

**MINUTES OF THE PLANNING AND ZONING
COMMISSION MEETING**

Brentwood City Hall

**Date: July 31, 2019
6:00 PM**

Chairman Daming called the meeting to order at 6:00 PM and led the pledge of allegiance. John Nuernberger called roll with the following members present: Sheri Bilderback, Michael Daming, Mark Favazza, Rebecca Jacobs, Jeff Moore, Paul Moran, John Nuernberger, John Ritter, Lisa Schuering and Tom Shipley.

APPROVAL OF MINUTES

Meeting Minutes for July 10th meeting will be presented at the August 14th meeting.

OLD BUSINESS

- 1) **Case #19-16** – Application for Text Amendment to Regulate Medical Marijuana Facilities in Accordance with the Adoption of Amendment 2, to the Missouri Constitution, to Enact Article XVI, Section 1, Relating to Medical Marijuana.

Chairman Daming noted the Commission discussed this subject matter at the July 10th meeting. The draft ordinance presented this evening include revisions for the Commission's consideration introduced by Chairman Daming and the City's zoning counsel, Stephanie Karr.

Chairman Daming reviewed the proposed draft which includes permitting dispensaries by right in the MC and LI Districts and as a conditional use in the PD District. The other facilities, cultivation, manufacturing and testing centers would be a permitted use in the LI District.

He noted the draft includes a 500' distance requirement from schools, child day care centers and churches, and a 1,500' distance requirement from other medical marijuana facilities. His opinion is there is no rationale to establish a 500' distance requirement from residentially zoned districts.

Mr. Nuernberger stated his concern that the State will someday legalize recreational marijuana use and the City will have these existing medical marijuana facilities which will now want to sell recreational marijuana. He believes that should be taken into consideration when the City is establishing the zoning districts where these facilities will be permitted.

Chairman Daming asked Stephanie Karr for clarification. She stated that if Missouri legalizes the sale of marijuana for recreational use, they will likely formulate regulations the State and cities must follow. If the regulations for the location of facilities selling marijuana for recreational use are the same, or similar, to the current licensing system for facilities to sell

medical marijuana, then it is likely these facilities will want to expand into selling marijuana for recreational use.

Sheri Bilderback cited similar concerns to Mr. Nuernberger's comments regarding the expansion of medical marijuana to recreational use of marijuana. She asked for staff to review the buffer map and what it represents. Ms. Koerkenmeier provided explanation that the buffer map had not changed from the last meeting, but a zoning district overlay was applied to the buffer map.

Ms. Bilderback believes the Commission should not play a role in judging what constitutes a church. She desires to have a setback from residential zoned areas and does not think facilities should be allowed at all in the PD given the PD District's location along S. Brentwood Blvd. and its proximity to residential zoned areas.

Ms. Karr stated the State law only allows separation from schools, child day care centers and churches. The City can effectively locate these facilities away from residential areas by permitting these facilities only in commercial districts not generally adjacent to residential areas or in districts already requiring buffers from residential areas. She noted the distance requirement from residential zoned districts was removed since it would appear it could be challenged in court.

Paul Moran noted he is unsure of regulating medical marijuana facilities as one can compare them to Walgreens or other pharmacies that sell alcohol and opioids which are known to have caused harm to individuals. He has no objection to medical marijuana facilities and does not see the need for restrictions from other uses.

Chairman Daming asked if anyone from the audience would care to address the Commission.

Dan Welsh stated he has a client who desires to apply for a dispensary permit. He is pleased the Commission will be recommending dispensaries as a permitted use in the MC, Manchester Corridor Commercial District. He questions the section in the proposed ordinance of how to compute the distance requirement, and he suggests the City use the language the State utilizes. The City has a different method basically measuring as "the crow flies" between lot lines. The State measures how a human being walks between facilities.

Ms. Karr noted the State law includes the verbiage "shortest path." Mr. Welsh noted the State law also includes "shortest path between demarcations lawfully traveled by foot." Ms. Karr will further research the intent and spirit of this requirement. However, the City has options how this may be included in the Code and applied to the local zoning requirements.

Ms. Bilderback asked to revisit the definition of church. Ms. Karr provided two alternatives for the Commission's consideration. The Commission is recommending the definition of church included in the State law be utilized for this section of the City Code.

