



## Committee on Legislative Matters and the Northampton City Council

### Members

*Councilor William H. Dwight, Chair*

*Councilor Maureen Carney*

*Councilor Alisa F. Klein*

*Councilor David A. Murphy*

### MEETING MINUTES

**Date: February 27, 2018, Time: 7:00 pm**

**Location: City Council Chambers, 212 Main St., Northampton, Massachusetts**

1. **Meeting Called to Order and Roll Call:** At 7:01 p.m., Councilor William H. Dwight called the meeting to order. On a roll call, the following councilors were present: Councilor Carney, Councilor Dwight, Councilor Klein and Councilor Murphy.

Councilor Dwight asked for a moment of silence to reflect on the recent loss of state Representative Peter Kocot.

Councilor Dwight announced that the meeting was being audio and video recorded for broadcast by Northampton Community Television.

2. **Public Comment:** Councilor Dwight informed those present that, rather than having public comment up front, he would accept public comment as they go through the items so people can speak to specific items and their concerns relative to those. The focus of tonight's meeting is limited to zoning, he reminded.

3. **Approve Minutes of February 12, 2018**  
Councilor Carney moved to accept the minutes of February 12, 2018. Councilor Klein seconded. The motion passed unanimously 4:0.

4. **Public Hearing on Proposed Zoning Changes**  
Councilor Dwight read the public hearing notice published in the Daily Hampshire Gazette on February 13th and February 20th per M.G.L. Chapter 40A, Section 5.

Councilor Klein moved to open the public hearing. Councilor Murphy seconded. The motion passed unanimously 4:0.

Senior Planner Carolyn Misch gave a Powerpoint presentation as an overview of the package of zoning changes. The zoning amendments related to retail marijuana sales and marijuana production deal with land

use regulations to incorporate retail marijuana, she confirmed. Northampton has regulations that address medical marijuana production and sales, so city officials need to add the component of retail sales by amending various sections of the zoning ordinance, such as Definitions, Tables of Use, etc.

If planners didn't do anything, marijuana retailers would simply be treated as a retail use which could take place in any zone where retail is allowed.

For definitions, it is necessary to establish definitions for medical, retail and production, she explained. Marijuana production is currently allowed in General Industrial (GI) and Office industrial (OI) districts by right except in the case of new construction. Outdoor cultivation is allowed in the Water Supply Protection (WSP), Special Conservancy (SC), Rural Residential (RR) and Suburban Residential (SR) districts. Outdoor growing could potentially be approved anywhere there are agricultural fields or enough room to grow, she confirmed.

Retail sales are allowed in the Central Business (CB), Entrance B (EB), General Business (GB) and Highway Business (HB) districts, she advised.

Misch displayed a slide depicting the 200-foot buffer zones around existing schools. All commercial districts are outside of these buffer zones, so retail marijuana sales could not occur within the buffers, she stressed. Under the zoning proposal, retail sales would be prohibited within two hundred feet (200') of grades K-12, in residential districts, in pre-existing non-conforming buildings and in non-retail districts, she clarified.

Misch described other proposed zoning changes as follows:

- Reformatting the Table of Use for the Office/Industrial (OI) district, including moving the reference to marijuana production from the 'Definitions' section to the Table of Use. Other changes include adding flexibility to allow new residential uses above the 1<sup>st</sup> floor, allowing a broader range of uses in historic buildings such as restaurants, reducing the parking requirements for the reuse of historic buildings and allowing retail self-storage (self-storage is currently only allowed in HB). In addition, planners propose eliminating the Special Permit requirements for solar arrays.
- Changing the General Industrial (GI) Table to reformat the table, move marijuana production from 'Definitions' to the Table of Use, allow industrial warehousing up to 25,000 s.f., eliminate the Special Permit requirement for solar photovoltaic (PV) arrays and eliminate existing language relative to the reuse of churches and schools.
- Eliminating commercial storage in the HB district, since it is being moved to OI.

- A. 18.027 An Ordinance Relative to Zoning and Marijuana - referred to Committee on 2/1/2018  
Councilor Dwight reviewed the proposed change to Section 2.1 of the zoning ordinance to replace the single definition for "Medical Marijuana" with the following three definitions: "Marijuana, Medical," "Marijuana, Production" and "Marijuana, Retail."

The deletion of text from the "Medical Marijuana" definition is because planners are distributing the Medical Marijuana use in the Tables of Use for the districts where the use is allowed, Misch noted.

