

**MINUTES OF THE COMMITTEE OF THE WHOLE MEETING OF THE
PORTAGE CITY COUNCIL
OF DECEMBER 19, 2017**

Mayor Patricia Randall called the meeting to order at 5:30 p.m. The following Councilmembers were present: Councilmembers 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, Assistant City Attorney Charles Bear, Deputy Director of Planning, Development and Neighborhood Services Chris Forth and City Clerk Adam Herringa. Councilmember Chris Burns joined the meeting at 5:37 p.m.

Mayor Randall shared that this Committee of the Whole Meeting and related topic was scheduled a year ago and thanked staff and City Council for their efforts related to medical marihuana. Mayor Randall reviewed the format for the meeting and invited the City Manager to begin the discussion.

City Manager Shaffer thanked Director of Community Development Vicki Georgeau, City Attorney Brown, Assistant City Attorney Bear and Director of Public Safety Nick Arnold for their hard work and informed City Council that Deputy Director for Planning, Development and Neighborhood Services Chris Forth would be assisting in the discussion this evening.

Mr. Shaffer stated that the City was approaching the medical marihuana issue with two proposed ordinances. One ordinance is related to zoning and the other related to facilities. Mr. Shaffer began by highlighting aspects of the proposed ordinance regarding Medical Marihuana Facilities. Following his review, Councilmember Urban inquired if a factor in the review of applications would include prior violations of city ordinances. Mr. Shaffer replied that staff did not discuss including such a provision and questioned, given that the City is in litigation regarding zoning violations, whether it made sense to include such a stipulation.

Councilmember Urban next stated that he did not see anything in the proposed ordinance that would permit the City to disqualify or reject an applicant and questioned if there would be a minimum threshold that an applicant would have to meet to qualify for a license. Assistant City Attorney Bear shared that the scoring metrics have yet to be developed and offered his opinion that meeting a minimum score can be subjective and not work as well as intended.

Councilmember Urban asked that specific language permitting the City to reject unqualified applications be included in the ordinance. City Manager Shaffer stated that the presumption of the ordinance is that an applicant will either pass or fail. He continued by stating that applicants will be given ten days to correct any deficiencies in the application and cited potential reasons for disqualification. Councilmember Urban stated that in his reading of the proposed ordinance a plan only needs to be there not that it be of any quality.

City Manager Shaffer stated that he sees a two phased approach to addressing medical marihuana in the community. The two steps include a phase to establish the overarching ordinances and a phase for City Administration to establish regulations. Councilmember Reid stated that the standards should be in place by the time people are submitting applications and City Manager Shaffer offered assurances that by the time applications are being submitted the rules will be in place.

Councilmember Ford shared his opinion that City Council should defer to City Administration in the development of rules and regulations. Councilmember Knapp expressed her desire that the ordinance be more broadly defined and that City Council amend it from time to time. With regard to rules, regulations and standards, she indicated a preference for City Administration to bear responsibility.

Councilmember Urban stated that he does not want the standards included in the agenda, either. Rather, he stated that he would like to see a provision included in the ordinance that permits the City to reject an application. City Manager Shaffer stated that he would work with the City Attorney in this regard.

Mayor Pro Tem Pearson expressed concern that a provisional permit will lapse six months from issuance if a variety of criteria are not met and whether staff will be able to review and process applications within that time period. He recommended that staff review the six month provision as it often takes a long time to get a business started and contrasted this provision with the one year allowed to a safety compliance facility. With regard to transporter and safety compliance facilities, Mr. Pearson inquired if they would be evaluated or simply approved. City Manager Shaffer stated that he does not believe there will be many applicants in these categories and that the applications will either pass or fail. Mr. Pearson stated that there is time to discuss and refine the proposed ordinance as he does not envision passage until February at the earliest.

Councilmember Reid stated that less than a month ago the City Manager talked about four provisioning centers and wondered how that number grew to twelve. Councilmember Reid then estimated the number of medical marijuana patients in the community and stated that she cannot see a justification for twelve provisioning centers. City Manager Shaffer stated that the number of facilities has been a source of great debate amongst City staff. He provided the rationale for why the City was initially recommending the number 4 and stated that he has a philosophy of being cautious especially since the impact of medical marijuana facilities on the community is unknown. However, he stated that the discussion at the last Committee of the Whole Meeting made it clear that City Council wanted to go in a different direction and, in general, want to see more facilities and all five types of operations. Mr. Shaffer stated that his opinion to move in a cautious manner remains unchanged but that City Council drives policy. Councilmember Reid advocated moving slowly on this topic and to learn as we go rather than be too expansive in the beginning and try to reign things in later. She concluded by stating that not all Councilmembers believe in a more expansive approach.

