

GLADSTONE PLANNING COMMISSION MINUTES
Council Chambers August 21, 2017

1. Meeting called to Order- Roll Call- Chairman Markenson called the meeting to order at 7:00 pm.

Commissioners present were: Anne Alexander
Jennifer McGee
Katie Middleton
Carlos Salazar
Bill Turnage
Don Ward
Larry Whitton
Gary Markenson

Also present: Jean Moore, Councilmember
Bob Baer, Assistant City Manager
Nick Pappas, CD Director
Alan Napoli, Building Official
Cheryl Lamb, Administrative Assistant

Absent were: Chase Cookson
James New
Shari Poindexter

2. Pledge of Allegiance to the United States of America.

3. Approval of Minutes.

Chairman Markenson asked if there was a motion to approve the minutes from the May 15, 2017 and July 17, 2017 meetings. Mr. Ward moved to approve the minutes with the following corrections to the July 17th minutes:

Page 23, Line 4: change Safe to Sage
Page 23, Lines 1, 7, 17: change New to Ward
Page 28, Line 10: change Ward to New
Page 29, Line 20: change New to Ward
Page 30, Line 13: change New to Ward

Mr. Whitton seconded. The minutes were approved, as amended, 8-0.

Chairman Markenson stated that today was a once in a lifetime historic event. It's the eve of Anne Alexander's 90th birthday. Anne celebrated with an eclipse, a flood of Noah's proportion, and he hoped that she wasn't going to have locust next as he doesn't like locust. He asked everyone to join him in giving Anne a round of applause and he congratulated her.

Chairman Markenson announced that the Commission has a new member, Katie Middleton, and asked her to share a little bit about herself. Ms. Middleton stated that she has been a residence of Gladstone since 2001. She wanted to get involved with government beyond just casting a vote every so often. She attended a Future Leaders academy in 2015 and became a member of the Board of Zoning Adjustment that year. She is a member of the Labor Control Board, and was recently asked to join the Planning Commission. Chairman Markenson welcomed her to the Planning Commission.

4. PUBLIC HEARING: Smoke shop text amendment. File #2017-006.

Mr. Pappas shared that City Manager, Scott Wingerson, attended the July meeting of the Planning Commission to brief the Commission on the genesis of the Smoke Shop ordinance, why it was wanted,

and reasons behind it. From that meeting there were a couple of areas of concern and clarification that were noted. He added that the information in their packet demonstrates how that was accomplished. One was expanding the proximity requirements when it comes to areas where children congregate or are seen frequently. Initially it addressed just schools and day cares. Since then they have looked at other cities throughout the region and nationally to come up with a broader definition. Now it includes schools, day cares, youth centers, community centers, recreational facilities, parks, churches or religious institutions, hospitals, and other places where children regularly gather.

The second area of concern that was discussed was whether the ordinance should be looked at the same way as liquor. Should they be looking at a percentage base for the restriction, not just the square footage, to determine whether a smoke shop is the focus of the business or an ancillary sale. Mr. Pappas said they looked throughout the nation and found a few examples in Florida, California, and Nevada, and quite few in Illinois, but didn't find any in Missouri. He shared that if this approach is taken it might result in creating a Board that just looks at smoke shops, the way we have a liquor control board. Since there are no other examples in Missouri, it would make Gladstone ripe for a lawsuit since there's been no case law up to this point. Not to mention it would require a lot of staff monitoring on an ongoing basis. It is staff's opinion that they should stick to what other cities throughout the nation have done, just looking at a square footage based requirement defining whether or not something is a smoke shop.

There is a third area that was looked into this morning. Chairman Markenson contacted him to ask about Public Safety. He asked if there were numbers that actually show that we have a problem with smoke shops selling to underage minors. Mr. Pappas talked with Chief Hasty and he said that, due to limited resources, they don't conduct sting operations the way that they do liquor, even though that might be something that we look into in the future and that we might want to pursue. At this time it's just complaint driven. If they get a complaint that someplace is selling to minors, then they look into it. He wasn't able to provide numbers as they were busy today with the eclipse. He did say that you could count them on one hand, if that. That's where that stands.

Mr. Pappas added that even if sales of tobacco and vapor products to minors aren't really a problem in Gladstone at this time, there are three other issues that are the focus of this ordinance.

1. *Research shows that Smoke shops actually provide a greater opportunity for the sale of drug paraphernalia.*
2. *It has negative aesthetic impacts.*
3. *It has been demonstrated that the proximity of smoke shops actually causes a loss of property values.*

Even absent of the problem of selling to underage minors, there are these three other areas that this ordinance does touch on. He encouraged the Commission to look at these areas and vote on this ordinance tonight so it can be taken before the City Council. He added that any discussion that happens here would be relayed to the City Council in his presentations.

Chairman Markenson asked if there were any questions for Mr. Pappas.

Mr. Salazar asked if previous discussions regarding being one mile from other smoke shops, would they be grandfathering existing ones, or are we asking them to move, or ?