### **Public Comment**

**Michael D. Cutler of Bridge Road, Northampton**, who identified himself as an attorney practicing law on Conz Street, reminded members that, as of the end of this year, the supervision of medical marijuana will

be moving from the Massachusetts Department of Public Health (DPH). As of 2019, it will come under the animus of the Cannabis Control Commission (CCC) and the section law cited will be repealed and replaced with a new law, Chapter 94I. It might be useful to reference this law, and city officials might also want to reference General Law 94G as the enabling legislation for 935 CMR, he suggested.

Attorney Seewald said he thought it was appropriate to reference the existing oversight agencies. He doesn't think it is appropriate to reference something that doesn't exist yet, he explained.

Members asked questions and offered comments. Councilor Dwight expressed his understanding that hemp is now allowed by right. As he understands it, hemp is being treated like any other benign crop.

Ms. Misch said she has not followed that [legislative process].

Attorney Cutler commented that a session law passed last July created a new category for hemp and hemp licensing. Individuals have to have a state license to be a hemp producer, he advised.

B. 18.033 An Ordinance Relative to Zoning and Marijuana - referred to Committee on 2/1/2018  
Councilor Dwight read the text of the proposed ordinance.

The change says that while zoning allows for Findings for changes in legally pre-existing nonconforming uses, a change to a medical or retail marijuana use would not be allowed because of the relatively high potential impacts, Ms. Misch paraphrased.

C. 18.034 An Ordinance Relative to Zoning and Marijuana - referred to Committee on 2/1/2018  
Councilor Dwight read the text of the proposed change.

This ordinance amends the Tables of Use for the EB, HB and CB districts to show where medical and retail marijuana sales are allowed. It also creates the 200-foot buffer zone she spoke about earlier, Ms. Misch advised.

Councilor Klein asked if requirements for appearance are used for other uses. (i.e. - **Building facades and property must be consistent with the character of the neighborhood, including such items as transparent storefront windows with a view into the interior of the building. Security measures must appear from outside of the building to be consistent with the character of the neighborhood.**)

The only other use that includes this type of language is porn shops, Ms. Misch said. Planners wanted establishments to have a display window that displays something.

Board of Health member **Cynthia A. Suopis, PhD** told members that 200 feet is the minimum buffer established by the state and the same buffer as required for medical marijuana. The buffer zone for retail has to be the same as for medical, she advised. As far as a cap, it could be in zoning but it is not necessarily a land use ordinance, she suggested. It could be a general ordinance. She asked where it fits.

It would have to be a separate city ordinance introduced by a councilor or by citizen petition, Councilor Dwight responded.

**Patricia Malone of 18 Center Street** noted that the maps are pretty hard to see. She asked if they are 'hamstrung' by 200 feet.

It has to match the buffer for the medical use so city officials would have to amend the medical buffer [to increase the retail buffer], Ms. Misch explained.

Ms. Malone said she'd like to see it be more than 200 feet beyond schools.

Councilor Murphy said he couldn't think of a school in a zone where it would be an allowed use with the exception of HEC academy. Mrs. Misch confirmed that is the case.

**SPIFFY Coalition Coordinator Heather Warner** noted that Amherst and Easthampton are creating buffer zones around a few other establishments. Maybe they don't want a dispensary around the Academy of Music or a new treatment center, she suggested. She wondered if there were a few other places for which they might consider buffers. As a parent, she is a little upset that there are no caps, especially downtown. She would like to consider other places in the city near which they would not site dispensaries.

Councilor Dwight asked if SPIFFY had any data about the efficacy of buffer zones.

Ms. Warner said she would see if she could get any information on this subject.

Attorney Seewald pointed out that, under Chapter 40A, zoning districts have to be uniform. The legislature has given authority to create buffer zones around schools K-12. Planners have to be careful not to violate the uniformity of zoning districts, he advised.

Mr. Cutler said he thinks it is fair to look at what cities do with zoning for alcohol and tobacco. There is robust data in mature reform states that show that adolescent use has not increased, he asserted.

With regard to data, some of the data collected in Colorado is statewide, whereas, in communities where marijuana is actually sold, there is an increase in use, Ms. Warner responded.

**D. 18.035 An Ordinance Relative to Zoning and Marijuana - referred to Committee on 2/1/2018**

Councilor Dwight read the text of the new language. The proposed change adds "Open/Outdoor Marijuana Cultivation" to the list of allowed uses in the RR, SR, WSP and SC zoning districts.

Given that it is New England, she doesn't know that outdoor cultivation would be competitive with an indoor facility, Ms. Misch observed. The intention of the ordinance is to allow this as an option if someone thought it would be a viable use of land.

Most cultivation in New England will probably be limited to indoors, Councilor Dwight agreed.

