



PLANNING COMMISSION MEETING MINUTES OCTOBER 28, 2024

I. OPENING OF MEETING

Vice-Chairman Foley opened the Clayton Planning Commission meeting, convening at 7:00 pm on Monday, October 28, 2024.

Call to Order: Present were Mr. Foley, Mr. Muncy, Ms. Pritchett and Ms. Williams.

II. MEETING PROCEDURE AND OATH

Mr. Foley explained the meeting procedure for tonight's cases and administered the Oath to those in attendance who wish to speak this evening.

III. MINUTES OF THE PREVIOUS MEETINGS

Mr. Foley asked for a motion to approve the minutes of August 26, 2024. Mr. Muncy made a motion to approve the minutes of August 26, 2024 as presented, motion was second by Ms. Williams. Voting: Mr. Foley-yes, Mr. Muncy-yes, Ms. Pritchett-abstain and Ms. Williams-yes. Motion passed 3-0 with one abstention.

IV. OLD BUSINESS

None

VII. NEW BUSINESS

A request to review revisions to the City of Clayton's Planning and Zoning Code, specifically section "1141.11 Violations; remedies"

Ellen Snyder, Zoning and GIS Manager, advised the current text of 1141.11 (C) reads "It shall be unlawful to locate, erect, construct, reconstruct, enlarge, change, maintain and/or use, any building or land in violation of any regulation in or any provisions of this Code or any amendment or supplement thereto adopted by City Council under Section 713.12 of the Ohio Revised Code. Any person, firm or corporation, violating any regulation in, or any provision of this Code, or any amendment or supplement thereto, shall be deemed guilty of a misdemeanor of the third degree. Each and every day during which such illegal location, erection, construction, reconstruction, enlargement, change, and/or maintenance if use continues, **may** be deemed a separate offense." Our suggested revision would read, "It shall be unlawful to locate, erect, construct, reconstruct, enlarge, change, maintain and/or use, any building or land in violation of any regulation in or any provisions of this Code or any amendment or supplement thereto adopted by City Council under Section 713.12 of the Ohio Revised Code. Any person, firm or corporation, violating any regulation in, or any provision of this Code, or any amendment or supplement thereto, **shall** be deemed guilty of a misdemeanor of the third degree. Each and every day during which such illegal location, erection, construction, reconstruction, enlargement, change, and/or maintenance if use continues, **may** shall be deemed a separate offense." Our reasoning for the suggested revision is due to the City receiving complaints of continued violations of zoning code. This would strengthen the penalties to achieve compliance with the zoning code, to encourage prompt correction of

violations, the language change in CCO 1141.11 (C) from “may” to “shall” allows each day a violation continues after the day the violation is cited to be counted as a separate third degree misdemeanor offense rather than a single third degree misdemeanor offense, and would enhance the public health, safety, and welfare. Third degree misdemeanor penalties in Ohio are up to 60 days jail and up to a \$500.00 fine. Staff recommends this suggested revision. It is the Planning Commission’s duty to make a recommendation to Council. If Council agrees, it will have two readings of an Ordinance to make the recommended revision to CCO 1141.11 (C).

Mr. Foley asked if there were any questions for staff.

Ms. Williams asked if there is a cap on the number of violations and fines. Ms. Snyder stated I don’t know about the number of violations but the fine can be up to \$500 for each third degree misdemeanor.

Ms. Zimmerlin stated in discussion with the Prosecutor, Mr. Caldwell, when we had a discussion about changing this language and how the court would handle that, he suggested that it’s capped at four.

Mr. Muncy stated as a defense attorney who has defended this particular charge, there is no cap in the State of Ohio. That is prosecutorial discretion, so if Mr. Caldwell is prosecuting and he’s saying that there is only four, that’s fair. In my opinion it takes a little discretion away because it could be used as a negotiation. May is permissive so there could be a hundred or there could be one. I’m a defense attorney so I’m very sensitive to the defendant side of the equation. Is there is a way we can use it as a tool to negotiate as opposed to a draconian kind of punishment. As a misdemeanor three, you can be put in jail for it. I don’t know what Court is going to throw you in jail for a zoning violation but the option is there.

Foley stated, just to understand, that may give us some opportunities to treat each case a little differently if it needs to be.

Mr. Muncy stated if the complaints are that there are continuing violations of the zoning code, then we already have that tool.

