



Joint Meeting of the Planning Board and City Council Committee on Legislative Matters and the Northampton City Council

Members

Councilor William H. Dwight, Chair
Councilor Alisa F. Klein, Vice Chair
Councilor Maureen Carney
Councilor David A. Murphy

MEETING MINUTES

Date: May 23, 2019

Time: 7 p.m.

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

1. **Meeting Called to Order and Roll Call:** At 7:03 p.m., Planning Board Chair Tess Perrone Poe called the meeting to order. On a roll call, the following councilors were present: Maureen Carney, Alisa Klein and David Murphy. **Absent:** William H. Dwight. Also present were City Solicitor Alan Seewald and Senior Planner Carolyn Misch.

Planning Board Members: Tess Perrone Poe, Terry Culhane, Euripedes DeOliveira, George Kohout and Samuel Taylor.

Ms. Poe asked if there was any general public comment. There being none, she opened the public hearing.

3. **Public hearing on proposed zoning changes**

Public Hearing Notice published May 9, 2019 and May 16, 2019 per M.G.L. Chapter 40A, Section 5.

The amendments before them are to address three main issues that have arisen since adult use marijuana ordinances were first adopted, Ms. Misch explained. First, planners did not include a specific provision for testing labs for testing marijuana products. Since marijuana sales are carved out separately from other uses, it wouldn't be appropriate to assume testing falls under another more general category of use.

- A. **19.054 An Ordinance Allowing Marijuana Testing and Processing in Core Business Districts - referred by City Council 5/2/2019**

Ms. Misch reviewed the ordinance, which allows testing labs above the first floor and behind a street-front unit. This restriction mirrors the requirements for other uses not considered appropriate for store fronts.

The City Council Committee on Community Resources (CRC) discussed the ordinances at its meeting Monday, and their questions focused on the potential for smell and whether heating is part of the processing/testing, Councilor Klein reported. Specifically, they wondered if there was a need for equipment to filter

the effluvia that would result as a result of the testing process. Ms. Misch consulted outside sources and got back to her. Apparently, there is very little heating, and resultant smells would be minimal, Misch said.

Mr. Taylor pointed out that THC burns at a lower temperature than the plant and does not produce the same smell as the plant when burning. The characteristic smell comes from the burning of the plant leaves, he noted.

Ms. Misch informed members that someone in the process of getting a license was present in the audience, so she is available for questioning.

Mr. Culhane asked if there is a provision for remedying the situation if, after the fact, neighbors object to the smell.

The other ordinances have a specific requirement that air filtration systems be installed to remove smells, Ms. Misch advised. It is not a subjective measure, rather, it is a proscriptive measure for what applicants need to do to extract those smells.

Mr. Culhane said his daughter lives in Denver and can easily smell pot from the facilities there as she is driving along.

In order to address odors, the Planning Department is suggesting ordinances require a mechanism that will extract smells and not allow them to escape from the building, Ms. Misch explained. The idea is to get very specific about the mechanism required so people don't get into a dispute about whether there is a noxious odor.

There are both private remedies and DEP regulations that apply in the event of odor complaints, Attorney Seewald added.

Ms. Perrone Poe asked if people felt it was more efficient to go ordinance by ordinance or to take the ordinances as a group. Councilor Carney said she would like to deal with all five, then hear from the public.

Applicants can't apply for a state license unless they have local sign off that the use is allowed by zoning, Ms. Misch said, in response to a question from Perrone Poe.

Massachusetts General Law (M.G.L.) Chapter 94G, Section G prohibits cities and towns from passing regulations that make marijuana establishment 'unreasonably unpracticable,' Attorney Seewald advised.

Mr. Taylor asked why a testing lab has to be behind another unit.

It's about street activity, Ms. Misch explained. It is considered a back office use that doesn't generate the same kind of vibrancy on the street front as a restaurant or café.

Councilor Murphy asked why a testing lab couldn't be allowed below grade in addition to above the first floor. He noted there are two medical buildings on Locust Street that both have labs in the basement.

Ms. Misch said she would agree. She offered to add the words 'below grade.'

