Pro Tem Jim Pearson and Mayor Patricia Randall. Also present were City Manager Laurence Shaffer, City Attorney Randy Brown and City Clerk Adam Herringa.

AUTHORIZATION TO PARTICIPATE AND VOTE VIA TELECONFERENCE: Mayor Randall opened the meeting and noted that Councilmember Reid would be participating in the meeting via telephone. Motion by Ford, seconded by Knapp, to permit Councilperson Claudette Reid to attend the Special Meeting of the City Council on December 12, 2017 at 7:00 P.M. by teleconference. Councilperson Reid is unable to physically attend the meeting. Councilperson Reid's telephonic participation shall be permitted only if a quorum of Council is physically present at a Special Meeting. While Councilperson Reid is participating in the Special Meeting telephonically, she may vote on all questions properly before the Council at the Special Meeting. Councilperson Reid shall be deemed present at the Special Meeting while participating by teleconference. Upon a roll call vote motion carried 6 to 0. Councilmember Reid was not permitted to participate in this vote as it was related to her participation in the meeting.

EMERGENCY ORDINANCE – TEMPORARY OPERATION OF MEDICAL MARIHUANA FACILITIES: Mayor Randall shared the purpose of the meeting and informed the audience that an emergency ordinance requires a super majority of five affirmative votes to be passed. She continued by stating that the resolution on the agenda requires a simple majority to be approved. City Manager Shaffer reviewed the proposed emergency ordinance, shared the rationale as to why it is being considered as an "emergency" and why City Administration is recommending adoption. City Manager Shaffer then reviewed the various provisions of the ordinance and the criteria a medical marihuana facility would need to meet in order to qualify for temporary operation. Mayor Randall thanked Mr. Shaffer and staff for their work on this ordinance and invited City Council comment.

Councilmember Urban stated that the ordinance appears to only involve one medical marihuana provisioning center in the City and asserted that this facility, Lake Effect, has been and is currently operating illegally under State law and City Ordinance. He stated that the business applied for a variance from the Zoning Board of Appeals (ZBA) and was denied. He continued by stating that Lake Effect litigated the decision of the ZBA and lost and that the case was currently at the Court of Appeals. Mr. Urban continued by saying that both the City and the State have allowed Lake Effect to continue operating illegally. Mr. Urban expressed understanding of the value of medical marihuana and the need for related facilities in the community but that he could not be supportive of a business that knowingly opened despite rules and regulations prohibiting such action. Mr. Urban continued by stating that he understands a majority of City Council will be supportive of the emergency ordinance and raised concerns as to the reason behind the support.

Mayor Randall took exception to Councilmember Urban's questioning the motives of fellow Councilmembers and Mayor Pro Tem Pearson shared his understanding of the medical value offered by marihuana. Mr. Pearson shared his belief that medical marihuana affords an

alternative to opioid medicines and that the closing of any clinic would have unfortunate and unnecessary consequences for medical marihuana patients in the community.

Councilmember Ford stated that when laws are passed and people disagree it is appropriate to challenge them in a court of law. He cited the current case involving the City of Portage and Lake Effect as an example. Mr. Ford stated that the State laws surrounding medical marihuana give local communities the power to regulate and manage medical marihuana in their own community. With regard to Lake Effect, Mr. Ford stated that he is aware of only two minor public safety issues involving the facility over the past year. He continued by sharing that there is a process in place to qualify for medical marihuana and that it involves only a limited set of the population. Mr. Ford concluded by expressing his support for the emergency ordinance.

Councilmember Knapp began by stating that the State of Michigan has kept municipalities busy with the medical marihuana issue but there seems to be increasing clarity in the laws. Councilmember Knapp then read a section of the Finding of Emergency by the Department of Licensing and Regulatory Affairs (LARA) Emergency Rules related to the Medical Marihuana Facilities Licensing Act. She also referenced Rule 19 of LARA which permits the temporary operation of medical marihuana facilities as evidence that the State is overtly recognizing that provisioning and other medical marihuana related facilities are currently operating in the State. She continued by stating that LARA recognized there is a gap between when the State licenses will be available and the present. Councilmember Knapp stated that the approach afforded by LARA and the approach being recommended for the City of Portage is responsible and pragmatic and avoids undue hardship for medical marihuana patients and business owners.