Ms. Zimmerlin replied that the problem comes not so much with the administration of the zoning code, it comes when we actually get to court. The Prosecutor and the Judge are both looking at the may rather than a shall and saying, we take it as far as we can administratively and then when we cite them to court, we don’t get a remedy. That’s where we are looking to strengthen that section of the code, so we can get a remedy. We have some properties in the city that it’s just repeat violations, after violations, after violations. In discussion with our Law Director and the courts, there aren’t any teeth in this section of code.

Mr. Foley asked, do you feel this kind of language other communities have adopted for the exactly the same reason. Ms. Zimmerlin replied, yes.

Mr. Foley stated we have no one here to speak for or against this case, so he asked if there were any additional comments from the Commission members.

Mr. Muncy asked staff if this has been specifically requested by the Prosecuting Attorney and the Law Director or has there been any discussion about some of these problem properties, what has been the process so far. Ms. Snyder stated there hasn’t been any discussion of any specific properties, it’s just a general across the board, it was proposed by City Council. We

looked at it and then had discussions with Prosecutors and our Law Director and it just made sense to change this language from may to shall to keep it consistent.

Mr. Foley stated I think the City tries very hard to keep open a good line of communication, maybe there are certain cases where someone needs a little extra flexibility or leeway to get something fixed, if the City believes they're sincere. Ms. Zimmerlin stated you are correct. Whenever there is a violation people receive multiple notices before it ever gets to the point where it's sent to Court. If someone receives a notice and they give the City a call, and they talk to us and say well I'm getting it fixed next month, we'll say that's fine and we'll just come out and reinspect in a month or so and we'll put everything on hold with the process. We do try very, very hard to work with people before it ever gets to multiple violations. The goal is compliance, that's what we are looking for, it's just compliance. If they are making a concerted effort to get there, absolutely the City always works with the resident.

Mr. Foley then asked for a motion to recommend approval, approval with conditions or disapproval of this request. Ms. Pritchett made a motion to approve with the suggested revision of the City of Clayton's Planning and Zoning Code Section 1141.11, motion was second by Ms. Williams. Voting: Mr. Foley-yes, Mr. Muncy-no, Ms. Williams-yes, and Ms. Pritchett-yes. Motion was approved 3-1.

Discussion only - Possible revision(s) relating to Recreational Adult Use Cannabis.

Ellen Snyder, Zoning and GIS Manager, advised Ohio legalization of marijuana was passed in May of 2016 by the Ohio General Assembly for medical purposes. Ohio's Medical Marijuana law, OMM law, became effective September 8, 2016 and was Codified at Ohio Revised Code 3796. ORC 3796.29 states, "The legislative authority of a municipal corporation may adopt an ordinance...to prohibit, or limit the number of, cultivators, processors, or retail dispensaries licensed under this chapter within the municipal corporation." The City of Clayton and medical marijuana permitted are permitted in certain zoning district. Medical Marijuana Cultivation, Processing, and Dispensaries are Permitted Uses in CMX, Commercial Mixed-Use, and CMI, Commerce-Manufacturing and Industry, Zoning Districts. Medical Marijuana Processing and Dispensaries are Permitted Uses in MSD, Main Street 48 District, Zoning District. Clayton's medical marijuana definitions states Medical Marijuana, Cultivation is a facility that has been issued a certificate of operation by the Ohio Department of Commerce to grow, harvest, package, and transport medical marijuana as permitted under Chapter 3796 of the Ohio Revised Code. A Medical Marijuana Dispensary is a building or structure licensed by the State Board of Pharmacy as a medical marijuana retail dispensary. And, a Medical Marijuana Processing is a facility that has been issued a certificate of operation by the Ohio Department of Commerce to manufacture medical marijuana products. Clayton does not currently have any Cultivators or Dispensaries, but does have one Processor, Main Street Health, LLC ("MSH"). On July 5, 2024, it was awarded a provisional dual use license by the Ohio Division of Cannabis Control ("DCC"). They have not yet been awarded a Certificate of Operation for dual use which would permit MSH to begin processing adult use cannabis in addition to the medical cannabis it currently processes. Adult Use Cannabis, Recreational Use was passed on Issue 2 on the November 7, 2023 ballot legalizing adult use cannabis in Ohio was approved by 57% of voters. In Clayton, 3,177 votes were cast in favor of legalizing adult use cannabis and 2,313 votes were cast against the legalization of adult use cannabis. Adult Use Cannabis has been codified at ORC Chapter 3780. Similar to the medical marijuana