**E. 18.036 Ordinance to Amend HB Table of Use to Delete Commercial Storage - referred by City Council 2/15/2018**

Given the evolution of Northampton's HB districts to more multi-access and multi-use by bicyclists and pedestrians, HB may no longer be appropriate for those uses that have little day-to-day use and are more appropriate for industrial areas, Councilor Carney observed.

F. 18.037 Ordinance to Reformat GI Table with Other Minor Changes - referred by City Council 2/15/2018

This zoning change is not directly related to marijuana, Councilor Dwight noted.

G. 18.038 Ordinance to Reformat OI Table and Allow Flexible Reuse of Historic Mill Buildings - referred by City Council 2/15/2018

Ms. Misch reiterated that the primary purpose is reformatting. Also, a lot of the old mill buildings are zoned OI, and there are several buildings that are hard to reuse. The idea of the change is to add other components to the uses that would help generate income that would offset the expenses required to update and rehabilitate these buildings. Marijuana production is already allowed, they are just moving it to the table of use, she clarified.

Given the electrical and watering needs for marijuana cultivation, Councilor Klein wondered if these locations could support what is needed for the production of marijuana.

The district isn't limited to old mill buildings, Ms. Misch noted. There are other properties within OI that could be developed. This is to pull back some of the regulatory impediments to using the buildings. It would be up to a potential developer to take those issues into consideration, she pointed out.

Councilor Murphy asked if it would make it easier for live/work arrangements.

The Planning Board voted unanimously to recommend the whole package, Ms. Misch reported.

**Patrick Boughan of Ward 5, Vice Chair of the Housing Partnership**, spoke in support of the change being proposed for historic mill buildings, particularly for the proposal to allow residential above the first floor. 40% of renters are 'cross burdened,' meaning they pay over a certain percentage of their income in housing costs. He gave other statistics intended to demonstrate the gap in the affordability of housing in Northampton. Anything we can do to increase the housing stock [is helpful], he indicated.

He thanked the Planning Department for bringing this forward.

Ms. Malone said she is interested in a map that includes Florence Center. She wondered aloud if she missed the opportunity to weigh in on how retail marijuana gets developed. She is concerned Florence Center could become a default location for a disproportionate number of dispensaries. Another concern would be siting dispensaries near some of the housing that supports recovery and libraries, etc.

Whatever gets approved, there will still be opportunities to modify and change zoning, Councilor Dwight assured. This is the recommendation, he explained. He hasn't heard any proposal for modification.

Ms. Malone asked councilors to think in advance of what this is going to be like for residents.

Signage is strictly controlled under the state regulations, so there won't be big flashing signs with marijuana leaves. It won't look all that different, Attorney Cutler suggested. The state will be vetting applicants very closely, he added.

Councilor Dwight asked him to describe the vetting process.

The state statute says that in addition to any Special Permit that may be involved, if the town feels there may be a need for further regulation of the use, it can be spelled out in the host agreement.

There being no further public comments, **Councilor Klein moved to close the hearing. Councilor Murphy seconded. The motion carried 4:0.**

**Councilor Murphy moved to send 18.027, 18.033, 18.034, 18.035, 18.036, 18.037 and 18.038 to the full City Council with a positive recommendation. Councilor Carney seconded. The motion passed unanimously 4:0.**

5. 17.265 An Ordinance Relative to Taxis and Vehicles for hire - continued from 2/12/2018 LM meeting

The last time committee members were all together to discuss this, the Sealer of Weights and Measures, John Frey, brought up some points they hadn't discussed, Councilor Sciarra related. He had two primary concerns:

- The margin of error for metering with phone apps was too large for comfort
- A segment of the population (elderly, etc.) have set rates with taxi drivers for regular trips and the ordinance as proposed would negatively impact them by making it no longer possible to get transportation at a cost they could afford.

As a result, the sponsor, Police Chief Kasper, has removed the provision for allowing GPS Smart Phone Apps to serve as meters. Proponents also added the caveat that a company based in another community could not both pick up and drop off a fare within Northampton.

Attorney Seewald said he thought the changes were thoughtful. Last year, there was a decision not to regulate outside cabs. One of the cab owners complained that he was the only one running on taxi plates and that all the other operators were running on livery plates but were operating as taxis. He thinks that they have created a much better ordinance and that Mr. Frey's suggestions are good ones. The revised ordinance accomplishes the goal of making a distinction between taxis and livery services, he added.

**Councilor Murphy moved to forward the measure to the council with a positive recommendation. Councilor Klein seconded. The motion passed unanimously 4:0.**

**Upon motion made and seconded, the meeting was adjourned at 8:51 p.m.**

*Prepared By:*

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