Councilmember Burns stated his belief that potential reasons to deny the continued operation of the medical marihuana business, such as public safety concerns, strong opposition and nuisance reports, are not present. Mr. Burns then shared his support for the emergency ordinance.

Councilmember Reid expressed concern with the emergency ordinance process and with Lake Effect functioning illegally in the community. She stated that the issue is not whether medical marihuana is good or bad but whether we should allow the continued operation of a business that was illegally established. Ms. Reid then expressed frustration with the short amount of time afforded by the State for municipalities to act on this topic. Councilmember Reid questioned the fairness of permitting a business that was illegally established to continue operating while others interested in starting a medical marihuana business and want to play by the rules have refrained from opening. Councilmember Reid stated that she also recognized the need to avoid interrupting medication that many people rely on and stated that there is a fundamental lack of fairness and inequity in this entire situation.

Councilmember Urban reinforced his belief that there are medical benefits associated with marihuana but questioned whether the City should give preferential treatment to a business that has been operating illegally. He continued by stating that, while zoning laws may change, the City should be working under the existing framework and that this framework does not permit the operation of Lake Effect. Councilmember Urban stated that any hardship experienced by patients would be the burden of the business that chose to operate illegally. Mr. Urban referenced the action taken by the Zoning Board of Appeals which determined that Lake Effect was improperly located. Mr. Urban continued by stating that appeals of decisions

made by the ZBA do not go to City Council but rather to the court and that the City has prevailed in the court case involving Lake Effect though the case is currently under appeal. Mr. Urban concluded by stating his desire to support and not overrule the determination of the ZBA and to not permit the continued operation of this medical marihuana facility.

Councilmember Knapp requested clarity from the City Attorney regarding zoning and the Medical Marihuana Licensing Facilities Act. City Attorney Brown stated that there is a different set of rules and circumstances that apply as a result of Rule 19 which is related to the temporary operation of medical marihuana facilities. These rules and circumstances, he stated, are different than the rules under which the ZBA made their determination. Mr. Brown concluded that he did not view the City Council adopting the emergency ordinance as overruling the ZBA.

City Manager Shaffer stated that the City of Portage is still in court regarding violation of the zoning ordinance. Mr. Shaffer informed City Council that the City is working on revised zoning laws that take into account medical marihuana facilities.

Motion by Pearson, seconded by Ford, to adopt an emergency ordinance to take immediate effect to amend the Code of Ordinances of the City of Portage, Michigan, by adding Article 11, Temporary Operation of Medical Marihuana Facilities of Chapter 14 Businesses.

Councilmember Urban commented that, while zoning laws may change, City Council should act based on the rules currently in place.

Upon a roll call vote, motion carried 5 to 2 with Councilmembers Burns, Ford, Knapp, Mayor Pro Tem Pearson and Mayor Randall voting in favor and Councilmembers Reid and Urban opposed. Ordinance recorded on page 407 of City of Ordinance Book No. 12.

RESOLUTION OF INTENT REGARDING ADOPTION OF AN AUTHORIZING ORDINANCE UNDER THE MEDIAL MARIHUANA FACILITIES LICENSING ACT: Mayor Randall opened the item for discussion and Councilmember Urban stated that he would like to see a limited number of medical marihuana facilities in Portage and cited support of residents as indicated in the Community Survey. Mr. Urban stated that the State has not followed the usual and extensive rulemaking process as it relates to medical marihuana and expressed concern with acting while final rules are not available. He reiterated his position that the City focus on serving Portage residents and not Southwest Michigan.

Councilmember Reid questioned if passing this Resolution of Intent would require the City of Portage to allow for medical marihuana facilities or could the City still decide not to take any action until a later date. City Attorney Brown stated that the proposed resolution is a statement of intent but leaves the numbers, types and locations of licenses wide open along with the possibility for City Council to decide not to issue any licenses at all. Councilmember Reid stated that, since the Resolution is not binding on the City Council, she would be supporting it but emphasized her desire for a thorough discussion regarding medical marihuana facilities in the community.