Mr. Pappas replied that they would be grandfathering them at this time.

Chairman Markenson stated that he had a few questions. This ordinance affects only smoke shops, tobacco shops. It doesn't affect liquor stores that sell cigarettes, grocery stores, drug stores, . . . He asked if Mr. Pappas knows if the tattoo businesses in Gladstone sell cigarettes. It doesn't affect any of those.

Mr. Pappas stated that it does if those places don't fall into the ancillary sale requirements. If they have display areas that are over 200 square feet or 2%, whichever one is less, than it would fall into a smoke shop even if it is primarily a liquor store or a tattoo parlor. If they have display areas that exceed those limits, they are considered a smoke shop and would be subject to this ordinance.

Chairman Markenson clarified that the ordinance would apply to any grocery store, convenience market, kiosk or similar use. He asked if that was the definition of "ancillary use" and if that is what Mr. Pappas is saying.

Mr. Pappas replied that was correct.

Chairman Markenson asked if that definition was broad enough to get into drug stores, tattoo parlors, . . .

Mr. Pappas said that it was. It would be broad enough to get in every use.

Chairman Markenson asked for clarification that even though it specifies a few and it doesn't specify others, it applies to everybody.

Mr. Pappas replied that it does. If they have a floor area dedicated to selling those items, it applies.

Chairman Markenson said that we have ten (10) legislative findings and he agreed with all of them, except none of the findings mention the word "smoke shop" or "tobacco shop". They all talk about tobacco retailers and one of them talks about convenience stores.

Mr. Pappas stated that for the ordinance they can actually craft the definition to more adequately match what was being discussed.

Chairman Markenson questioned if what they are doing is enough. He repeated that Mr. Pappas said this will keep two or three smoke shops out of the City, at the most. He asked if instead of specifying "smoke shop", if we specify "tobacco retailer" would they pick up more potential businesses and prevent more potential businesses.

Mr. Pappas believes that it can be defined as that. He said that it would really be semantics because our definitions are so broad, but they do pick up ancillary.

Chairman Markenson said he would feel better if "ancillary use" did not list a couple of things specifically and then say "and others".

Mr. Pappas shared that the definition was taken from a common definition from most cities that were reviewed. That could be changed. He stated that if the Commission wants to say that ancillary sale refers to grocery stores, convenience markets, retail kiosks, . . .

Chairman Markenson stated that he would like the list to be extensive instead of hoping that a judge interprets it that way. Oftentimes, sometimes when you specify certain things and say "anything else", the court will say "if it's anything why didn't you specify that?". You specify some and it applies to everything.

Mr. Pappas stated that the particular sentence is saying, "For a grocery store, convenience market, retail kiosk or similar use consisting of 250 square feet or less". They are referring to a kiosk like you would find in an airport. In that case, "the ancillary sale shall not be more than five (5) square feet". That is the only thing it's really pointing to. If a store is 250 square feet or less, meaning they are really just a kiosk like you find in an airport, at that time an ancillary sale shall mean that not more than five (5) square feet

of that 250 square feet are being used for the display, sale and distribution of tobacco and tobacco related products.

Chairman Markenson asked if it really only applies to kiosks.

Mr. Pappas clarified that that one sentence does. Everything else is under the two percent (2%) or 200 square feet rule. It really is a catch-all. All businesses are included.

Chairman Markenson asked if it would include tattoo parlors.

Mr. Pappas replied that it would. It would include any use.

Chairman Markenson stated that he doesn't read it that way. It says "grocery store, supermarket, convenience store, or similar market that uses no more than two (2%) of its gross floor area or 200 square feet, whichever is less, being used for the display, sale and distribution of tobacco and tobacco related products". He asked how that includes a tattoo parlor, or a drug store.

Mr. Pappas stated that he sees Chairman Markenson's point.

Mr. Ward asked if that falls under the "kiosk", the kiosk being the sale area inside the tattoo parlor.

Mr. Pappas stated that it could. He asked for clarification on whether it would help if they more broadly said "any retail use". It could say that. It doesn't define grocery store in the definition. It could say "in any retail use", period.

Mr. Turnage said that the second paragraph says regulation is necessary due to the likelihood of continued expansion of smoke shops in the City. He was curious what was behind that. He questioned if Gladstone fits a particular demographic that makes it appealing here, even with increased regulation.

Mr. Pappas shared that the problem is that there are two major corridors that traverse our City. Gladstone picks up a lot of people that drive through our City who spend their money on those products. He wouldn't say that Gladstone is particular to that.

Mr. Turnage asked if this expansion is likely to continue.

Mr. Pappas said yes it is.

Mr. Salazar stated that it was shared that other cities were researched for the way they word this. He asked if they are able to look at the impact that those new statues or ordinances played.

Mr. Pappas shared that a lot of cities were like Gladstone in that the problem surfaced before the city really took any targeted focus on that problem. For many cities it stopped a lot of these uses from coming in. Gradually, as these uses have closed up shop, went out of business, or decided to move down the road, then, at that point, it actually decreased over time.

