

Special Planning & Development Committee

Wednesday, June 13, 2018 – 5:30 p.m.

Kyrouz Auditorium – City Hall

-Minutes-

Present: Chair, Councilor Valerie Gilman; Vice Chair, Councilor Jen Holmgren; Councilor Paul Lundberg
Absent: None.

Also Present: Councilor Hecht (entered the meeting at 4:12 p.m. and departed the meeting at 4:55 p.m.); Joanne M. Senos; Jim Destino; Gregg Cademartori; Chip Payson; Rick Noonan (entered the meeting at 5:12 p.m.)

The meeting was called to order at 4:05 p.m.

1. *Planning Board Informal Review and Recommendations regarding Zoning for Recreational Marijuana Establishments - to review and discuss the draft marijuana establishment ordinance and proposed Use Table amendments with city staff (Cont'd from 06/06/18)*

Councilor Gilman reviewed and asked for responses for each of the outstanding questions the Committee submitted to the Planning Director, Gregg Cademartori; and General Counsel, Chip Payson, from the June 6, 2018 meeting. They are as follows:

- **Request the administration provide the committee with the document that the Planning Director and the City Solicitor presented to the Planning Board on March 1, 2018. NOTE: Prior to June 6th meeting, Chairperson Gilman had requested the red lined working document from Planning Director, Gregg Cademartori.**
- **Request clarification on whether the CCC's energy specifications for marijuana cultivators are operational recommendations or regulations**
- **Modify the third paragraph in Sec. 5.31-Marijuana Establishments to reflect the most current language – it should say *less than .5*.**
- **Request clarification in regards to what would happen if the City Council was made the permit granting authority (instead of the Planning Board, as stated in Sec. 5.31.4-Use Allowance and Special Permit Procedures), and how that section would work if it were changed to make the City Council the permit granting authority.**
- **Modify the fifth paragraph in Sec. 5.31.4-Use Allowance and Special Permit Procedures to say 500 feet to be consistent with the CCC regulations.**
- **Request clarification on Sec. 5.31.9-Host Community Agreement as to what department the CCC contacts after a license application is made to the CCC, who writes the agreement and how it works in the approval process.**
- **Requested zoning maps are made available to the Committee at the next committee meeting.**

COMMITTEE DISCUSSION:

- **Request clarification on whether the CCC's energy specifications for marijuana cultivators are operational recommendations or regulations**

Chip Payson, General Counsel, reviewed the language in the original draft language to the Planning Board that spoke to energy restrictions that marijuana facilities shall offset 100% of their electricity consumption through at least 50% of on-site generation facilities, New England based renewable energy credits and/or an equivalent that is subject to approval by the city. The Code of Massachusetts Regulations (CMR) for the CCC includes language that requires marijuana establishments have and follow a detailed set of operating procedures such as, policies and procedures for energy efficiency and conservation measures which shall include: 1) Identification of potential energy use reduction opportunities; 2) consideration of opportunities for renewable energy generation; 3) strategies to reduce electric demand; and 4) engagement of energy efficiency programs offered pursuant to MGL Ch. 25, §21 or through municipal light plants. Mr. Payson offered his opinion what Salem did, which both he and Mr. Cademartori based the Zoning Ordinance first draft on -- Salem passed the ordinance "as is" meaning that the first draft that was produced was Salem's final ordinance. The CMR puts standards in place but not particularly detailed energy reduction, or efficiency/energy conservation standards. What was originally proposed was built upon what the regulations said in terms of requirements of the marijuana establishments--the regulations sets a baseline. What was proposed was

stricter and required specific energy reduction requirements to be complied with which the Planning Board eliminated from the draft language. He further opined that the CCC through the regulations addresses and requires certain energy conservation efforts. By doing that the CCC and the state recognize that there's going to be high energy consumption in this industry. Had the CCC left the energy consumption and conservation issues out, then an argument could be made this industry is like any other, but because the CCC included those, in his opinion, the CCC is recognizing that this industry is going to have high energy consumption which is something that cities and towns should pay attention to. He indicated that the question is whether or not the Council is satisfied with the CMR requirements or whether the Council wants to take the next step as the city of Salem did by adding specific energy efficiency standards to be complied with as opposed to the general CMR regulations for marijuana establishments.

