

Roll Call

A regular meeting of the Kalamazoo City Commission was held on Monday, May 18, 2020 at 7:00 p.m. This meeting was held as an electronic meeting under the authority of Executive Order 2020-48 issued by Governor Gretchen Whitmer.

COMMISSIONERS PRESENT:

Mayor David Anderson
Vice Mayor Patrese Griffin
Eric Cunningham
Jeanne Hess
Erin Knott
Chris Praedel
Jack Urban

COMMISSIONERS ABSENT:

None

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

Invocation

The invocation was given by Michelle Scheidt of the Fetzer Institute.

Adoption of the Agenda

By unanimous consent the City Commission adopted its meeting agenda as presented.

2020-0138

Public Hearing re:
Amendments to the
Zoning Code re: Adult
Use Marihuana Uses

At 7:05 p.m. Mayor Anderson opened a public hearing to receive comments on an ordinance to amend the text of Appendix A and Chapter 50, the Zoning Ordinance, to allow adult use and medical marihuana uses.

City Attorney Clyde Robinson reviewed amendments to the ordinance that were being proposed by staff to clarify changes made at the May 4th meeting and to correct an inconsistency regarding separation distances for Safety Compliance Facilities.

Public comments were received next.

Ryan Reedy, City resident, asked that Retail and Safety Compliance facilities be permitted uses in Zone CCBD.

Sandy, a City resident, asked that the City not allow marihuana businesses to operate in close proximity to churches, parks, and drug rehab facilities.

Joey Kejbou, non-resident, stated the City had broad authority to adopt ordinances regulating the time, place, and manner of marihuana facility operations. Mr. Kejbou asked that the City add buffers around churches and drug rehab centers for adult use marihuana establishments. Mr. Kejbou expressed concern about oversaturation in the marihuana market and stated oversaturation would work against the City's social equity goals.

Omar Fakhouri, non-resident, indicated the City's proposed ordinance was one of the most lenient in the state. Mr. Fakhouri asked that buffers be expanded to libraries, parks, and churches. Mr. Fakhouri spoke about the dangers of market oversaturation.

At 7:19 p.m. Mayor Anderson closed the public hearing.

Commissioner Hess, seconded by Commissioner Knott, moved to adopt an **ORDINANCE** to amend the text of Appendix A and Chapter 50, the Zoning Ordinance, to allow adult use and medical marihuana uses.

Commissioner Urban, seconded by Commissioner Cunningham, moved to amend the proposed ordinance by adding the following definitions to Section 50-1.3:

PLAYGROUND means any outdoor facility (including any parking lot appurtenant thereto) intended for recreation, open to the public, and with any portion thereof containing three or more separate apparatus intended for the recreation of children including, but not limited to, sliding boards, swingsets, and teeterboards.

YOUTH CENTER means any recreational facility and/or gymnasium (including any parking lot appurtenant thereto), intended primarily for use by persons under 18 years of age, which regularly provides athletic, civic, or cultural activities.

And by adding the phrase “except Safety Compliance Facilities” to the end of the introductory clause of Section 50-4.4 F (1) (b).

With a roll call vote the motion to amend the proposed ordinance passed unanimously.

AYES: Commissioners Cunningham, Hess, Knott, Praedel, Urban, Vice Mayor Griffin, Mayor Anderson

NAYS: None

Commissioner Praedel thanked City staff for their work on these ordinances, and specifically City Planner Anderson for the data and maps she provided regarding the impact of adding playgrounds, community pools and youth centers as buffered uses. Commissioner Praedel stated the addition of these buffered uses was a good compromise between input received from the community and the City’s social equity goals.

Mayor Anderson reviewed the history of the proposed marihuana ordinances and asked staff if they had any comments in response to Mr. Reedy.

City Attorney Robinson explained the Planning Commission removed the CCBD Zone as a permitted zone for marihuana uses because the City would be initiating a comprehensive review of downtown zoning, and the Planning Commission did not want to create a situation that could result in non-conforming uses.

City Planner Anderson stated the downtown zoning review could probably be done over the summer, with a proposed ordinance ready for action by early fall.

With a roll call vote the motion to adopt the ordinance, as amended, passed unanimously.

AYES: Commissioners Cunningham, Hess, Knott, Praedel, Urban, Vice Mayor Griffin, Mayor Anderson

NAYS: None

2020-0138

Ordinance 2007
Amending the Zoning
Code re: Adult Use
Marihuana Uses

Public Comments

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

Linda, a City resident, stated she was asthmatic and asked the City to regulate marihuana use in apartment buildings.

Brian, a City resident, expressed concern about oversaturation of the marihuana market in Kalamazoo and what this would mean for the career prospects of marihuana business employees.

Linda, a City resident, asked that the City Commission use legislation to protect vulnerable people from marihuana use by others.

City Attorney Robinson explained state statute did not authorize marihuana use in public places or in places where the property owner had prohibited its use. City Attorney Robinson noted there was a county ordinance prohibiting cigarette smoking within proximity to doors and windows, but it referred to smoking tobacco, not marihuana.

