

**MINUTES OF THE COMMITTEE OF THE WHOLE MEETING OF THE  
PORTAGE CITY COUNCIL OF FEBRUARY 25, 2020**

Mayor Patricia Randall called the meeting to order at 6:00 p.m. The following Councilmembers were present: Councilmembers Chris Burns, Richard Ford, Lori Knapp, Claudette Reid, Terry Urban, Mayor Pro Tem Jim Pearson and Mayor Patricia Randall. Also present were City Manager Joe La Margo, Deputy City Manager Adam Herringa, Deputy City Manager Mike Carroll, Interim Director of Community Development Chris Forth, Public Safety Chief Nick Arnold and City Clerk Erica Eklov. Attorney Denise Policella attended via phone. Citizen Jevin Weyenberg was also present.

Mayor Randall asked City Manager Joe La Margo to introduce the purpose of the meeting. City Manager La Margo relayed that the City Administration desired to get an ordinance in place before allowing recreational marihuana in the City. Mr. La Margo noted that the City did have a rough draft on file starting November 2019, but had since brought on an attorney specialized in marihuana. City Manager La Margo then turned the meeting over to Deputy City Manager Carroll.

Deputy City Manager Carroll acknowledged Attorney Denise Policella and summarized her work with the City. Mr. Carroll highlighted Attorney Policella's provision of a draft ordinance to which he had made only minor revisions following prior discussions with Deputy City Manager Adam Herringa and Interim Director Chris Forth regarding prior ordinance history on adult-use marihuana. Deputy City Manager Carroll noted that the City Administration decided to convene a Committee of the Whole Meeting before further discussing policy decisions in an effort to get direction from City Council regarding opting in to recreational marihuana. Mr. Carroll relayed that the City Administration understood that Council desired to opt-in to adult-use marihuana, but desired to be restrictive and limit the number of licenses to those who already had a medical marihuana license. Mr. Carroll stated that there are currently eight medical marihuana licenses issued in the City of Portage, including one grower license. He noted that Councilmember Reid had previously expressed a desire to have a cap on the licenses, however, Attorney Policella had advised that a numerical cap requirement creates the need for a competitive process. Deputy City Manager Carroll noted that the proposed draft ordinance for adult-use marihuana pairing licenses with medical marihuana licensees was the safest route with the least potential for litigation.

Mayor Pro Tem Pearson asked whether a separate recreational marihuana application would be explored at later date. Councilmember Reid asked for the pros and cons of tying recreational marihuana to medical. Deputy City Manager Carroll responded that, based on the desire of City Council to restrict potential recreational/adult-use licenses to the lowest number possible, the staff was pursuing this route at the beginning of the process following consultations with Attorney Policella. Attorney Policella added that tying recreational marihuana to medical marihuana under the Michigan Medical Marihuana Act does not require a competitive process if you limit the number of applicants and creates an automatic cap both the City and the State have fully vetted.

Deputy City Manager Carroll highlighted the existing Medical Marihuana Zoning Map detailing the few remaining areas in the City permitted for medical marihuana licenses based on the current zoning ordinance. He further noted there was only one applicant during the 2019 application window.

Councilmember Knapp asked about the sale or transfer of a business or a facility and what happens with the license in that instance. Deputy City Manager Herringa answered with medical marihuana the licenses are directly tied to both the applicant, as well as the location. Mayor Randall noted the presence of language regarding licensing in the draft in response to Councilmember Knapp. Mayor Randall then inquired if there were only two more permissible locations in the City based on the zoning map. Deputy City Manager Carroll responded that presumably, that was the case. Mr. Carroll further stated that the zoning code does not have a provision for recreational marihuana but that amending the zoning code at the same time as introducing the recreational/adult-use marihuana ordinance would be the cleanest route. Attorney Policella noted that she supported

adopting the police powers portion of the adult-use marihuana<sup>[mT1]</sup> ordinance first before moving into the zoning ordinance.

City Manager La Margo asked Deputy City Manager Carroll regarding the timeline for implementing the proposed ordinance noting a potential month delay. Deputy City Manager Carroll responded that the Planning Commission review is needed first which would delay Council action by approximately two months.

Councilmember Burns asked about certain new types of licenses allowed by the Michigan Medical Marihuana Act that do not require an initial medical marihuana license. Attorney Policella advised against permitting such types, stating that Council could prohibit these new types or permit them but then zero them out.

Mayor Pro Tem Pearson asked Interim Director Forth to elaborate on the microbusiness provision in the State language. Director Forth noted that microbusinesses are much like microbreweries and would make marihuana businesses similar to a hookah lounge or a festival such as Hash Bash. Mayor Pro Tem Pearson noted microbusinesses seem to be more hometown based and asked if any hometown medical marihuana operators exist current<sup>[mT2]</sup>ly. Deputy City Manager Carroll responded that they could be allowed but there would be complications. Mayor Pro Tem Pearson asked if a micro-business could be included in the proposed ordinance as he likes to promote local business. Deputy City Manager Carroll asked Attorney Policella about potential legal complications should City Council want to include micro-businesses in the proposed ordinance. Attorney Policella responded that this would create a problem with microbusinesses as it is a retail facility with all three types in one location and zoning would be an issue due to neighbors with odor concerns. Attorney Policella also noted that recreational require separate zoning for microbusinesses.