B. 19.055 An Ordinance Allowing Marijuana Production/Cultivation, Testing and Processing in the PV District - referred by City Council 5/2/2019

Planners never included a provision for marijuana production/cultivation, testing and processing in the Planned Village (PV) district, so this is to correct that oversight, Ms. Misch explained. She reviewed the requirement for high efficiency particulate air handlers with activated carbon filters and exhaust systems. .

The ordinance specifies what to use because this is what has been determined to be most effective in eliminating cannabis odors. This language is mirrored in the other ordinances, she noted.

At the CRC meeting, the question came up about enforcement and members discussed that the Building Commissioner would be called in if there were complaints, Councilor Klein shared. The only other question was the proximity of residences to this area. This district fronts on Earle Street and there are residences on the other side of the street. There was a question as to whether a 10' stack was sufficient, and it was discussed that it should be since the residences are at a lower grade.

Members asked questions and offered comments.

Mr. Kohout asked how the public was notified of the new use in the district. Residents were notified of the public hearing via the legal notice, Ms. Misch responded.

C. 19.056 An Ordinance Amending the Requirements for Medical Marijuana Operations by Adding Air Filtration - referred by City Council 5/2/2019

This ordinance is adding the requirement for air filtration to medical marijuana operations since zoning still distinguishes between medical and recreational marijuana, Ms. Misch explained. It adds the requirement for air handlers for medical marijuana.

D. 19.057 An Ordinance Amending the Requirements for Marijuana Manufacturing in the OI and GI Districts by Adding Air Filtration - referred by City Council 5/2/2019

This adds the air handling requirement to adult use marijuana, Misch said.

E. 19.058 An Ordinance Clarifying the Provisions for Outdoor Growing of Marijuana - referred by City Council 5/2/2019

A special permit is required for outdoor growing, Ms. Misch reminded. In discussing specific applications, questions arose about whether buildings are allowed. This adds language to clarify the types of structures allowed on site.

The intent is to be very explicit to growers to say they can only have an accessory building. Everything is intended to be outdoors. The provision is intended to allow farmers or growers to possibly convert some of their farmland for this purpose.

The CRC wanted to eliminate the word 'processing,' she related.

Councilor Murphy said he might suggest the whole months of April and May be allowed for starting structures since they have been known to have frost later in May.

Ms. Misch said she had no objection.

There was a question about whether there would be a possibility of outdoor grow lights and how that would affect neighbors, Councilor Klein volunteered. In Leeds, there is a proposal for outdoor growing on Kennedy Road which is literally between two houses. There's been a lot of concern about what the outdoor building is going to look like and whether there are going to be lights.

Ms. Perrone Poe asked if it would already come before the Planning Board on Site Plan Review, and Ms. Misch confirmed that it would. Ms. Misch stressed that this is a special permit so all of those features would be evaluated by the board.

Lighting and the shielding of lighting is in basic zoning, Councilor Murphy pointed out.

Ms. Perrone Poe opened the floor to public comment.

Mark Warner said he has been following this issue for a while and had an Op Ed piece in the Daily Hampshire Gazette in February. He has made a couple of statements to the City Council and it is with great delight that he sees they are taking up this issue. He supports Ms. Misch's proposal in 19.055, 19.056 and 19.057, he confirmed. It is important to get going [to enact zoning] and he hopes it can get going very quickly.

With regard to odors, "It is still something that undermines the quality of life for neighbors half a mile away," he contended. In southern Ontario, they are finding that people are abandoning their properties due to odor problems and other communities are rushing to get ordinances in place.

He is surprised that they are not requiring air handling systems for outdoor growers. He encouraged them to take the step to make sure odors are not associated with outdoor cultivation. Just a few weeks ago, Hadley passed an ordinance saying there will be no outdoor growing in Hadley because they have an ordinance to control odors and there is no way to control them except in a facility. Shelburne is going to allow the outdoor cultivation of marijuana, he asserted.

Mr. Warner urged members to put in place a new ordinance prohibiting outdoor growing. "Wait a year from now and see what the experience of Shelburne is," he suggested. He thinks it would be in the community's best interest. He ended by encouraging them again to 'take the next step.'

