

Roll Call

A regular work session of the Kalamazoo City Commission was held on Tuesday, February 27, 2018 at 5:30 p.m. in the Community Room at City Hall. The purpose of this meeting was to discuss ordinances regulating facilities operating under the Michigan Medical Marihuana Facilities Licensing Act (MMFLA).

COMMISSIONERS PRESENT:

Mayor Bobby J. Hopewell
Vice Mayor Erin Knott
David Anderson
Don Cooney
Eric Cunningham
Shannon Sykes
Jack Urban

COMMISSIONERS ABSENT:

None

Also present were City Manager Jim Ritsema, City Attorney Clyde Robinson, and City Clerk Scott Borling.

Discussion Items

Discussion items were considered next.

Review of Proposed
Ordinances Regulating
Medical Marihuana
Facilities

City Attorney Robinson delivered a PowerPoint presentation entitled *Local Regulation of Medical Marihuana*. City Attorney Robinson distributed and reviewed a proposed ORDINANCE TO AMEND CHAPTER 20B "MEDICAL MARIHUANA FACILITIES," OF THE CITY OF KALAMAZOO CODE OF ORDINANCES. Copies of the proposed ordinance and the PowerPoint presentation were filed with the papers for this meeting.

In response to questions from Commissioner Anderson, City Attorney Robinson stated his thinking on the length and detail of the ordinance had not changed; the question was whether the City needed or wanted to include a lot of detail. City Attorney Robinson indicated the required separation distance between Medical Marihuana Facilities (MMF's) and facilities owned by a "public housing authority" was taken directly from state law. City Attorney Robinson explained the Master Plan identified "designated nodes," which were areas deemed more walkable compared to other intersections that were designed for vehicular traffic. City Attorney Robinson stated he was not sure why the separation distance between MMF's and these nodes was 660 feet. City Attorney Robinson indicated section 2(M)1-7 on page 4 of the proposed zoning ordinance was detailed because it described the uneven boundary between the City and the Township and took into account areas where there were commercial districts on both sides. City Attorney Robinson stated the City of Portage was requiring a 1,000 foot separation distance between Provisioning Centers.

Community Planning and Development Director Rebekah stated a 500-foot separation distance between Provisioning Centers would result in approximately 20-25 locations where those facilities could exist. However, that number included parcels that were already built-out, so not all of those locations would be available. Director Kik indicated that a 1,000-foot separation distance would result in approximately 15-18 locations where Provisioning Centers could exist.

Review of Proposed
Ordinances Regulating
Medical Marihuana
Facilities (cont'd)

Commissioner Urban asked if the City Commission had decided the larger question of whether to allow MMF's in the first place. Commissioner Urban stated he was getting the impression the Commission had unofficially decided to allow these facilities, and he was not convinced the City needed to act quickly. Commissioner Urban noted the Kalamazoo County Sheriff was opposed.

City Attorney Robinson stated the City Commission did not tell him to stop developing MMF ordinances when he presented the City's options in 2017, and he noted City voters had expressed support for medical marihuana through two separate ballot questions. City Attorney Robinson explained the City Charter and Code of Ordinances could be amended by a citizen initiative, and if Commissioners did not act to regulate MMF's they could face the prospect of a voter-approved ordinance or charter amendment that was not to the City's liking. City Attorney Robinson agreed with Commissioner Urban that the law enforcement community was generally opposed to both medical and recreational marihuana.

In response to a question from Mayor Hopewell, Director Kik stated an estimated 12-15 sites would be available for Provisioning Centers if the City required a 1,000-foot separation distance. Discussion followed.

Commissioner Sykes indicated she would support the short version of the ordinance with the addition of language from Slide 14 in the PowerPoint presentation.

In response to a question from Commissioner Sykes, City Attorney Robinson stated he was treating MMF's different than liquor establishments because marihuana was illegal at the federal level.

Commissioner Sykes expressed concern about section 20B-8(d) of the ordinance distributed by City Attorney Robinson and asked why the ordinance had blanket restrictions on prior convictions, which was more than state law required.

City Attorney Robinson stated the requirements specified on Slide 3 of the PowerPoint presentation were state requirements, and the City could not broaden those restrictions.