Mr. Moran asked why the Commission was considering applying the distance requirements.

Ms. Karr stated it is up for discussion by the Commission because the State law allows cities to apply the distance requirements from churches, schools and child day care centers if cities feel there is impact to these land uses from medical marijuana facilities, but cities are not obligated to apply distance requirements.

Mr. Welsh stated his client may be impacted by the distance requirement from a church located at 8614 Manchester Road. He questioned if the church is a legitimate church.

Alderman Andy Leahy noted the proposed local ordinance under consideration appears to mirror the State law. He questioned if the City is considering the buffer distance requirements due to the City recognizing a potential problem of these facilities being near churches, schools and day care centers. He inquired if the City could jeopardize federal grant funding if the City allowed these facilities. Mr. Leahy also inquired about how the legal home growing of marijuana and the monthly 4 oz. limit of medical marijuana will be enforced. The bill restricts those under age of 18 not be allowed in the facility and he questions how those under 18 will be able to have access to prescribed marijuana. He also asked how on-line sales of marijuana will be regulated. He finds a few holes in the draft ordinance and feels recreational medical marijuana use will follow medical marijuana use and this should be a consideration in the drafting of this ordinance.

Ms. Karr responded the City cannot prohibit medical marijuana facilities and would be subject to a legal challenge. This ordinance is for commercial facilities and does not address home use. She stated additional ordinances amending other sections of the Municipal Code will be forthcoming to regulate and enforce activities such as legal home growing. The age requirement and limits of how much can be sold is regulated by State law. If a business does not comply with these requirements the conditional use permit and/or business license may be revoked.

Chairman Daming asked if the Commission is in agreement with adding the church definition as proposed by legal counsel and recommending the ordinance include the state computation to measure the distance between medical marijuana facilities and churches, schools and child day care centers.

Mr. Shipley asked if a church came along after a dispensary was opened, what would happen. Ms. Karr said the buffer requirements would only be applied to existing facilities at the time of application.

Ms. Bilderback asked about a separate business license fee for medical marijuana facilities. Ms. Karr said a business license is a tax and therefore needs to be approved by the voters. Also, the City already has a business license classification for each type of medical marijuana facilities and cannot create a new one.

Mr. Nuernberger made a motion to approve the proposed text amendment with the changes to the church definition and utilizing the state computation to derive at the distance measurement, seconded by Ms. Schuering.

Ms. Koerkenmeier informed the Commission that in case of multiple applications for medical marijuana facilities, the distance requirement between medical marijuana facilities will be applied on a first come, first serve basis.

Ms. Karr added the proposed ordinance includes in Section 6, O. that no portion of any facility used as a medical marijuana facility shall be used for any other purpose, including a medical office. This provision will not permit a medical office offering prescriptions in the same facility used for a dispensary. Section 7, includes treating a dispensary similarly to a pharmacy and also a manufacturing facility as gross receipts businesses and cultivation and testing facilities as exception businesses.

Mr. Neurnberger and Ms. Schuering agreed to add these additional amendments to the ordinance.

Roll Call: 9-ayes, 0-nay. Sheri Bilderback-yes, Mark Favazza -yes, Rebecca Jacobs-yes, Jeff Moore-yes, Paul Moran-yes, John Nuernberger-yes, John Ritter- yes, Lisa Schuering-yes, and Tom Shipley-yes.

Motion passed.

ALDERMANIC REPORT

None

CITY PLANNER'S REPORT

Ms. Koerkenmeier noted the proposed text amendment for medical marijuana facilities will be forwarded to the Board of Aldermen for their consideration at the August 7th meeting. Given the State's deadline for applications for medical marijuana facilities and the Commissioner's recommendation for the Board to consider these text amendments on August 7th for 1st and 2nd reading of the bill, it is anticipated new regulations will be adopted at this Board meeting.

SITE PLAN REVIEW SUBCOMMITTEE APPOINTMENTS

None

RATIONALE FOR THE BOARD OF ALDERMEN

None

OTHER BUSINESS

None

ADJOURNMENT

Motion to adjourn all in favor; stand adjourned 7:23 p.m.