"I hope you don't miss this opportunity," he concluded.

Meghan Dobrow of Leverett identified herself as a scientist and CEO of one of the upcoming testing labs. She wanted to give a brief summary of testing labs, she said.

The testing lab will have five major instruments testing for cannabinoids, etc. Out of five machines, three of them are using liquids so there is no gas or vapor to filter out in the air. The others use the amount of liquid that would fit in a coffee mug.

Testers work within hoods that have filters in them. The amount of cannabis they have in the lab at any one time is about \$100 worth of product. "It's so, so tiny," she stressed. They're testing a gram at a time. They have to follow regulations of the Cannabis Control Commission (CCC), ISO, OSHA and DEP for waste management, fume mitigation, etc.

She consulted with someone who started and built a lab in Martha's Vineyard and confirmed that there's absolutely no odor that comes out of the lab.

With regard to heating, there is a little bit of heat that is used to help to break apart the compounds within the machines but there are no fumes that come out of that.

Ms. Perrone Poe asked from her perspective whether air-handling seemed appropriate.

It wouldn't apply to them as a testing lab but they have to comply with other regulations that require filters on equipment.

Mr. Taylor asked how many jobs are created by the business.

They need three chemists and a receptionist, Ms. Dobrow said. Right now, testing is the bottleneck of the industry in Massachusetts, she volunteered. There are far too few testing labs.

Ms. Perrone Poe asked if they could do testing in a basement, and Ms. Dobrow said they do need to vent the machines.

With regard to 19.055 An Ordinance Allowing Marijuana Production/Cultivation, Testing and Processing in the PV District, Councilor Murphy asked if testing labs needed vents that force air at least 10' above the roof line of the building.

Ms. Misch said she would suggest that the language be amended to say "all **manufacturing/cultivation** facilities must incorporate both high efficiency particulate air handlers with activated carbon filters and exhaust systems..." instead of "all facilities..." The intent was not to apply the air filtration requirement to testing and cultivation, she clarified.

Chemists are using only a small amount of solvent per day, what would fit in a coffee mug, Ms. Dobrow reiterated.

The recommendation is not to have the onerous air filtering requirement on testing, Ms. Perrone Poe clarified.

There being no further public comment, Mr. Kohout moved to close the Planning Board public hearing. Mr. DeOliveira seconded. The motion passed unanimously 5:0 by voice vote.

Councilor Carney moved to close the Legislative Matters Committee public hearing. Councilor Murphy seconded. The motion passed unanimously 3:0 by voice vote with Councilor Dwight absent.

The public hearing was closed at 7:58 p.m.

DISCUSSION

Ms. Perrone Poe wondered if would be appropriate to limit the size of outdoor cultivation.

Ms. Misch said she thought that would be a conversation for a later date.

Attorney Seewald said he is comfortable that it does not constitute 'unreasonable' regulation if what they are doing is regulating because of concern about odors from outdoor cultivation.

Mr. Taylor said he honestly doesn't see odors as a legitimate complaint. He mentioned that he drives by farms with manure smells and that there is an odor associated with the Coca Cola plant. "To me that's a bizarrely subjective thing," he commented. "I think we're exaggerating those smells in reality."

He expressed the opinion that they want to stay away from imposing 'no's' at this point. They have a process to set restrictions on it so he doesn't think a prohibition is needed.

Ms. Perrone Poe expressed willingness to entertain a motion on the package of zoning ordinances with the amendments as described by Ms. Misch. She reviewed the amendments discussed to 19.054, 19.055 and 19.058, noting that there was no change to 19.056 and 19.057.

Mr. Culhane moved to accept the ordinances as amended. Mr. DeOliveira seconded. The motion passed unanimously 5:0 by voice vote.

Councilor Carney moved to forward the ordinances with a positive recommendation as amended. Councilor Murphy seconded. The motion passed unanimously 3:0 with one absent (Councilor Dwight).

5. **Public hearing on proposed zoning changes**

Public Hearing Notice published May 9, 2019 and May 16, 2019 per M.G.L. Chapter 40A, Section 5.