Responding to an inquiry by **Councilor Gilman**, Gregg Cademartori, Planning Director pointed out that the requirements enumerated in the current draft of the Zoning Ordinance amendments, whoever the permit granting authority is, will receive all the information that an applicant will be submitting to the CCC for licensure. The way in which applicants have to outline and address how they're going to deal with their energy consumption through the four specifications will have to be provided. It is not setting a standard to be applied, he noted, but that information is parallel just not reinstated in the current draft language. **Mr. Payson** advised that he didn't know that the language out of the regulations was inserted in the original draft because it applies whether it's in the ordinance or not. The ordinance draft did include that "next step" and took a position of going one step further than the CCC and CMR regulations. There are many ways to achieve energy credits; they could pay to buy energy credits, **Jim Destino**, CAO, pointed out that there are different ways to achieve energy efficiency and briefly reviewed what the possible options for a marijuana establishment could do, highlighting one example of placing solar panels on a building. He advised there are options as to how they meet those regulations. **Mr. Payson** pointed out that the language that was in the draft that was stricken listed on-site energy generation facilities; New England based renewable energy credits, or an equivalent that is subject to approval by the city. **Mr. Destino** suggested they may want to leave room to be flexible to allow the businesses to come up with other energy conservation options to limit their energy use in the Gloucester grid.

Councilor Lundberg confirmed there is no language in the current draft language from the Planning Board's informal recommendations about energy efficiency with **Mr. Cademartori** who indicated that the applicants will have to address this issue with the CCC and that package of information will be forwarded to the city for its consideration that the applicant is meeting those standards in the regulations.

Councilor Gilman sought clarity on the Planning Board's decision to remove this language because the Board wanted to make it easy for a non-cultivation business. **Mr. Cademartori** advised it was about an equal application of the standard; that there could be other proposed uses that might come into the Industrial Park that are allowed, as of right, that would not be held to this standard. He assured it wasn't a dismissal that these were uses that were going to have high energy demands. It was more that given the CCC regulations there is a lot of attention to detail to these future businesses that the standards that have been set terms of evaluation and demonstration of dealing with this issue was the level at which it was fair at this juncture rather than setting a new higher standard for one industry that the city doesn't have or any other industry. **Mr. Payson** pointed out that inherent in that conclusion is the fact that there appears to be a belief that it is similar to all the other industries, and because it is similar to all the other industries it shouldn't take this next step. **Mr. Cademartori** suggested that the Board is simply saying that they don't know what might come in as there are a number of as-of-right uses; they don't know what a business's energy demand is categorically by industry, and that this is a new standard. He advised he met with people at National Grid's (NG) headquarters before the discussions were held at the Planning Board, and that this is something they're concerned about on a variety of energy delivery issues. It is for the Council to consider if they want to pursue trying to protect the infrastructure of the city in setting a standard like that. **Councilor Gilman** noted that the state is providing the oversight; what is the benefit to the city including this in the ordinance. **Mr. Cademartori** indicated this would hold them to a higher standard which is what Salem is doing. This was driven by National Grid's comment to the CCC because NG was concerned about it, **Mr. Destino** pointed out. That is the genesis of why the CCC wrote that into their regulations. If the city had two or three cultivation facilities at the Blackburn Industrial Park, he suggested it could be a drain on the city's infrastructure. **Mr. Cademartori** noted that the CCC is trying to raise the bar on energy consumption.

Councilor Hecht asked how much more is the consumption of these marijuana establishments. **Mr. Cademartori** advised he didn't have that information. **Councilor Lundberg** pointed out that there are industries that consume far more energy, and that this is an unknown yet.

- **Modify the third paragraph in Sec. 5.31-Marijuana Establishments to reflect the most current language – it should say *less than .5*.**

Councilor Gilman pointed out this is a small change, suggesting when the Planning Board holds their public hearing it would be good to make a note of this is the current language which the Council approved.

