

CITY OF FENTON COUNCIL PROCEEDINGS
Monday, January 12, 2015
City Hall Council Chambers
301 South LeRoy Street

Mayor Sue Osborn called the meeting to order at 7:30 PM.

The invocation for the evening was the Lord's Prayer and was followed by the Pledge of Allegiance.

Present: Bland, Grossmeyer, Jacob, King, Lockwood, McDermott, Osborn.
Absent: None.
Others Present: Lynn Markland, City Manager; Mike Reilly, Building and Zoning Official; Dan Czarnecki, Director of Public Works and Stephen Schultz, Legal Counsel.

MAYOR'S COMMENTS

Osborn wished all a Happy New Year. She reminded all the Chamber of Commerce forecast breakfast is scheduled for 7 AM tomorrow.

CITY MANAGER'S REPORT

Markland reported the following:

- Administration has been busy preparing for the Streetscape project which is due to start in a few months.
- The building department has been busy dealing with a code enforcement issue.
- Administration is working on many housekeeping items in preparation for springtime projects.

COUNCIL MEMBER COMMENTS

Grossmeyer commented at the last Small Cities meeting, it was discussed that the Genesee County Board of Commissioners voted to merge the 67th and 68th District Courts and possibly consolidate them. He asked if a resolution stating the City would like to keep the District Court in Fenton could be discussed. Item will be placed on the February work session agenda.

Lockwood gave an update on the Holiday Lights Committee meeting that took place earlier today. She gave an update on fundraising efforts for the Community Center.

King stated the Holiday Lights Committee meeting went very well. She wished all a Happy New Year.

LEGAL COUNSEL REPORT

None.

CITIZEN COMMENTS

None.

CONSENT AGENDA

Osborn reviewed all items that were on the Consent Agenda.

A motion was made by Bland and seconded by McDermott to approve the consent agenda containing the following items:

- Authorize payment of invoices in the amount of \$231,888.90.
- Approve and place on file the minutes of the November 13, 2014 Oakwood Cemetery Board meeting, the November 20, 2014 Planning Commission meeting, the December 1, 2014 City Council work session and the December 8, 2014 City Council meeting.
- Declare a vacancy on the Parks and Recreation Board.
- Appoint David McDermott and Patricia Lockwood to the Southern Lakes Parks and Recreation Board of Commissioners.
- Appoint Adele Karas to a vacant term on the Oakwood Cemetery Board expiring April 1, 2016.
- Appoint Mary Hansen to a first term on the Parks and Recreation Board expiring January 1, 2018.
- Approve Traffic Control Order 14-03 which installs a 'No Left Turn' sign below the stop sign at the North Road Elementary School west driveway.
- Approve Traffic Control Order 14-04 which installs 'No Parking' signs on the east and west shoulder of Appletree Lane 30 feet south of the intersection of Appletree Lane and South Long Lake Road.

YEAS: Bland, Grossmeyer, Jacob, King, Lockwood, McDermott, Osborn.

NAYS: None.

ABSENT: None. Motion carried by a roll call vote.

ORDINANCE NO. 687

Schultz commented this ordinance provides zoning regulations in conjunction with medical marihuana use. He stated the provision in the ordinance that was presented at last week's work session that pertained to caregivers growing in a residential district was removed. In summary, the ordinance provides that a medical marihuana patient may cultivate for themselves but caregivers must operate under a special land use permit in the industrial district where they can grow up to a maximum of sixty plants.

Schultz stated he asked for this to come forward to Council tonight. There has been recent litigation that he thinks resolved a lot of the questions relating to medical marihuana and stated it's a good time to get land use regulations in place.

McDermott asked if the City is in a situation where an ordinance has to be put in place. Schultz responded the City has no authority under prevailing law to prohibit the use of medical marihuana. Since the law allows for the use of medical marihuana, the question is where the appropriate time, place and manner is for such usage. He stated there are land uses associated with the cultivation of medical marihuana that if the City fails to put regulations in place, it could be argued that medical marihuana can be cultivated anywhere in the City.

