

GLADSTONE PLANNING COMMISSION MINUTES

Council Chambers September 16, 2019

1. **Meeting called to Order– Roll Call.** Chair McGee called the meeting to order at 7:00 p.m.

Commissioners present were: Chase Cookson
Mike Ebenroth
Gary Markenson
Katie Middleton
Kim Murch
James New
Bill Turnage
Larry Whitton
Jennifer McGee, Chair

Also present: Jean Moore, Mayor Pro Tem
RD Mallams, Council Member
Bob Baer, Assistant City Manager
Alan Napoli, Building Official/Com Dev Administrator
Austin Greer, Asst to the City Manager/Planning Administrator
Cheryl Lamb, Administrative Assistant

Not present: J.N. Hernandez
Alicia Hommon

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

3. **ADOPTING: a Revised Agenda for September 16, 2019.** Chair McGee informed the Commission that there was a revised agenda and the first action was to adopt the revised agenda. She asked for a motion to adopt the revised agenda.

MOTION: by Mr. Whitton; seconded by Ms. Middleton. The agenda was adopted as revised, 10-0.

4. **Approval of Previous Meeting Minutes: August 19, 2019.** Chair McGee asked if there was a motion to approve the minutes from the August 19, 2019 meeting.

Mr. Murch moved to amend the minutes on Cross Recording pages 50, 51 and 53 from MS. MURCH to MR. MURCH.

Chair McGee moved to amend the minutes on page 9 of the PC packet, but on Cross Recording page 20, line 13 from “Please approach the podium and state your name and our address” to “Please approach the podium and state your name and your address”.

Mr. Markenson moved to approve the minutes as amended; Mr. Murch seconded. The minutes were approved as amended, 10-0.

5. Other Business. None.

6. CONSIDERATION: OF A Right-of-way Vacation for 7010 N Holmes. File #2019-013. Mr. Greer thanked the Commission for approving the revised agenda so they could address this issue. He referred to the overhead showing an application from the Community Development department asking to vacate a right-of-way that runs through the middle of the City Hall building. This was flagged by a title company when they were working on the Public Safety headquarters financing. The right-of-way needs to be vacated so they can take the next steps to get the project going. They are looking for an informal recommendation from the Planning Commission to vacate this right-of-way so they can start looking at the other steps of the financing of the Public Safety headquarters.

Mr. Markenson asked if there was anything in the right-of-way.

Mr. Greer replied that they were sitting in it right now. The answer was no. They don't believe anything is there. They will notify the utility companies in the next week or so to let them have the opportunity to come to the next City Council meeting and either oppose it or nothing at all.

MOTION: by Mr. Ebenroth; seconded by Mr. New to recommend the Right-of-way Vacation at 7010 N Holmes. File #2019-013. Recommended by vote, 10-0.

7. REVIEW: of new Chapter 2900, Marijuana Cultivation Regulations. Mr. Napoli shared that the first section, Division 1. Scope and Administration, was standard information and was pretty much how all of the Chapters start. He wanted them to know that this was the chapter on the enforcement. There will be an ordinance that actually adopts this chapter and that will come forward to the Council. After they review the chapter it will go to the Neighborhood Commission and the Council will hear it on the 11th of November.

Mr. Napoli reviewed Part 2- Administration and Enforcement. He shared that the BZA was the appealing body for this. He then covered Division 2- Definitions. He noted that a Primary Caregiver can only take care of three (3) people; themselves if they are approved to use medical marijuana, and two (2) other people. They cannot take care of three (3) people excluding themselves.

Mr. Napoli reviewed Division 3- Cultivation. He stated that home grow was not considered a business so they would not have a license. He shared that one of the issues that came up with BZA was that "grow area" was not specifically defined and they will be coming up with a definition. They felt it was too open so they will come up with a definition where the grow area will be specifically inside the primary structure; not in the backyard, not in a greenhouse, not in a shed. He mentioned on item 6 that they are limiting the wattage of lights to 1,000 watts, but not the number of lights.

Mr. Markenson asked if the section applies to outdoor cultivation and indoor cultivation.