Mr. Salazar asked if there were there any legal issues.

Mr. Pappas stated that there were not any in Missouri. There were a couple in Florida, but the Florida Supreme Court actually decided in favor of the cities.

Chairman Markenson asked if there were any other questions or comments. None were stated. He then asked if there was anyone in the audience that wanted to testify in favor of this bill, or anyone that wished

to testify against this bill. Hearing none, he closed the Public Hearing. He asked if there was any discussion from the Commission.

Mr. Pappas asked Chairman Markenson if he could re-state the definition of “ancillary sale” so that everyone is on the same page, based on tonight’s discussion.

Chairman Markenson asked him to proceed.

Mr. Pappas read the definition: *“Ancillary sale. Any retail use that uses not more than two percent (2%) of its gross floor area or 200 square feet, whichever is less, for the display, sale, distribution, delivery, offering, furnishing, or marketing of conventional cigars, cigarettes, or tobacco. For any retail use consisting of 250 square feet or less “ancillary sale” shall mean not more than five (5) square feet are used for the display, sale, distribution, delivery, offering, furnishing, or marketing of conventional cigars, cigarettes, or tobacco. The display, sale, distribution, delivery, offering, furnishing, or marketing of e-cigarettes or tobacco products or tobacco paraphernalia, regardless of square footage used, is subject to the restriction of this Section and shall not constitute “ancillary sale” under any circumstances.*

Chairman Markenson said that he felt that definition was inclusive and was what he wanted. He felt that to exclude smoke shops seemed to be almost worth their time to do, but this is much broader and he appreciates that.

Chairman Markenson asked if there were any other comments. None were stated. He then said that he was prepared to entertain a motion to recommend amending Chapter 135, C1, Local Business District, Title VII, Zoning and Planning Ordinance of the City Code by adding a new Section 7.135.025 Public Policy, and other amendments as it relates to the expansion of smoke shops in the City. He added that maybe they could change the title to “Tobacco Retailers in the City”.

Mr. Pappas stated that could be done.

MOTION: By Mr. Turnage, second by Mr. Ward, to approve Chapter 135, C1 Local Business District, Title VII, Zoning and Planning Ordinance of the City Code, Section 7.135.025 Public Policy, as amended.

VOTE:	Ms. Alexander	Yes
	Ms. McGee	Yes
	Ms. Middleton	Yes
	Mr. Salazar	Yes
	Mr. Turnage	Yes
	Mr. Ward	Yes
	Mr. Whitton	Yes
	Chairman Markenson	Yes

The motion carried. (8-yes, 0- no)

5. Other Business:

- a. **Commission Education.** Mr. Pappas shared that Community Development had subscribed to a website for planners called “planetizen”. The site is inclusive of planning commissioners and there are over 100 courses that are all video based. The website can be shared through Mr. Pappas’ login. The idea is that anyone who has any interest in additional educational opportunities can take a look at some of these courses. He referred to the handout showing a sample of the courses that are available, including the ones he felt that the Commission would be most interested in. His examples included, “Legal

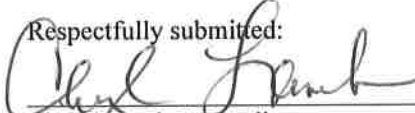
Issues in Sign Codes” which explains what’s going on with signs and that is an area the Commission is looking at. He also mentioned “Regulating Electronic Message Centers” which is another area that the Commission is reviewing. He said that if any Commissioner wants to look into these issues, they can contact him to schedule a viewing session in the Community Development conference room. These classes are offered through a website called <https://courses.planetizen.com/courses>.

- b. **Planning and development related news.** Mr. Pappas shared that on August 28th there will be a Beyond the Loop meeting. These are the meetings that MARC is putting on that discuss closing the Broadway Bridge for a period of time. That’s on August 28th. If anyone has an interest in going, contact him to carpool as he will be attending.
6. **Communications from City Council and Staff.** Councilmember Moore expressed her thanks to the Commission for their critical and careful deliberation of the tobacco retail ordinance. She shared that the passage of this ordinance will go a long way toward trying to stop the proliferation of these kinds of businesses in the City. She knows the Commission has taken the time to read though the information and they were very critical and careful in their deliberations.
7. **Communications from Planning Commission.** Chairman Markenson shared that he attended the Eclipse Party in Linden Square and it was a fabulous event. Over 400 people were in attendance. Kids were running around barefoot in the grass, music was playing. The music all had to do with “suns’ and ‘moons”. It was a delightful place and it is nice to have a place that the community knows they can gather.

Ms. Alexander invited the Commission to a birthday party being held in her honor by Curry Company. It will be at 11:00 am tomorrow at the new Kendallwood Clubhouse.

8. **Adjournment-** Chairman Markenson adjourned the meeting at 7:27 pm.

Respectfully submitted:


Cheryl Lamb, Recording Secretary

Approved as corrected _____


Gary Markenson, Chairman

Approved as submitted