- **Request clarification in regards to what would happen if the City Council was made the permit granting authority (instead of the Planning Board, as stated in Sec. 5.31.4-Use Allowance and Special Permit Procedures), and how that section would work if it were changed to make the City Council the permit granting authority.**

Councilor Gilman referred to the Informal Draft Recommendation dated of May 21, 2018, last page, draft use table amendments: Sec. 2.3.4 (25) Recreational Marijuana Retailer in the Extensive Business district (EB) it is suggested that the permit granting authority be "PB" (Planning Board). **Mr. Cademartori** advised this would have to be mapped all the way through the process -- there would be a use table change and any reference to the Special Permit Granting Authority (SPGA) would be substituted. The question would be whether the Council would treat this as a City Council Special Permit or a CCS in terms of submission requirements. He pointed out that there are already additional requirements that applicants have to make for licensure application with the CCC; and it would be the substitute for identification who the SPGA would be. All of the uses proposed require site plan approval from the Planning Board which wouldn't change. He indicated that procedurally it made sense for the application to be submitted and go concurrently without need for referral to the Planning Board --they'll already have to be in front of them for site plan approval. **Mr. Payson** highlighted that the necessity of a Site Plan Review requires the Planning Board to weigh in which was why the Board suggested that they should be the permit granting authority to create a "one-stop" shopping. He pointed out that if the Council becomes the SPGA it adds extra steps because the application needs to go to the Planning Board and then come back to the Council which adds time. **Mr. Destino** recounted that the Council wanted the city's permit granting to become streamlined pointing out that if there is a Site Plan Review at the Planning Board, then the permit granting authority should be at the Planning Board. He added that the Council is elected officials, and that this isn't the average Special Council Permit as this is not subjective which he briefly expanded upon. **Mr. Payson** added that technically the CCC is the licensing authority but what the SPGA can do is limit it. Where the lines are in terms of denial of a Special Permit which stops the applicant from getting the license, securing their location and opening their business, based on economics; or any of the six criteria under GZO Sec. 1.8.3, that body of law doesn't exist yet. **Mr. Destino** noted it is not that they don't have some oversight and jurisdiction over the special permit but it isn't a usual one because the state plays such a big role in all of it unlike any other Special Permit. It will be the most regulated business ever, he noted, saying it is a long process. **Councilor Lundberg** noted that is all true but it isn't a rubber stamp; they wouldn't have the Building Inspector approve such permits. He suggested that having nine elected councilors say yes after a City Council public hearing is a good thing. He agreed that the Council's discretion is limited, and no one will turn down anything with their ducks in a row, but the applicants should come before the Council.

Councilor Holmgren advised she agreed with Councilor Lundberg because they are elected and the Planning Board is appointed; and while respecting their experience, professional background and commitment, but putting it through the process by vetting it through the Special Council Permit process is the best way to go to her. She added that she didn't want to make it seem it unreasonably impracticable for any applicant. **Councilor Lundberg** pointed out they'll most likely have only three or four retail recreational retail outlets in the city which is capped at three. **Mr. Cademartori** advised that the Planning Board was provided a draft that had the Planning Board as the Permit Granting Authority. He pointed out they didn't decide this but did make the point should the Council choose to consolidate the permit granting, that they were willing to do it. If the Council wants to be the SPGA it was fine, too, he noted. The three categories that aren't proposed to have a Special Permit tied to them will require a Site Plan Review, and will be looking at the same issues for the different uses; if it makes sense to consolidate they will take that on. Salem has the Zoning Board as the permit granting authority. The drafts they looked for modelling before advancing anything to the Planning Board were gleaned mostly from towns rather than cities -- in most towns it is the Zoning Board not the Board of Selectmen who are the SPGA. He pointed out that the Zoning Board of Appeals in the city is a permit granting authority for three-family domiciles, and if there was a variance that was also needed, they'd consolidate the permitting, he pointed out. **Councilor Lundberg** noted when they get to this part they have to make that decision by consulting with the entire Council.

Councilor Hecht noted an article in the Washington (State) Times which highlighted the high energy consumption of cannabis growing facilities and read briefly selected parts of it to the Committee.