Mr. Napoli clarified that it was indoor only. They don't have grow area specifically defined here, so grow area will indicate that the grow area will have to be inside the primary structure.

Mr. Markenson asked why they don't want them to use a shed or an outbuilding.

Mr. Napoli said it ties back into the State regulations.

Mr. Whitton asked if they have a burglar alarm on the place where they are growing this. He believes people will be breaking in to get it.

Mr. Napoli replied that it wasn't required here. When they get to the dispensaries, they have much tighter security. The only thing that was required was that everything was locked up. The intent of it, theoretically, was that somebody would be living there as they are growing it. The way everything was written, in theory they don't have to be living there as long as it was designed to be an occupiable, habitable place, and has all the functions; they don't have to live there. The intent when they were putting the information together was that somebody would be living there aka the home grow. That wasn't specified there.

Mr. Whitton said that without an alarm someone could break in. It's a business. They break into businesses all the time.

Mr. Murch asked what the first sentence on item 1 referred to. It says "the primary use of the residential property where marijuana is grown shall remain at all times a residence".

Mr. Napoli clarified that the resident doesn't have to reside there; it just says a residence. If there is a vacant house right now it is still a residence. It's not somebody who is residing there, but the residence has those legal functions. They could modify that so it is an occupied residence. They could look at that and he would have to check back against the state to make sure that they can do that. He doesn't recall and referred to Mr. Greer.

Mr. Greer said that a lot of it is like the land use regulations they went through. Ninety-five percent of it is covered by state regulations. Staff is taking an effort with 5% of what they can do to fill in the blanks.

Mr. Murch commented that he read through the regulations ten different times. In his opinion, it is dealing with the assumption that marijuana is bad; that it's recreational; it's got to be under lock and key. He could have a medicine cabinet full of opioids, which are way worse than this and he doesn't have to have it under lock and key. To him, it is like these people they are talking about have severe medical issues but yet we are treating them like criminals. He asked why they can't grow it outdoors. He grew up in an area where every ditch in the country had marijuana growing on it. He understands that this deals with growing or cultivating. It doesn't address the number of plants, which he assumed the state does. It doesn't address their ability to go in and check to see how many plants are there. It also, as he got further into it, he sees that it starts to deal with odor and smell. Personally, he knows what marijuana smells like. He finds the smoke and the smell intoxicating. He wanted to know what a public nuisance is. That becomes the next question. As he read it, it was like we are missing the point here. This is for medical and the voters of the state of Missouri voted to make it legal. But we are treating people like criminals.

Mr. Napoli explained when they get down to the odor part he would discuss it more.

Mr. Greer said the state is dictating a lot of what we are able to do. Mr. Murch made good points, but on the other side, it's hard to deal with. There are three (3) components that municipalities are having to deal with and they are land use and zoning, the home grow portion and the decriminalization of the public safety side too. That is coming forward as well, but he made a lot of valid points.

Mr. Murch asked if the state is saying it has to be under lock and key.

Mr. Greer replied that they have their own security measures.

Mr. Murch asked to him clarify if the state is saying it has to be under lock and key, or it that the City.

Mr. Baer replied it is the state law.

Mr. Murch asked if the state is saying it can't be grown outdoors or in a greenhouse.

Mr. Napoli and Mr. Greer confirmed that was correct.

Mr. Greer added that it is a difficult topic because it's a new frontier.

Mr. Murch asked where the break is between residential and commercial growers.

Mr. Napoli said this is strictly residential, home grow.

Mr. Murch replied that they do address it with a business license.

Mr. Napoli shared that when they get down to the business license that would be for the dispensaries. There's no grow operation, they don't have any. If they ever got into that there would be some changes. Basically, what they are saying is since they aren't selling it, they don't need a business license because they are growing it for their own specific use. It's not a product that they are selling so they would not need a business license.

Mr. Greer added that their understanding was that one (1) individual; one (1) qualifying patient can have up to six (6) plants. If someone is growing it for two (2) others, they can only have 18 plants at a time in their home. They aren't selling that product. That is the way they read the state law. He asked if that clarified it.