Consent Agenda

Consent Agenda items were presented as follows with a recommendation to approve the items and authorize the City Manager to sign all documents on behalf of the city:

2020-0139

- approval of a sole source purchase in the amount of \$115,275.00 with Solterra Group, LLC of Newark, DE to purchase odor suppressant chemicals.

2020-0140

- approval of the resolution of a settlement for a dispute with AT&T that will result in credits to the City's accounts in the amount of \$157,071.16.

2020-0141

Resolution 20-28

- adoption of a **RESOLUTION** confirming the 2020 Assessment Roll.

2020-0142

Resolution 20-29

- adoption of a **RESOLUTION** approving the request of the Downtown Development Authority to levy a tax rate of 1.9638 mills.

2020-0143

Resolution 20-30

- adoption of a **RESOLUTION** supporting pursuit of any needed approvals and funding to design and build U.S. 131 interchange as recommended by Michigan Department of Transportation.

2020-0144

- acceptance of a 2020 grant award in the amount of \$39,749 from the Office of Highway Safety Planning for pedestrian and bicycle safety enforcement and education.

2020-0145

- acceptance of the 2019 Bulletproof Vest Grant award in the amount of \$25,756.92 from the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance.

Commissioner Knott, seconded by Commissioner Cunningham, moved to approve the consent agenda requests and authorize the City Manager to sign all documents on behalf of the City.

With a roll call vote this motion passed unanimously.

AYES: Commissioners Cunningham, Hess, Knott, Praedel, Urban, Vice Mayor Griffin, Mayor Anderson

NAYS: None

Regular Agenda Items were considered next.

Commissioner Urban, seconded by Commissioner Cunningham, moved to adopt an **ORDINANCE** to amend Chapter 20B of the Kalamazoo City Code to provide for the permitting and regulation of adult-use marihuana businesses.

With a roll call vote this motion passed unanimously.

AYES: Commissioners Cunningham, Hess, Knott, Praedel, Urban, Vice Mayor Griffin, Mayor Anderson

NAYS: None

Commissioner Cunningham, seconded by Commissioner Hess, moved to adopt a Social Equity Policy for Marihuana Businesses; and a **RESOLUTION** setting the annual fees for Marihuana Business Operating Permits.

Commissioner Cunningham, seconded by Commissioner Urban, moved to amend the proposed Social Equity Policy by adding the following language as a third bullet point under sections B(1) and B(2): "An applicant, or a majority of the applicant-owners is an African American City resident for the 3 years prior to applying for a marihuana business permit."

Commissioner Cunningham explained the purpose of his amendment was to allow for a larger pool of social equity applicants.

Prior to a vote on the motion and in response to questions from Commissioner Knott, City Attorney Robinson recommended against approving the amendment because it made a classification based on race, which was unconstitutional under the 14th amendment. City Attorney Robinson stated approval of the policy amendment would likely lead to litigation, and the City would probably not prevail in that litigation based on current case law. City Attorney Robinson indicated the proposed amendment would not have a direct impact on the lawsuit pending against the City, but approval of the policy amendment might require changes to the zoning ordinance to make sure the policy and ordinance were synchronized. City Attorney Robinson explained that modifications to the zoning ordinance would be substantial changes that could not be adopted until the next meeting in two weeks, and this timing could impact the judge's ruling in the current lawsuit. City Attorney Robinson reported there were a variety of cases at the state and federal level involving contracting and education in which the courts had struck down the granting of preference based on suspect classifications.

Commissioner Praedel stated Commissioner Cunningham knew the challenges involved with his amendment, and his decision to bring it forward, despite the challenges, demonstrated his level of concern regarding the disproportionate impact of marihuana laws and enforcement on people of color and African Americans. Commissioner Praedel expressed admiration for Commissioner Cunningham and stated his motion was courageous.

2020-0146

Ordinance 2000 re: the Permitting and Regulation of Adult Use Marihuana Businesses

2020-0147

Adoption of a Social Equity Policy for Marihuana Businesses and Resolution 20-31 re: Fees for Marihuana Business Operating Permits

2020-0147

Adoption of a Social Equity Policy for Marihuana Businesses and Resolution 20-31 re: Fees for Marihuana Business Operating Permits (cont'd)

Commissioner Urban stated it was unfair to ignore the disparities in how people of color will have access to the marihuana industry. Commissioner Urban stated the City Commission needed to address the issue of racial disparities but questioned whether access to a morally questionable industry was the best opportunity. Commissioner Urban stated he would vote no on the amendment.

Commissioner Hess stated the City Commission needed to address the issue of race but noted the legal fees would be high at a time when the City was facing budget challenges. Commissioner Hess expressed support for allowing the current social equity provisions to have an impact.

In response to a question from Vice Mayor Griffin, City Attorney Robinson stated the zoning ordinance included separation distances for people who qualified under the Social Equity Policy, so changes to the qualifying criteria in the policy would require changes in the zoning ordinance.