Mayor Pro Tem Pearson stated that he agrees with a measured response but there may be far more need in the community than identified by Councilmember Reid. He stated that he does not want to restrict provisioning centers so much that there are lines of cars stacking up to get medical marijuana and advocated that the City work to identify an appropriate number. Councilmember Ford stated he understands the City wants to operate with caution but stated there are cautionary steps built into the process and highlighted some of those steps. Councilmember Ford echoed the assertion of Councilmember Urban that a provision allowing the City to reject an application be inserted.

Councilmember Knapp inquired as to why the 1,000 feet restriction would not be applicable to permit holders in the first year. City Manager Shaffer explained that the City does not know where the applications will come from and did not want to be in position to select one applicant over another if two people apply that are in close proximity to each other. Mr. Shaffer continued by explaining how the ordinance would apply in the first year vs. subsequent years. Councilmember Urban expressed concern that the way the ordinance is written there could be a strip mall or similar location in which numerous provisioning centers locate.

Mayor Pro Tem Pearson stated that he believes in the free market and if there are too many provisioning centers located too close together, some won't stay in business. He

continued by stating that he does not want to overregulate and shared concerns with some of the distance requirements and zoning restrictions that are being proposed.

Councilmember Burns thanked Councilmember Urban for his suggestion to include provisions permitting the rejection of an application and cited potential locations in the ordinance in which the language could be inserted. Mr. Burns continued by stating that only one of the five potential licenses interacts with the public. The others, he continued, are business to business and likely less contentious.

Councilmember Knapp inquired if staff knew when the State of Michigan would replace the emergency rules with final rules. Attorney Bear stated that it could be within six months as the emergency rules are for a six month period. He continued by stating that this is an evolutionary process and communities will learn more as we move along.

Councilmember Reid stated that she believes that medical marihuana presents an unusual situation and that regular market forces do not apply, especially in the initial phase. She cited the possibility of legalized recreational marihuana and potential conversion of medical marihuana businesses into recreational marihuana establishments as an example.

Councilmember Ford asked the City Manager to elaborate on the proposed application window. City Manager Shaffer reviewed the planned timeline for the application process, evaluation, notification, final review and issuing of licenses. He continued by stating that the application period would be once per year so that staff can better manage the process and review applications. It also provides clarity to applicants. He concluded by stating the process is burdensome on the industry, involves a rigorous application process, and raises potential legal pitfalls.

Mayor Pro Tem Pearson stated that he, like other members of City Council, has technical questions and asked if those could be submitted to the City for consideration with response provided to all Councilmembers. Mayor Randall agreed and asked that the City consider a drive-thru, home delivery for sick patients and/or the ability to pickup a prescription for someone who is ill.

Councilmember Urban stated that there was a recent city survey and believes that a strong majority of residents indicated a preference for either no facilities or a limited number. He continued by stating that the City has a total of 13 pharmacies yet is proposing to allow 12 provisioning centers. He continued by stating that he does not see the need for 12 provisioning centers in Portage.

Mayor Randall asked the City Manager to discuss the second ordinance which is related to zoning in the City. Mr. Shaffer asked Deputy Director of Planning, Development and Neighborhood Services Chris Forth to review the proposed changes and additions to the Zoning Code. Following the presentation, Mayor Pro Tem Pearson stated that in response to proposed distance requirements pharmacies do not have similar restrictions and shared his belief that only having limited areas where medical marihuana businesses can locate will drive up property prices and, correspondingly, prices of the product. Mr. Pearson asked for clarification regarding whether a provisioning center would be able to locate next to a residential zone. Mr. Forth stated that a facility would not be permitted on a parcel in which a property line touches the property line of a residential zone.