Councilor Gilman noted that the CCC did a great job getting information from other states and expressed she is comfortable with the regulations for the protections put in place. She added the CCC has done a good job regulating this in part from lessons learned from other states.

- **Requested zoning maps are made available to the Committee at the next committee meeting.**

A colored map that would be applicable to adult use recreational marijuana outlets was made available to the Committee to view from Mr. Cademartori. He highlighted the Extensive Business districts which would be where recreational marijuana establishments would be allowed. Schools were also identified showing a 250' setback. He noted there are about 105 parcels, all potentially sites that could make sense for someone to pursue a Special Permit, but many of those properties have some constraints. The Planning Board's thinking about from capacity and access of sites, didn't want to invite congestion where areas don't have the capacity to accommodate, same type of thing people are looking to open up to be accessible and visible. He then reviewed some of the parcels saying that the combination of the existing use of property; its accessibility; provision of on-street parking; all these things have to be considered because of a higher standard being applied to this use than typical retail which will eliminate some of these sites. It is modeled after the shopping center which is mostly what is in the EB districts; grocery stores are in shopping centers. Beyond that there are some smaller centers that are multiple tenant locations that may make sense. There was a link on the city's website, he advised, which will call up the zoning map and show EB zones, and clicking on any of those parcels will give the Assessors information. It is up to the property owner in terms of leasing or sale of the property. **Mr. Destino** added as to property owner's willingness to lease space mentioning Shaw's Plaza and Gloucester Crossing. He advised that in a conversation he had with Sam Park of Gloucester Crossing, Mr. Park informed him it will be up to his tenants. He suggested that the most likely places for these establishments are the larger places with empty buildings that have parking. **Joanne M. Senos**, City Clerk, pointed out that there is a day care center at the Shaw's Plaza on Eastern Avenue and there's a play area there also. **Mr. Destino** highlighted that it shouldn't preclude the city from zoning there. **Mr. Payson** and **Councilor Gilman** engaged in a brief discussion as to the issue of possibly adding a higher level of qualifications as Salem did with **Mr. Payson** clarifying it is a notification issue if within 500 feet of a church, institution of higher learning, licensed day care, etc., that the applicant must provide written notice of their intention to these entities to or in conjunction with any request for a Letter of Support or Non-Opposition for a Special Permit. **Councilors Lundberg** and **Gilman** discussed this with **Mr. Payson** and **Mr. Destino** clarifying that there is a Letter of Non-Opposition that has to be with the Host Agreement. **Mr. Payson** advised that the language wasn't in the original draft and is not in the draft that is before the Committee now.

Councilor Gilman noted the 105 parcels are only EB confirmed with **Mr. Cademartori**. She asked for on-street information as to what surrounds these particular parcels. With 105 parcels, **Mr. Cademartori** advised he can't give that much information for that many parcels but that he could obtain a list of the properties with addresses and who owns it. He noted that there is a way in which Councilors and the public can click onto that information on the city's website on a map. Both **Councilors Gilman** and **Lundberg** advised the information on the website was sufficient.

- **Modify the fifth paragraph in Sec. 5.31.4-Use Allowance and Special Permit Procedures to say 500 feet to be consistent with the CCC regulations.**

Mr. Cademartori advised that 250' or 500' doesn't have a lot of impact on retail establishments. He suggested that if they're focusing primarily on the impact to retail, it is a matter of what additional things they think are sensitive receptors to put a setback on. EB districts aren't immediately adjacent to schools in the city. Part of this recommendation from the Planning Board is also to remove those restrictions for the medical uses. They didn't see the necessity to have all those different additional associated setback requirements associated with a medical marijuana facility. **Councilor Gilman** advised she personally is more concerned about retail marijuana recreational use sales locations than medical marijuana uses. Guidance from the CCC is that it is 500' unless the city or town reduces it. There wasn't a lengthy discussion about the recommendation. With some of the knowledge of the potential locations in the EB district it doesn't have a lot of impact either way. If the Council feels strongly he would need to know what those considerations are. Daycare is a state licensed use that changes from time to time. They can do some analysis now but he pointed out that many of them could be home based. He can go based off of the latest state database of licensed facilities advising he did that a year ago but offered they can start to look at it again if it is a consideration. There was some discussion at the Planning Board because the question was for an adult use 21 years of age and older retail operation how does that relates to children of a young age within that distance. He pointed out that the Eastern Avenue daycare facility in Shaw's Plaza has a liquor store in the same plaza. The Board didn't see that as a reason to prohibit a location, he added. **Councilor Gilman** suggested that the 500' buffer would put more people at ease. She read the pertinent CCC regulations to setbacks to the Committee which spoke to being able to regulate changes at a local level.