Mr. Murch restated that these are people who are going to be dealing with severe medical conditions and they are treating them like a criminal and the city is now the Gestapo. Because it will be the city that has to enforce the misdemeanors, he doesn't know what the misdemeanor fine is for any of this stuff.

Mr. Greer said from an enforcement side it will be difficult because the department of Health and Senior Services is supposed to take on the enforcement side of it as well. However they accomplish that goal, he wasn't sure.

Mr. Murch asked him to repeat who would handle the enforcement.

Mr. Greer repeated that it will be the Department of Health and Senior Services. They are the department that. . .

Mr. Murch asked where they are located.

Mr. Napoli replied they are the state of Missouri.

Mr. Murch asked where.

Mr. Napoli said he believes they are in Jeff City. Basically, as they go through here, one of the things is that he will not be going into houses to see how many plants they have. If someone will be doing home grow and they are adding electrical outlets or upgrading their service, we will be doing inspections on the electrical work, things that relate to building construction.

Mr. Murch said they have to go in, they have to ventilate it. They have to have an odor scrubber.

Mr. Greer said he hoped that they would call them.

Mr. Napoli said they would be coming in to get the appropriate permits for that work to be done. But he won't be going in there on a regular basis or annually to check on how many plants they are growing or any of that. He would mostly be there the first time they set it up to do their plumbing, electrical work. If it meets code, they approve it and they are out of there.

Mr. Murch asked who will determine what a public nuisance for odor is.

Mr. Napoli said they will discuss that later in the regulations.

Mr. Cookson asked what was the rationale for the limitation for the wattage for the lights.

Mr. Napoli replied said that a 1000 watt light is a pretty good size light. They are trying to keep it around standard lighting and not getting some huge old lights that overtax a home. Some people have bought big halogen lights and used them. He said 1000 watts is quite a bit of watts and some good heat will come off of that lightbulb.

Chair McGee asked about the growing area being secured by lock and key and wanted to know if the growing area is inside a house and there is a lock on the front door of that house, does that qualify or do they mean it needs to be in a locked room.

Mr. Napoli said he looks at it as a front door is locked and you can't get in that house, it is secured. He continued by reviewing Cultivation, and then moved to Public Nuisance. He clarified that if someone is cultivating and they have a home grow and the house next door is getting odor in his window, the determining factor on whether it is a nuisance or not is going to be hard to determine. The bigger issue on that one is when there are duplexes or 4-plexes. If they are outside using their medical marijuana while that odor is floating upstairs and the person upstairs doesn't like it, public safety will be the people who will be addressing this issue. There may be a time where he has to get involved.

Mr. Murch asked if the state specifies if it's a single family residence versus a multi-family.

Mr. Napoli explained that the "use" would be the thing; the "grow" is there, but the use of it. They don't specify if it's a single family, duplex, 4-plex, condo; just it's a residence. Theoretically, they could have it in an apartment complex. He continued reviewing the Public nuisance, grow section.

Mr. Murch asked about it being a misdemeanor and having the right to appeal someone's opinion of a noxious order, and they have 10 days to do that. Yet every day that they haven't taken care of the noxious odor is another misdemeanor every day according to this.

Mr. Baer asked to address this from a Public Safety standpoint. If someone has a noxious odor coming from their house it could be their garbage. If your neighbor is willing to sign to a complaint, they would site you into court; they would issue you a court date; they would issue you a citation. Then your neighbor would have to come in and testify against you. He shared that would be the Clay County Prosecutor. The City does not issue misdemeanors. That's a state thing. The difference in a misdemeanor and a felony is a state thing. An ordinance violation is what the city would deal with regarding that.

Mr. Murch said that someplace in there it talks about being a misdemeanor.

Mr. Baer said that is like saying the court could fine you up to \$10,000 or 80 days in jail. It never happens. That's not going to happen. It may say it's a misdemeanor, but it's whether the state prosecutor files against it or not.

Mr. Murch shared that every day that goes by is like a new ticket.

Mr. Napoli replied that they would have to write a new summons every day to do that. It just isn't automatic.