Councilmember Reid inquired if consideration had been giving to permitting provisioning centers in OS-1 (Office Service) zoning areas similar to other medical facilities. Mr. Forth stated that the topic was discussed but given the anticipated amount of traffic and variety of unknown

factors City staff viewed this business as initially more suited to retail type operations. Mayor Pro Tem Pearson stated his agreement that OS-1 may not be the best zoning district in which provisioning centers should locate and cited volume as the reason why.

Councilmember Knapp inquired if there are minimum parking requirements that will have to be met given the potential for high traffic. Mr. Forth stated that the City has parking standards for other uses and will evaluate parking and traffic at medical marihuana facilities to determine appropriate parking requirements.

Councilmember Urban asked that consideration be given to prohibiting external identifying signage for all categories except for provisioning centers. He also suggested that consideration be giving to banning window displays at provisioning centers. City Attorney Brown stated that he would look into this.

Mayor Randall opened the meeting to public comment. Mr. Joseph Samona, 6960 Orchard Lake Road, Suite #150, West Bloomfield, MI, stated that he was a realtor and asked several questions including whether one person can have more than one license in each category, if there is a scoring system when will it be released, will the distance between facilities be door to door or property line to property line and whether a facility would be permitted on a commercial parcel if the property backs up to a residential district but there is an easement between the two properties. City Manager Shaffer, Attorney Bear and Mr. Forth responded and stated that, per state guidelines, only Class C growers may have more than one license, distances are measured property line to property line, the scoring system and rules will be made public and an easement does not have any bearing on whether a business can locate on a particular parcel.

Mr. Chris Hoffman, 5813 Stratford, stated that he was concerned City Council was focusing on preventing and regulating rather than facilitating. He encouraged City Council to make it easier for local residents to get involved in the medical marihuana business and expressed concern with ventilation requirements.

Mr. Devin Loker, 1595 West Centre Avenue, stated his belief that 12 licenses are an appropriate number and it will bring competition to the market. He asked City Council to consider revisiting residential zoned property and the easement situation.

Ms. Ashley Bergeon, 219 West Cass Street, Schoolcraft, introduced herself and shared that she is the coordinator of the Kalamazoo County Substance Abuse Task Force (Task Force). She stated that based on studies, alcohol outlet density has a direct impact on youth use as does access to prescription drugs such as painkillers and opioids. She asked City Council to take density and access to youth in consideration as it relates to medical marihuana in the community.

Mr. Eric Foster, Cannabis Practice Group, 2000 Town Center, Suite 1900, Southfield, MI, complimented the City of Portage on their approach to the issue of medical marihuana. Mr. Foster stated that there is a tremendous market opportunity in Kalamazoo County and Southwest Michigan related to medical marihuana.

Ms. Diana Loynes, 1776 East T Avenue, asked that City Council reconsider the Code of Ordinances as it relates to her practice and ability to dispense medical marihuana tinctures.

Mr. Ryan Dickerson, 6033 Daniels Street, Kalamazoo, spoke in favor of easing proposed zoning restrictions on medical marihuana facilities. He inquired if City Council would decide who would be granted a license or if it would be the City Manager. City Manager Shaffer stated that issuance of a provisional license and evaluations of the applicants would be the

responsibility of the City Manager.

Mr. William Schmidt, 6346 Highpoint Circle, asked that City Council remember local residents that got the medical marihuana process started, to not force them to cease operations for up to a year and to not let large organizations only interested in money dominate medical marihuana in the community. He asked the City to research who is behind an organization before issuing a license.

Mr. Vince Renda, 1312 Forest Drive, asked about medical marihuana facilities on parcels abutting residential property and pointed out that alcohol and tobacco shops are allowed to do so. City Manager Shaffer stated that some activities referenced are grandfathered and would not meet current zoning restrictions. He continued by saying that proposed zoning regulations attempt to preserve neighborhood quality. Mr. Forth stated that regulating marihuana related businesses is uncharted territory and we do not know what the consequences of permitting the businesses will be and cited an example of a recent break-in of a marihuana facility on Sprinkle Road as an example of a potential negative consequence. He continued by stating that marihuana is still a Schedule 1 Controlled Substance under Federal Law whereas alcohol and tobacco are not. He reiterated that using caution is the best course of action and that the ordinance could be loosened up in the future.

Mayor Randall thanked everyone for attending the meeting.

ADJOURNMENT: Mayor Randall adjourned the meeting at 7:07 p.m.

Adam Herringa, City Clerk