statute, the adult use cannabis statute contains a provision which permits political subdivisions to restrict or prohibit adult use cannabis within its jurisdictional limits. ORC 3780.25(A) states the legislative authority of a municipal corporation may adopt an ordinance, by a majority vote to prohibit, or limit the number of adult use cannabis operators permitted under this chapter within the municipal corporation. Adult use cannabis operator is defined as a level I adult use cultivator, a level II adult use cultivator, a level III adult use cultivator, an adult use processor, and an adult use dispensary. Ohio imposes a special 10% tax on the sale of adult use cannabis plus the fixed state sales tax of 5.75% and local variable sales tax %'s. The adult use cannabis statute is silent with respect to the allocation of revenue from the 5.75% tax and the local sales tax, but the statute provides that all funds collected from the special 10% tax will be deposited into the Adult Use Tax Fund. Monies will be distributed from that Fund on a quarterly basis. The 10% special tax allocations are split with 36% going to the Cannabis Social Equity and Jobs Fund, 36% to the Host Community Fund to be used for the benefit of municipal corporations and townships for any approved purpose. Distributions from this fund shall be based on the percentage of adult use tax which is attributable to each municipal corporation/township, 25% to the Substance Abuse and Addiction Fund to help alleviate substance abuse, and 3% to the Division of Cannabis Control and Tax Commissioner Fund to support the operation of the DCC and to defray costs of the Department of Taxation related to administration of the adult use cannabis tax. O.R.C. 3780.23 (C)(2) state that unless otherwise authorized under this chapter or rule, the director of budget and management shall transfer amounts to each fund as follows: thirty-six per cent to the host community cannabis fund for the benefit of municipal corporations or townships that have adult use dispensaries, and the municipal corporations or townships may use such funds for any approved purpose. Distributions to municipal corporations or townships shall be based on the percentage of adult use tax attributable to each municipal corporation or township. An example of this split would be a City with 5 dispensaries and those 5 dispensaries generates sales totaling \$10,000,000.00. \$10,000,000.00 times 10% would be \$1,000,000.00. \$1,000,000.00 times 36% would equal \$360,000.00, so the City would receive \$360,000.00. Ohio adult use cannabis sales began in Ohio on August 6, 2024. As of September 21, 2024, adult use cannabis sales exceeded \$76 million. As of September 30, 2024, there are 124 dual use dispensaries in Ohio that can sell medical and adult use cannabis: Columbus has 13, Cincinnati has 10, Dayton has 6, and Cleveland has 5. As of September 30, 2024, there are over 100 local cities/townships with moratoriums to prohibit adult use cannabis. City Council adopted Resolution No. R-12-23-72 on December 18, 2023 and Resolution No. R-05-24-31 on May 16, 2024 enacting a moratorium on adult use cannabis so that further research and analysis could occur. On September 5, 2024, City Council adopted Resolution No. R-09-24-48 extending the moratorium until September 5, 2025 such that the issue of adult use cannabis in Clayton could be submitted to the Clayton Planning Commission for recommendation to Council. Per CCO 1141.03: The Planning Commission is tasked with review of proposed amendments to the Zoning Code and make recommendations to Council. The City of Englewood enacted Ordinance No. 24-11 on September 24, 2024 limiting the number of adult use cannabis operators within its jurisdictional limits to no more than one. We suggest a few alternatives. Alternative 1 would prohibit adult use cannabis operators within all zoning districts of the City. Please note that even if operators are prohibited individuals are still permitted to home grow for personal use 6 plants per person per residence where two adult users reside, with a cap of 12. Alternative number 2 would allow adult use cannabis in the same zoning districts in which

medical marijuana is currently allowed, or Alternative number 3 would allow adult use cannabis in the same zoning districts as medical marijuana is currently allowed but limit the number permitted.

After discussion, the Board asked staff to draft proposed language for Alternative numbers 2 and 3 based on our discussion and submit for the November 25th Planning Commission meeting for consideration. Ms. Snyder stated she would put together specific proposed changes and introduction of definitions for the Board to review.

VIII. END OF MEETING

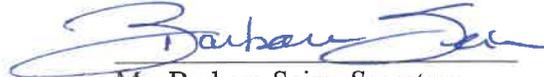
Motion by Ms. Williams to adjourn the meeting, motion was seconded by Ms. Pritchett. Voting: Mr. Foley- yes, Mr. Muncy-yes, Ms. Williams-yes, and Ms. Pritchett-yes. Motion was approved 4-0. The meeting adjourned at 7:56 PM.



Mr. Dan Foley, *Vice Chairman*

11-25-24

Date



Ms. Barbara Seim, *Secretary*

Nov-25, 2024

Date