Vice Mayor Griffin noted there were no constitutional protections when people of color were disproportionately impacted by marihuana enforcement. Vice Mayor Griffin asked Commissioners when the time would be right to press for change on the issue of racial disparities. Vice Mayor Griffin stated people will say, "Not this time," and "Maybe when the next issue comes along," but then years pass, and communities are devastated. Vice Mayor Griffin expressed respect for Commissioner Cunningham for being bold and trying to take advantage of an opportunity to bring about change.

Commissioner Cunningham stated he had met with his colleagues, when staff were present, to discuss this issue, and it was the consensus that everyone was passionate about addressing racial disparities. Commissioner Cunningham stated the City Attorney had told him the amendment would not be a substantial change, and now he was saying it would be a substantial change.

Mayor Anderson stated the City Commission was in a heartbreaking position, as the existence of generational inequity was an indisputable fact. Mayor Anderson noted Commissioner Cunningham had been transparent, comprehensive and inclusive in his outreach and discussions with Commissioners and staff on this issue. Mayor Anderson stated there was a lot of work to be done.

With a roll call vote the motion to amend failed 2-5.

AYES: Commissioner Cunningham and Vice Mayor Griffin

NAYS: Commissioners Hess, Knott, Praedel, Urban, Mayor Anderson

At the time of the vote, Commissioner Urban indicated he had experienced technical difficulties that prevented him from hearing the previous four minutes of the meeting.

With a roll call vote the motion to adopt the Social Equity Plan and fee resolution passed unanimously.

AYES: Commissioners Cunningham, Hess, Knott, Praedel, Urban, Vice Mayor Griffin, Mayor Anderson

NAYS: None

Chief Financial Officer Steve Vicenzi delivered a presentation entitled *Budget Impacts*, which provided an overview of projected budget shortfalls for Fiscal Year 2020 due to the COVID-19 pandemic. CFO Vicenzi also reviewed proposed employee furloughs through the federal Work Share Program. A copy of the slides from this presentation was filed with the papers for this meeting.

In response to questions from Mayor Anderson, CFO Vicenzi explained the state had two revenue estimating conferences each year, and he stated the furloughs would be in effect through the third week in July.

City Manager Ritsema reported the City Administration was looking to reopen City facilities beginning June 1st with the following limited hours: Monday, Tuesday, and Thursday – 9:00 a.m. – 3:00 p.m.; Wednesday – 12:00 – 6:00 p.m.; and Friday – 9:00 a.m. – 1:00 p.m.

Finally, an opportunity was given for miscellaneous comments from City Commissioners.

Commissioner Cunningham stated the vote against his amendment to the Social Equity Policy did not mean the City Commission was against social equity, and he cited reasons why Commissioners may have voted against the amendment. Commissioner Cunningham discussed how social equity ideas were built into the adult use marihuana law approved by voters in 2018. Commissioner Cunningham noted when the racial minorities on the Commission thought it was the right issue and right time to address racial inequity, it was something to be considered. Commissioner Cunningham suggested the City could have found someone to donate funds to fight a lawsuit. Commissioner Cunningham stated it was his expectation there would be a deeper dialogue about the economic recovery from COVID-19. Commissioner Cunningham remarked on the death of Vonte Griffin and asked that the community continue to have a discussion around gun violence.

Commissioner Urban expressed frustration that his audio failed at an important moment in the meeting.

Commissioner Hess thanked Commissioner Cunningham for his courage and his voice. Commissioner Hess stated this was a watershed moment, and she was looking forward to working with Director of Diversity, Equity, and Inclusion Dorla Bonner on social equity issues. Commissioner Hess noted May was National Mental Health Awareness Month, and she stated there would be a discussion about how COVID-19 was affecting people of color.

Commissioner Knott remarked on a statewide petition drive to amend the Elliot-Larsen Civil Rights Act, and she urged people to sign an electronic petition at fairandequalmichigan.com.

Commissioner Praedel offered remarks about people who were being laid off from their jobs and were facing income insecurity. Commissioner Praedel stated the City would need to be creative to ensure people in the community had what they needed to live after COVID-19. Commissioner Praedel expressed condolences to Commissioner Urban on the death of his wife Carol. Commissioner Praedel reported Michigan currently ranked 4th in Census responses, which was good, but community leaders needed to keep pushing to make sure everyone was counted. Commissioner Praedel noted June was National Anti-Bullying Month. Commissioner Praedel thanked staff for their work on the marihuana ordinances.

2020-0148

City Manager's Report
– Budget Update

City Commissioner
Comments

City Commissioner
Comments (cont'd)

Vice Mayor Griffin urged people to continue to wear masks and be kind to each other. Vice Mayor Griffin thanked staff for their work on the marihuana ordinances. Vice Mayor Griffin noted marginalized people were often expected to be the change agents when they achieved positions of power, and this meeting was an example of the fact that creating change was not easy.

Mayor Anderson expressed condolences to Commissioner Urban on the death of his wife Carol. Mayor Anderson urged people to recognize in a deep way the work that still needed to be done to make the world a better place.

Adjournment

The meeting adjourned at 8:46 p.m.

Respectfully submitted,

Scott A. Borling
City Clerk

For City Commission approval on November 16, 2020

Approved by: _____
David F. Anderson, Mayor
Dated: November 16, 2020

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