In response to a question from Mayor Hopewell, Director Kik indicated there were design standards in the Downtown and Southtown Design Review Districts and in commercial zoning districts, but there were no design standards in the manufacturing districts. Director Kik explained the site features usually dictated the design of industrial sites, and the Site Plan Review process included a review of environmental factors. Director Kik noted design standards, where present, would not affect existing structures.

In response to comments from Mayor Hopewell, City Attorney Robinson stated applying judgement and discretion in a purchasing context, where the City was a consumer, was different than applying discretion in a licensing context, where the City was a regulator. City Attorney Robinson cautioned that the marihuana industry was well resourced and would take the City to court if they thought there had been an error of discretion.

Review of Proposed
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Facilities (cont'd)

Mayor Hopewell noted the City was in the business of enforcing regulations, and he expressed support for a strong community benefit requirement and design standards for MMF's.

Commissioner Urban stated it would be easier for him to support the MMF ordinances if there were community benefit requirements and design standards.

In response to a question from Commissioner Anderson, City Attorney Robinson confirmed that businesses currently operating under the Michigan Medical Marihuana Act as home-based businesses would continue to do so.

Discussion followed regarding items Commissioners wanted to see added to the ordinance City Attorney Robinson had distributed at the beginning of the meeting.

City Attorney Robinson indicated he heard Commissioners ask that the final provisions/requirements be in the final MMF ordinances: compliance with the City's anti-discrimination ordinance; community outreach; and some type of economic benefit such as job creation.

In response to a question from Commissioner Urban, City Attorney Robinson stated there were no design standards in place for the manufacturing zones, so those would need to be created, or the commercial zone standards would need to be referenced.

Director Kik noted that design standards were applicable to any type of building. Director Kik explained that applying design standards to specific properties would be "spot zoning" which was illegal.

In response to a question from Commissioner Anderson, City Attorney Robinson explained that a "permitted use" meant there were no special permissions required for that particular use in a particular zone, where as a "special use" required the property owner to meet specific conditions set forth in the zoning code. City Attorney Robinson indicated he became concerned when staff or the Zoning Board of Appeals, or the Planning Commission started adding special conditions, as this subjectivity created a risk of being accused of discrimination.

Director Kik offered that a Special Use Permit allowed the City to address the scale of use and make sure that the scale of a particular project was aligned with the surrounding area.

Commissioner Anderson observed that Director Kik and City Attorney Robinson seemed to be describing two different versions of the Special Use Permit.

City Attorney Robinson explained he was looking at Special Use Permits from an academic point of view, whereas Director Kik was looking at Special Use Permits from a practical perspective. City Attorney Robinson stated less discretion meant less risk of legal exposure for the City.

Director Kik indicated there were zoning tools, such as parcel size and setback requirements, that could be used to limit the locations where MMF's were allowed instead of buffer zones and separation distances.

City Attorney Robinson advised Commissioners that the decisions about zoning restrictions were theirs to make, and they could be changed in the future. City Attorney Robinson noted the 1,000-foot separation distance would align Kalamazoo with the City of Portage.

By consensus the City Commission expressed support for regulating the number of Provisioning Center licenses through zoning regulations, including a 1,000-foot separation distance between Provisioning Centers, rather than imposing a "hard cap" on the number of available licenses. By consensus the City Commission also expressed support for the shorter ordinance with language added regarding community benefits.

In response to a question from Commissioner Urban, City Attorney Robinson requested feedback from Commissioners on possible opportunities for requiring a community benefit from licensees.

Mayor Hopewell expressed support for requiring a community benefit from medical marijuana facilities, and he stated the City of Lansing's ordinance included job creation requirements.

Commissioner Urban requested that the updated ordinance include a reminder to businesses that renewal of their license would be contingent them keeping their community benefit commitments.

Next, when an opportunity was given for general citizen comments, the following people addressed the City Commission:

Fritz Brown, non-resident, spoke on behalf of the property developer Treystar and expressed concern about one of their properties that could be impacted by the proposed ordinance.

Finally, an opportunity was given for miscellaneous comments and concerns of City Commissioners, but no comments were offered.

The meeting adjourned at 7:48 p.m.

Respectfully submitted,

Scott A. Borling
City Clerk

For City Commission approval on April 2, 2018

Approved by: _____

Bobby J. Hopewell, Mayor
Dated: April 2, 2018

Review of Proposed
Ordinances Regulating
Medical Marijuana
Facilities (cont'd)

Citizen Comments

City Commissioner
Comments

Adjournment