Councilmember Reid asked if the City could limit the microbusinesses to a local owner versus a franchise owner. Attorney Policella responded that the legal language for micro businesses at the state level was created with the intent to be local only. However, the State has found in practice that the owner cannot supply the required funding. She stated that several franchisees have already created plans and the industry is starting to blossom in a way the State did not desire. Attorney Policella said regulating would be legally difficult as it would require interviews and then the process would appear biased.

Mayor Pro Tem Pearson highlighted prior City history relating to the Home Occupation Ordinance concerning caregivers and inquired how this may relate to the proposed ordinance. Mayor Randall asked if caregivers can sell marihuana. Attorney Policella responded that the MMA expressly prohibits caregivers to sell and the State is already finding this to be a problem. Mayor Pro Tem Pearson asked Attorney Policella if people can circumvent the law concerning freebies. Attorney Policella responded that the MMA does not allow the transfer of cash or the practice of trading for a product, but that anyone can give or get a sample. Councilmember Urban noted the Home Occupation Ordinance does not allow on-site consumption and stated he has no interest in promoting it.

Mayor Randall asked Attorney Policella if the City's current review structure with the City Manager as the administrator of the Medical Marihuana Ordinance is typical for other jurisdictions. Attorney Policella responded that there is currently no typical structure. Councilmember Reid inquired whether there was one mechanism more favorable than others regarding the City Manager adjudicating marihuana licensees versus the Council. Attorney Policella responded that the best possible option is avoiding the need to make decisions entirely, but noted that the current draft ordinance circumvents any type of merit-based system.

Deputy City Manager Carroll noted that the proposed adult-use ordinance is based on the current practice but states that the City Administration is open to transferring that power to City Council should they desire.

Mayor Randall asked Attorney Policella how marihuana business in Michigan was faring financially. Attorney Policella responded that is it not going well, noting the shortage of marihuana in

the state to meet the demand and the resulting explosion of the black market. She further stated that people will begin seeking the product through the black market if the limits become too strict and relayed that the temporary pause in licensing at the state level did not help.

Mayor Pro Tem Pearson stated he agrees with allowing eight licenses in the City in light of the current population statistics and stated that the creation of the original Medical Marihuana Ordinance was not set in stone. He stated the current proposed proposal is also flexible.

Councilmember Burns asked for clarification regarding the zoning code for adult use. Attorney Policella responded that the State cannot overly limit zoning under the Home Rule Act and the oversight is given to the municipalities. She highlighted the 1,000-foot buffer with schools under the MMA unless a municipality has its own provision that is similar or less restrictive. She noted that marihuana remains a Schedule I drug that is prohibited in the federal Drug-Free School Zones.

Councilmember Burns then inquired about the proposed application fee in the new ordinance in light of the existing fees in the medical marihuana ordinance. Deputy City Manager Carroll responded that the application fee for adult use remains \$5,000.

Mayor Pro Tem Pearson asked about the state law for keeping medical and recreational uses separate. Attorney Policella confirmed that facilities are required to keep medical and adult-use enterprises separate, include location, sales, and inventory.

Councilmember Urban noted that adult-use marihuana remains in the regulatory phase and is not statutory yet. Attorney Policella confirmed that the current state regulations have a sunset clause of May 1, 2020. Councilmember Urban then asked why the City is not waiting for the adoption of state rules to ensure the proposed City ordinance aligns with the state. Attorney Policella responded that the proposed ordinance is not expected to conflict.

Councilmember Ford noted the New York City Medallions case and expressed concern regarding the liability with the City creating limits that could result in anti-trust or inflation. Attorney Policella responded that marihuana remains a federally regulated substance, which would prevent such instances.

Councilmember Urban asked if the City can limit the number of sales per day more than the State. Attorney Policella responded that the City cannot.

Mayor Randall noted the lateness of the hour and asked Attorney Policella whether she had any additional comments. Attorney Policella responded that she did not. Mayor Randall then acknowledged the citizen present asked if he had any comments. Jevin Weyenberg thanked City Council and Attorney Policella for their efforts and noted that this was an important community issue concerning safety and choice. Mr. Weyenberg noted there is an urgency to raise the standard of the marihuana product in the community and that demand is currently exceeding the product. He stated that the Lake Effect retail location always has their door open if someone wanted to discuss further or view the facility.

Mayor Randall asked Chief Arnold his opinion on the proposed ordinance. The chief responded that his department would support any City Council decision.

Mayor Pro Tem Pearson noted the City's current stance based on the November 2018 election which had 19 precincts voting in support for medical marihuana. The Mayor then asked about the next steps. Councilmember Urban noted the prior process that Council supported had delayed any additional action until June.

City Manager La Margo requested clarification from Council regarding next steps and asked if it was Council's direction for the City Administration to pursue the process as currently drafted. Councilmembers responded in the affirmative and directed the City Manager to proceed as proposed.

ADJOURNMENT: Mayor Randall adjourned the meeting at 6:59 p.m.

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Erica L. Eklov, City Clerk