Schultz further stated the discussions at the Planning Commission and Council work sessions have revolved around the idea that a caregiver is operating more of a commercial enterprise rather than a residential enterprise, and where the appropriate places are for that to occur as opposed to a medical marihuana patient growing for themselves in their own home. This ordinance tries to strike a balance between an industrial use and a personal/residential use.

McDermott referenced Section 3(b) (ii) of the ordinance that talks about the requirements for a caregiver that state in part “...otherwise make available proof of their valid, unexpired registry identification cards.” He did not think the City could ask for patient identification cards.

Schultz responded the medical marijuana statute prohibits the State from disclosing the registry. He stated the City is not asking for the registry to be disclosed. The language is to let caregivers know that want to engage in a commercial/industrial use related to medical marijuana, the City needs to know that it is an appropriate, lawful use and be able to determine if an individual can validly engage in this use.

Lockwood stated the Supreme Court has made a decision that communities cannot have an ordinance prohibiting medical marijuana but did not address what regulations communities can put in place to regulate use.

Schultz responded that is correct. It is his opinion the court decisions that have been rendered leave open the authority and ability of municipalities to regulate land uses, which is what the ordinance does. The *TerBeek v. City of Wyoming* case only addressed the question of whether an ordinance that prohibits any activity that violated federal law could be banned from the City. He stated the issue of whether medical marijuana should or should not be allowed has been decided. The City still has the authority to regulate what it thinks are appropriate uses in appropriate districts.

Lockwood stated the ordinance as it’s currently drafted only allows for growing in residential areas by patients and not caregivers.

Schultz responded that is correct and clarified that a person can be both a registered patient and caregiver so those individuals that are both a patient and caregiver can grow for themselves in a residential district. The ordinance does not allow for a caregiver to grow for someone else in a residential district.

Lockwood inquired whether or not outdoor growing was allowed.

Schultz responded originally the law was interpreted to require that an enclosed, locked facility be inside a building. There is a Court of Appeals decision that authorized the growing of medical marijuana in an enclosed locked facility that was outdoors, but the facility had to be fenced and secured as such that no one could get into it. The ordinance indicates the medical marijuana has to be in an enclosed locked facility that is built and maintained in a manner consistent with applicable building and property maintenance codes and stated it’s conceivable an outdoor facility could be constructed that meets those codes and complies with the Court of Appeals decision. He stated the easiest way to comply with the ordinance is to have a facility inside a building.

Lockwood stated the City of Roseville ordinance indicates there is no outdoor growing and asked if that would be the intent of Fenton’s ordinance, should it pass.

Schultz stated the intent is that the best and most appropriate place to conduct any growing activity by a patient is inside a dwelling, but again stated it’s conceivable upon application to the Building Official that some arrangement could be made that meets both building and property maintenance codes and would allow for growing outside a residential dwelling. He stated if that is what the Courts allow, and that hasn’t yet been determined, the City is not in a position to overrule that.

Lockwood asked how many communities in Michigan have medical marijuana ordinances.

Schultz responded he doesn’t know the exact number but stated there are many and they include all different levels of restriction. He stated last week the Supreme Court upheld a charter

amendment in the City of Grand Rapids that prohibits any kind of prosecution by City police for possession of marihuana. He stated other communities are using the zoning approach, and that is the approach taken in the ordinance being discussed tonight. He commented the cities of Wyoming and Novi have not yet adopted ordinances, but Novi has undertaken the process and is looking at appropriate land use regulations that apply to medical marihuana.

Lockwood stated she thinks the City Attorney has done a great job incorporating the best policies for the City but in reviewing other ordinances, questions kept arising. She stated it's her understanding the ordinance for the City of Tawas only allows growing in the business district and asked if that ordinance had been looked at. Schultz responded he has not looked at that ordinance.