City Manager Shaffer stated that the Resolution is intended to be a companion piece to the Emergency Ordinance and allows City Council to continue the discussion regarding a formal ordinance addressing medical marihuana. Mayor Pro Tem Pearson shared that City Council had a recent Committee of the Whole Meeting regarding medical marihuana and that another meeting is planned for December 19th. At the meeting of the 19th, Mr. Pearson stated, he anticipates a draft ordinance to be presented. He concluded his comments by assuring the

audience that City Council is taking a measured and deliberate approach to this process.

Motion by Pearson, seconded by Ford to adopt a Resolution of Intent regarding adoption of an Authorizing Ordinance under the Medical Marihuana Facilities Licensing Act. Upon a roll call vote, motion carried 6 to 1 with Councilmembers Burns, Ford, Knapp, Reid, Mayor Pro Tem Pearson and Mayor Randall voting in favor and Councilmember Urban opposed. Resolution recorded on page 419 of City of Portage Resolution Book No. 46.

PETITIONS AND STATEMENTS OF CITIZENS

Mr. Jevin Weyenberg, 5817 Cheshire Street, proprietor of Lake Effect, stated that there has been a two-year or longer relationship between himself and the City of Portage and that, during this time, many laws and regulations have changed. Mr. Weyenberg complimented the leadership of the City of Portage and mentioned Mayor Randall in particular. He concluded by emphasizing his belief that medical marihuana patients are people and deserve to be treated with respect and thanked members of City Council for acting with courage. Mr. Weyenberg thanked City Manager Shaffer for his efforts and complimented him on being proactive and cited discussing medical marihuana with potential growers over a year ago as evidence. He continued by emphasizing the importance of focusing on the health and wellness of the community and stated that he is looking forward to the continued process of developing a permanent ordinance. Mr. Weyenberg concluded by complimenting Director of Community Development Vicki Georgeau and her department.

Mike Quinn, County Commissioner and resident of 7025 Rockford Street, thanked City Council and staff for their efforts and vote regarding medical marihuana. Mr. Quinn also commended Lake Effect for their efforts in the community.

Kacie MacLagan, resident of Texas Township and former Portage resident, thanked City Council for their vote and shared that medical marihuana has helped her, as a disabled veteran, improve her quality of life.

Glenn Smith, 10143 Portage Road, stated that he is an attorney representing a client who is currently in litigation with the City regarding the Home Occupation Ordinance. He continued by stating that clients of his have benefitted from medical marihuana. He stated that the emergency ordinance enacted by City Council creates a monopoly in the medical marihuana business arena in Portage and that his client had a medical marihuana facility on Sprinkle Road. Mr. Smith stated that his client, John Rockwood, has tried to follow the law and direction of the City but is harmed by the ordinance enacted this evening. Mr. Smith asked that I-1 zoning be taken into consideration when issuing medical marihuana licenses and that his client be permitted to operate his facility on Sprinkle Road.

Mr. Dave Vandeven, resident of Kalamazoo, thanked City Council for their support of medical marihuana and shared how medical marihuana has been of benefit to him.

Mr. Chris Hoffman, 5813 Stratford, identified himself as "Scorch" and stated that he would not be alive today without the benefits of medical marihuana. Mr. Hoffman expressed his support for medical marihuana and encouraged City Council to take steps to ensure that local business development be encouraged in Portage and not large corporations.

Mr. Don McCreery, 10319 Woodlawn, expressed his support for medical marihuana and stated his belief that the City of Portage not limit the number of dispensaries in the community.

Ms. Sheila Hodgkinson, owner of Green Earth Hydroponics in Portage, thanked City Council for their support of medical marihuana and expressed support for Lake Effect and medical marihuana patients.

NEXT STEPS: Mayor Randall reviewed next steps and highlighted the upcoming Committee of the Whole Meeting on December 19th and City Manager Shaffer reviewed what material would be provided and covered at the meeting.

ADJOURNMENT: Mayor Randall adjourned the meeting at 8:03 p.m.

Adam Herringa, City Clerk