- A. **19.068 An Ordinance to Amend Zoning to Add Definitions of Short-Term Rental and Owner-Occupied Dwelling - referred by City Council - 5/16/2019**
- B. **19.069 An Ordinance to Amend Zoning to Allow Short-Term Rentals in WSP, SC, SR and RR Districts - referred by City Council 5/16/2019**
- C. **19.070 An Ordinance to Amend Zoning to Allow Short-Term Rentals in URA and URB Districts - referred by City Council 5/16/2019**
- D. **19.071 An Ordinance to Amend Zoning to Allow Short-Term Rentals in the URC District - referred by City Council - 5/16/2019**
- E. **19.072 An Ordinance to Amend Zoning to Allow Short-Term Rentals in GB and NB Districts - referred by City Council - 5/16/2019**
- F. **19.073 An Ordinance to Amend Zoning to Allow Short-Term Rentals in the CB, EB, HB and OI Districts - referred by City Council - 5/16/2019**
- G. **19.074 An Ordinance to Amend Zoning to Allow Bed and Breakfasts and Short-Term Rentals in the PV District - referred by City Council - 5/16/2019**

At 8:11 p.m., Ms. Perrone Poe opened the public hearing on Short-Term Rental ordinances.

The whole package is about defining what Short-Term Rentals (STR's) are and where they're allowed and setting up a registration process to coincide with the new state law that will come into effect July 1, 2019, Ms. Misch explained. The ordinances also amend the term 'Tourist Home/Bed and Breakfast' to just refer to the use as 'Bed and Breakfast.'

With regard to the definition of 'owner-occupied dwelling,' the key term is 'domicile,' Attorney Seewald said. A person can only have one domicile and it's wherever the person makes the center of his personal and civic life.

19.069 specifies that STR's be allowed in WSP, SC, SR and RR, Ms. Misch confirmed.

Ms. Perrone Poe asked if there is a fee associated with registration.

Yes, said Ms. Misch. It will just be a one-year registration.

(Mr. Culhane left at 8:22 p.m.)

The other ordinances are allowing STR's by right in additional districts.

Ms. Perrone Poe asked what department will be handling registrations, and Ms. Misch said it would probably start in the Mayor's office.

Ms. Perrone Poe said she feels very happy and comfortable with all of this.

Mr. Taylor asked the difference between an STR and a regular rental. He wondered why the city doesn't have registration for regular landlords.

PUBLIC COMMENT

Maureen Scanlon of 197 Nonotuck Street said she has been an Airbnb host for going on six years. She is watching things change and is very aware that things will change. She knows several other people who are also hosts and are watching the changes play out and trying to figure out how it will impact them. Airbnb's have been a relationship-based, trust-based industry. Massachusetts may be the first state to require registration, she noted.

It is a paradigm shift. She said she would encourage Northampton to take the chance to reach out to people like her who have offered their homes to visitors. She knows this is a community of people who would love to be involved and to have a voice. It does have an impact on their rules as hosts and as people who have opened their doors to people around the world.

With Airbnb, people who ask to stay in the operator's house don't know who the operator is or where he/she is located until the host has done a little vetting. Prospective guests don't have an actual address or full name until they reach an agreement. There's a safety issue from her perspective that will be somewhat lost when they're in a public registry.

Mr. Taylor moved to close the public hearing. Mr. DeOliveira seconded. The motion passed unanimously 4:0.

Councilor Murphy moved to close the public hearing. Councilor Carney seconded. The motion carried 3:0.

The public hearing was closed at 8:42 p.m.

Mr. Taylor moved to approve the proposed zoning ordinance amendments to define STR's and allow them in all zoning districts. Mr. DeOliveira seconded. The motion passed 4:0 (Mr. Culhane absent).

Councilor Carney moved to forward the package with a positive recommendation to the full city council. Councilor Murphy seconded. The motion passed 3:0 with one absent (Councilor Dwight).

6. New Business

None

7. Adjourn

Upon motion made and seconded, the meeting was adjourned at 8:43 p.m.

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