Mr. Murch replied that they could do that.

Mr. Napoli agreed in theory. He would have to look at it. Typically, the way this is, it isn't every day. The nuisances are every 10 days. He read the regulations that say "each day that a prohibited condition is maintained shall constitute a separate offense." He said they would have to write a citation every day.

Mr. Murch asked if that would be his responsibility.

Mr. Napoli said it would be our responsibility if we did it every day.

Mr. Markenson asked if they needed any sort of vote on this.

Mr. Napoli replied no. This was to advise the Commission where it is going. After tonight, they will let you know if it passes with the Council or not. It just ties back with the zoning issues they have. It was mainly to keep them in the loop.

Mr. Markenson clarified that it isn't part of the zoning ordinance.

Mr. Napoli confirmed it was not part of the zoning ordinance. This will actually be in the Building Construction ordinance.

Mr. Murch commented that it does go into the public record and, in the event there is ever a lawsuit on it, the ethical standard of whatever they say tonight is used in court.

Mr. Ebenroth asked if this is restricted to a single family residence.

Mr. Napoli said no. It could be a duplex, condo, apartment complex, as long as it is a residential structure that has those requirements of the sink, bathroom, kitchen, cooking, that type of thing.

8. REVIEW: of new Chapter 3000, Mobile Food Establishment Regulations. Mr. Markenson asked if there was an existing ordinance on Mobile Food Establishments or if this was all new.

Mr. Napoli replied that this was all brand new. The beginning is the same thing: general stuff, applicability, administration, violations and the appeals process. The Board of Zoning Adjustments would be the appealing body. He reviewed the definitions. There were no questions.

Mr. Napoli reviewed business licenses and operating locations, hours.

Mr. Markenson asked why there was a restriction from 11 until 2. He wanted to know what would happen if they want to have breakfast or operate until 2:30 or 3:00.

Mr. Napoli replied they can look at that on a case-by-case basis. Basically, everyone who has called has wanted to have lunch or come in for a special event. There haven't been any requests for mid-afternoon snacks or tea and crumpets, or serving breakfast burritos, that type of thing. There haven't had any of those issues come up.

Mr. Markenson asked why we are doing this now.

Mr. Napoli said they have had increased calls for having mobile food establishments, specifically during types of events. Three years ago there were no calls. This last year there were about a half-dozen calls and this year there have been another half-dozen calls plus. More and more people are looking at doing that type of thing for other reasons than just Gladfest. They want to have something there in case someone comes in with a little pushcart. If you go by Home Depot you will see a little hot dog guy out there selling hot dogs and brats. We may have someone at Walmart that may want to do that also. This will allow those requests to happen. In the past they've been told they could not do it unless it was specifically inside that structure.

Mr. Greer added that it is a cool concept to have food trucks in Gladstone. Since we are getting more people trying to do it here, they think it would be pretty wise to have something in place. Then we don't have to say they can't be here at the softball complex during an event or at a

Linden Square concert. Having something on the books will be really helpful. The limiting of the hours comes into play when you have places like Stone Canyon and Summit Grill and Laughing Place Bakery and those types of places that are paying leases at brick and mortar. We want to protect them so mobile food trucks can't come in and put them out of business completely because they are mobile and their expenses are lower. That is where you will see the downtown come into play too. We want to protect those brick and mortar places.

Mr. Markenson said they are protected because they can't go into the downtown area. He asked if this will limit the hours of the ice cream vendor from hours other than 11 to 2.

Mr. Napoli said he doesn't know. It's a good question.

Mr. Greer added that was why they are getting their feedback on this. This was the first or second rough draft and they will make provisions to it as they go.

Mr. Murch asked if this would impact Linden Square as well. There are food trucks that go down there for arts day or whatever.

Mr. Napoli replied yes and no. That is kind of jumping ahead a little. Linden Square activities, Theatre in the Park, movie night, Gladfest— all of those require a Special Event Permit. With that permit, there is a sheet they provide with specific regulations the city has that they want a variation, such as smoking, drinking at Gladfest, dogs in the park, park open later than normal. This will be added so when those events are coming up there will be a section that food vendors can be at those events during those hours.