Lockwood asked if the standards for residential districts are for single family dwellings only. Schultz responded it is for all residential and would apply to multiple family dwellings and residential uses in planned unit developments.

Lockwood stated the ordinance for Farmington Hills does not allow outdoor growing, only allows for growing in single family dwellings and allows for Fire Department inspections.

Schultz stated the draft ordinance presented tonight contains provisions that requires a facility to meet the code enforcement obligations that would apply.

Lockwood referred to the City of Hartford's ordinance that states no persons other than Doctors shall dispense medical marihuana.

Schultz stated he has not seen that ordinance and cannot comment on it.

Lockwood asked where someone would get seeds to grow marihuana. Schultz responded that is not addressed by state law.

Lockwood asked if the Council should move forward with adopting an ordinance even though things are changing on a daily basis and many questions remain.

Schultz responded the question whether or not medical marihuana must be allowed within the City has been settled. The City is not in a position where the law is so unsettled that no use is allowed. Since it's known that medical marihuana use will be within the City limits, it needs to be determined on what basis will it be allowed. He thinks the ordinance presented is a good starting point for addressing that and commented the ordinance can always be revised if something is found to not be working well.

Osborn asked if caregivers would be allowed to go into one facility in the industrial park and each grow the maximum number of plants allowed by the ordinance. Schultz responded the ordinance provides that each caregiver may operate a facility, but caregivers cannot be combined in one facility. The ordinance also provides that patients may not grow in a facility designated for caregivers.

Osborn asked if the residential growing should be changed to single family residential as apartments may pose odor, ventilation and other problems.

Schultz responded that is a policy question for Council but stated many landlords have provided that medical marihuana is not permitted in their buildings.

King stated she has a problem with allowing the use in apartment buildings and she considers apartments more of a commercial building. She knows medical marihuana was voted into law but a lot of communities are not passing ordinances and thinks this is being rushed into because people are wanting to open businesses.

Bland stated condos also have more than one unit per building and feels this is an area the Council shouldn't get into.

Grossmeyer commented the Council does not have to enact an ordinance and if one is not enacted, eventually a moratorium can no longer be in place in which case the state law takes over and there will be no control over what zoning districts growing takes place.

Schultz stated the issue is, if the Council chooses not to regulate land use relating to medical marihuana cultivation, then it can occur anywhere in the City.

Grossmeyer stated communities that do not enact an ordinance are allowing the use in all areas. The City is attempting to enact an ordinance so that doesn't happen. He commented even if growing was prohibited in apartment buildings, an individual would still be able to obtain medical marihuana from a caregiver and use at the apartment. He thinks its best left to the landlords to determine what activities are allowed in their buildings.

Osborn stated she has concerns with allowing growing in apartment buildings, the amount of plants that could be grown there and if they could be accessible to children; it's more difficult to know what's going on in an apartment building than in a single family residence because people are coming and going all the time in apartment complexes.

Jacob commented he is comfortable leaving it up to the owner of an apartment complex as to what they will allow in their buildings.

Grossmeyer stated he thinks the ordinance keeps honest people honest and people that will grow marihuana other than for medical purposes are going to do so anyway. He thinks the ordinance provides guidelines for people that want to do the right thing.

Osborn stated she is not against use for medical purposes but she sits on the Flint Area Narcotics Group and has seen that use doesn't stop there and she doesn't want problems coming here that she has seen in other communities.

McDermott stated he thinks it needs to be left to the landlords to determine what they will allow in their buildings and to treat certain residential areas different is too complex. He feels the zoning approach that the ordinance takes is the way to address this issue.

Bland stated there are condos and apartments all over town and he doesn't agree with them being treated different. He stated if growing is allowed in the residential district, then it should be allowed in all residential districts.

King commented regarding problems Dauner Haus is having trying to become a smoke free facility. She has an issue with allowing medical marihuana in apartment buildings. She asked if the apartments were notified that this was on the agenda tonight.