Councilor Lundberg reminded the Committee that a marijuana establishment is not just a retail store but it can also be the cultivator, the testing facilities, the product manufacturer as well as the retailer, which raises the issue of what is this buffer zone designed to do; why have a buffer zone. He pointed out that there is a state requirement of a buffer zone for schools asking if it was for all marijuana establishments which **Mr. Cademartori** confirmed it was. **Councilor Lundberg** noted that there comes a point where they've reduced it too much and they might be unreasonably eliminating locations; and you can't make an ordinance that unreasonably impracticable -- this too will need to be pointed out to the Council. **Mr. Cademartori** advised it could be that after the Planning Board's public hearing the draft language of the Informal Recommendations could be modified in the Formal Recommendation. What is the delta between K-12 for 500' versus 250' -- what do they lose if they go from one to the other because if they lose nothing then they should keep it at 500'. It is about putting concerned people at ease, she opined.

- **Request clarification on Sec. 5.31.9-Host Community Agreement as to what department the CCC contacts after a license application is made to the CCC, who writes the agreement and how it works in the approval process.**

Mr. Payson advised that according to the CCC from guidance to municipalities in 2017 that the Executive branch would engage with the applicant and agree to the parameters of the Host Agreement. That is a piece of the application that has to go back to the CCC; and in turn the CCC notifies the municipality. Then the Council has 60 days to determine that the applicant is in compliance with the Zoning Ordinance. **Councilor Lundberg** asked if the Executive branch knows at this time how that would work -- is the notification that they have an applicant that requires that they shall enter into a Host Agreement. The applicant would come to the Mayor, **Mr. Destino** advised, and would advise they want to open their business in the city, and they'd then negotiate a Host Agreement. He assumed the Mayor's Office would do that. Many aspects of this law could get challenged he cautioned, referencing the use of funds gained in a Host Agreement, as the funds the city receives have to correlate to adult use marijuana impact in the community--the maximum would be 3%. **Councilor Lundberg** noted it is similar to what the Mayor's Office did with the Happy Valley's medical marijuana facility. **Councilor Gilman** understood that Happy Valley's Host Agreement is for five years which can be renewed for another three years, **Mr. Destino** noted. There is a five-year Host Agreement with Happy Valley now, and thereafter it is a renewable three-year agreement which is the new rule, and the percentage moves to 3% from 5%. The city starts seeing the revenue when the facility opens, **Mr. Payson** advised.

There was a brief discussion of the red-lined versions of the draft ordinance by the Committee with staff that was present.

Rick Noonan, Planning Board Chair advised there are typographical errors in the language of the Informal Recommendation from the Planning Board, and he gave several examples. **Mr. Payson** explained that after the PB has their hearing if there are any changes he advised he'd go through and perform a grammar check.

Councilor Lundberg reviewed the Council process briefly, and that they should let the Planning Board finish their formal process and await their formal recommendation. Once the Committee receives that formal recommendation, the Committee can take what they're learning, take that recommendation and continue to evaluate that proposal. What was presented on May 21 is the working draft the Committee has to use and will still need to undergo possible modifications, **Councilor Gilman** advised.

Mr. Noonan advised he's already received a phone call from a potential applicant.

This matter is continued to July 18, 2018.

A motion was made, seconded and voted unanimously to adjourn the meeting at 5:30 p.m.

Respectfully submitted,

Dana C. Jorgensson

Clerk of Committees

DOCUMENTS/ITEMS SUBMITTED AT MEETING: None.