Mr. Murch asked if that would apply to the Farmer's Market.

Mr. Napoli said the Farmer's Market has a Special Event Permit so that would tie in.

Mr. Murch clarified that would allow them different hours.

Mr. Napoli confirmed that was correct.

Mr. Murch stated that they would apply to him to be able to smoke dope at Gladfest.

Mr. Napoli replied in theory, yes. The event person would have to apply for it so they would need to get with Amy.

Mr. Markenson asked if a Mobile Food Establishment was required to obtain a Gladstone business license.

Mr. Napoli said yes. They are required to have a business license.

Mr. Markenson asked if they were required to show that they have been inspected by the County Health department.

Mr. Napoli replied yes. The county stuff is all part of the business stuff. That is required. The Fire Marshall will be checking them out also. He will go and check the large ones that have propane tanks to make sure they are done right, make sure they have the proper fire extinguishing equipment and all of that. The little pushcarts that are not propane operated he won't be worried about those. If they are propane, he will address those.

Mr. Napoli continued reviewing the remaining requirements.

Mr. Murch had a question about Hy-Vee. They have a barbeque truck on their own private land. He asked if that was legal.

Mr. Napoli stated that was part of their process and zoning that was approved when Hy-Vee wanted to do all that stuff.

Mr. Markenson said the 11 until 2 seemed too restrictive. If he were writing this ordinance he would give them a little more leeway, that's just his personal opinion.

Mr. Napoli said they were open. He picked the lunch hours because that was all they have been asked about, except when it came to some special events. They are open. If somebody came in they wouldn't say no they can't do it. They may have to amend the ordinance and look at widening it. Right now all talks on the staff side were addressing lunch hours, which was what had been addressed with by the vendors who have called.

Mr. New asked if it could be reworded to say, "Hours between 11 and 2; other hours will be considered."

Mr. Napoli said he would look at it. He doesn't know if they can do it but he will look at it and talk to legal.

Mr. New said if he was a vendor wanting to do this and looked at those hours that he would think he couldn't do it in Gladstone.

Mr. Turnage asked that with the business license, food safety precautions, and restrictions; how could anybody make much money.

Mr. Napoli said they are doing it now because Kansas City has them. They get a business license, they get a health department inspection, and they pay to work in the areas they are in. They are making money somehow.

Mr. Greer added that an interesting point to that– and he's not sure how he knows this except that he works with Gladfest– is that a lot of the food trucks have a minimum they have to meet in revenue that has to be guaranteed. That's why they haven't seen a lot of food trucks per se like you would see in Westport here in Gladstone. They have to make a certain amount of money for it to be worthwhile.

Mr. New commented that he was on vacation in Orlando a couple of years ago and his wife found an area that was a park that was all food trucks. It was like a food truck mall. The person who owned the space had this concept, he had the land and he had hookups. Anybody who has a food truck lines up. It was like walking through a mall.

Mr. Napoli shared there were some areas in Portland when he was there. There was an area, semi-business district area, where there were no people parking. That was where all the food trucks would be at lunch. Down in Memphis at City Hall, they have a little concrete area out front and there are six (6) food trucks that are allowed to go there between certain hours for lunch. There are some areas that are designed and set up to have the food trucks there on a regular basis.

Mr. Murch asked if it is a 503 organization, do all of these things still apply to them, like Gladfest.

Mr. Napoli replied that Gladfest would all be tied with the Gladfest Special Event permit. There are no issues there. If it's a 501 c 3, basically it is a not-for-profit and if they are doing anything 72 hours or less there are no issues there. It's like the Girl Scout cookies. They are only out there for a day or two or the weekend. As long as it's 72 hours or less and they are a not-for-profit, they don't have to worry about anything.

Mr. Markenson asked if there is any enforcement of sales tax collections.

Mr. Greer said he wasn't sure that would be our area.

Mr. Napoli said their business license should show their gross receipts.

Mr. Markenson said there is a number there so you can check them.