Markland responded no because a request was never made to contact them.

Bland stated he thinks apartment landlords and owners are familiar with the law as to what is allowed or not allowed in their buildings and that is their choice to make, not the Council's.

Lockwood stated she thought it was discussed at last week's work session to check with the cities of Novi and Livonia and look at their ordinances and then address this after reviewing those ordinances.

Schultz stated the cities of Wyoming and Novi were contacted as those municipalities were involved in efforts to prohibit activity that violated federal law and neither have adopted an ordinance but Novi has taken up the issue. He stated Livonia does not have an ordinance in place.

Schultz stated he asked for this to come back to Council because there is a moratorium in place set to expire on February 1st. He thinks the City was justified in continuing the moratorium until the law was settled as to whether or not medical marihuana could be prohibited. That issue has been resolved and medical marihuana cannot be prohibited; the issue now is, what level of regulation the City should have in terms of regulating use. He reiterated that to do nothing is to allow it everywhere.

Lockwood commented regarding the cities of Ferndale and Farmington Hills stating she would like to know their reasons for including certain residential restrictions in their ordinances.

Jacob stated if the proposed ordinance includes more restrictions than what it already contains, he will probably vote no on the ordinance.

A motion was made by Jacob and seconded by Grossmeyer to adopt Ordinance No. 687, which provides for standards for medical marihuana cultivation in the City of Fenton. ***Motion superseded by a motion to table.***

Lockwood asked if there would be consideration to limit uses in the residential district to single family residences. Jacob replied he thinks that should be left up to the property owners of multiple family housing. He feels if the property owners find there are problems, they can restrict what is allowed in their building.

Osborn asked if the ordinance is adopted tonight, can it be amended after reviewing the ordinances from the municipalities discussed tonight. She would like to see what other communities have done concerning single family residences and how apartments and condos are addressed.

Schultz responded the zoning ordinance can always be amended but that any amendments would have to first be addressed by the Planning Commission, who will then make a recommendation to City Council.

Osborn asked if this could be tabled until the next meeting (Jan. 26th). She stated the moratorium is in effect until February 1st so there is time to look into questions and concerns before the moratorium expires.

Bland stated he is willing to table the ordinance with the contingency that action is to be taken on the ordinance at the next meeting.

Schultz clarified a motion to table takes precedence over the motion on the floor. If the motion to table passes, the item is tabled until the next meeting.

A motion was made by Bland and seconded by King to table Ordinance No. 687 until the January 26, 2015 City Council meeting so long as action is taken at that meeting.

YEAS: Grossmeyer, King, Lockwood, McDermott, Osborn, Bland.
NAYS: Jacob.
ABSENT: None. Motion carried by a roll call vote.

RESOLUTION 15-1

Markland stated this resolution is to set the special assessment roll and public hearing date for the Lake Fenton weed eradication program. The public hearing is scheduled for Monday, January 26, 2015 at 7:30 PM.

A motion was made by Bland and seconded by Lockwood to approve Resolution No. 15-1, a Resolution to file the special assessment roll for the Lake Fenton aquatic weed eradication and control program and set a public hearing for January 26, 2015 to review the special assessment roll.

YEAS: Jacob, King, Lockwood, McDermott, Osborn, Bland, Grossmeyer.
NAYS: None.
ABSENT: None. **RESOLUTION DECLARED ADOPTED.**

RESCHEDULE MARCH 9, 2015 CITY COUNCIL MEETING

A motion was made by Osborn and seconded by McDermott to reschedule the March 9, 2015 City Council meeting to Monday, March 16, 2015 at 7:30 PM. Motion carried by a voice vote.

CALL TO THE AUDIENCE

None.

Meeting was adjourned at 8:32 PM.

Mayor Sue Osborn

City Clerk, Renee Wilson

Date approved: February 9, 2015