Mr. Napoli said that would fall under the finance department primarily.

9. Communications from City Council. None.

10. Communications from City Staff. Mr. Napoli reminded the Commission that last year they had approved a site plan for Gladstone Foods. They are still planning to do the structure and are planning to start in March, 2020. Hy-Vee has started inside the store. There is a temporary flower area. They just received revised plans on the Fast & Fresh Store with one comment to address on that. The kiosk is waiting on a couple of comments to come back and it's on order right now. There will be a time where everything will be going on at once at Hy-Vee.

Mr. Greer clarified that Gladstone Foods is adjacent to the Community Center. It is the taco factory, La Tiera Tacos. He also reminded them that Gladfest is October 4th, 5th & 6th this year so make sure you come out and buy some stuff and check out some of the concerts.

11. Communications from Planning Commission Members. Mr. Murch asked if there was an update on any of the projects that they have approved with the hotel.

Mr. Greer said he believes they will submit their building permits at the end of this month to the middle of next month. They should be seeing those soon. They just got their bids back from contractors and they were really favorable. They should be seeing something in the next month or so.

Ms. Middleton asked for clarification on the gas station behind the neighborhood. She wanted to know the difference in the types of zoning. There was something about it being a CP as opposed to a different type of zoning.

Mr. Greer explained the CP-1, CP-2, CP-3, etc. The P stands for "planned" which means they are in a planned district. If there is something major being done to the exterior, if they are adding or subtracting square footage, or adding a roof like the fuel station roof (canopy), that would constitute going to the Planning Commission. Another really good example would be the Wendy's that was approved. The Planning Commission didn't have to approve that because the zoning was C2, so it was a straight zoning, it didn't have the "Plan" to it. It was allowed to go in that zoning so they went straight to building permit, be approved by City Council, and start work.

Ms. Middleton shared that she didn't understand the difference between what makes one planned versus the other.

Mr. Greer said they want to see a lot of the zoning properties go to a planned district because it allows us to have some say on what the building can look like or what the site plan can look like. With the Comprehensive Plan, they want it to be as esthetically pleasing as possible. If we can help that in some ways, we want to. With the Wendy's, they knew the product they were going to put out there being brand new, it was a straight zoning so it went straight to building permit.

Mr. Whitton added if the footprint of the building on the lot changes, then they have a P zoning.

Mr. Greer agreed. He shared another example being the work that is going on at the Heights at Linden Square, the apartment complex, the exterior work that is being done. There's no square footage being added or subtracted there. They are just redoing the paneling and some of the Juliet balconies on the outside. Therefore, it didn't have to go to Planning Commission. With the gas station/convenience store, since they are adding a canopy and fuel stations and subtracting square footage that would constitute coming to the Planning Commission.

Ms. Middleton confirmed that being a C without being a CP they have more freedom to do what they want.

Mr. Greer agreed, as long as they fit within the zoning code, what is allowed. And that was the code that Alan and he wrote. Whenever a project wants to come in, or a development, they like to see if what they want to do fits with that zoning designation.

Mr. Markenson suggested that when they come to Gladfest to please come to the Rotary Mobile Food Establishment and get a turkey leg. He will be there.

Mr. Murch asked for an update on the Master Plan and if the money was allocated and whether a firm had been picked.

Mr. Greer said they are still working on the Comprehensive Plan. They are working on the RFP right now. It is circulating amongst the staff at this point. They are hoping to get that done by the end of the year and at least get it bid out and see who they are going to choose.

Mr. Murch replied that they are really looking at 2020 before they start.

Mr. Greer confirmed that was correct.

12. Adjournment. Mr. Markenson motioned to adjourn; Ms. Middleton seconded.

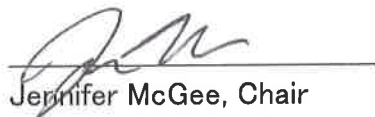
Chair McGee adjourned the meeting at 7:46 p.m.

Respectfully submitted:



Cheryl Lamb, Recording Secretary

Approved as corrected _____



Jennifer McGee, Chair

Approved as submitted ☒