

**Health & Human Services and Public Safety Committee
&
Economic Development Committee**

Tuesday, August 6, 2019, 5:30pm, Room 209, City Hall

Health & Human Services and Public Safety Committee Attendance:

Belinda Ray, Chair (District 1), Brian Batson (District 3), Pious Ali (At-Large)

Economic Development Committee Attendance:

Justin Costa, Chair (District 4), Spencer Thibodaux (District 2), Pious Ali (At-Large), Nicholas Mavodones (At-Large).

City Staff: Heather Brown, Assistant City Manager; Christine Grimando, Acting Planning Director; Jessica Hancombe, Licensing and Housing Safety Manager ; Anne Torregrossa, Associate Corporation Counsel ; Jim Sweatt, Interim Assistant Police Chief; Chris Goodall, Assistant Fire Chief, Kristen Dow, Health and Human Services Director; Adam Harr, Social Services Executive Assistant; Greg Mitchell, Economic Development Director; Kolawole Bankole, Public Health Administrator; Bridget Rauscher, Chronic Disease Prevention Program Coordinator; and Keri Ouellette, Permitting Intake and Review Manager.

Meeting called to order at approximately 5:40 PM.

AGENDA ITEM 1 – Announcements

Councilor Costa, Chair of the Economic Development Committee introduced the background of the joint meeting; it is an initial meeting and there will be no public hearing at this meeting. Councilor Ray, Chair of the Health and Human Services & Public Safety Committee explained there will be opportunity for public comment at future meetings: before leaving this committee level and again at the full City Council.

AGENDA ITEM 2 – Marijuana Business Licensing

Heather:

- Over a year ago the City created a staff working group with the following goals:
 - o Create a working frame work
 - o A program that can pay for itself
 - o Works with industry and launch a novel program for Portland.
 - o Health and safety focused that treats medical and recreational use similarly.

Anne Torregrossa:

- November Existing
 - o State distinguishes medical vs adult/recreational use.
 - o Dispensaries already exist for medical use

- o Individually license care givers.
- Ordinance
 - o Retail: both medical and adult use
- Adult use regulations in September from the State.
 - o Depending on this process Portland may do the same.
- Adult use rules are comprehensive.
 - o Medical rules are not as comprehensive and Anne expects the State will update these in the future.
- Portland's ordinance will be more robust due to the disparity between medical and adult use regulations from the state.
- Licenses
 - o The limits are expected to be the biggest point of public contention (Cap on 20 Retail Licenses)
 - o Give and take with Council feedback is expected.

Councilor Mavodones suggested a brief overview for people viewing the meeting.

Memo: Marijuana Business Licensing Overview

<https://portlandme.civicclerk.com/Web/GenFile.aspx?ad=2913>

- License Types
 - o Cultivation: 3 tiers based on size
 - o Manufacturing
 - Manual (Low Hazard)
 - High Hazard
 - o Retail
 - Medical
 - Adult Use/Recreational
 - o Caregiver is limited to 5 patients a month; home operations are allowed.
 - o Testing Facilities
- Allocation of retail licenses
 - o 250ft buffer between business regardless of medical or retail/adult use (door to door along and across streets, similar to the business entertainment license)
- Cap on retail stores
 - o Cap method: using the 250 ft buffer there could theoretically be 500 retail stores.
 - o Staff was concerned that without a cap, the market would be flooded initially and then each year would steadily lose business.
 - o 20 is a starting point.
- Possible allocation method for retail applicants
 - o First come, first served
 - A professional proposal with the following conditions met:
 - <https://portlandme.civicclerk.com/Web/GenFile.aspx?ad=2909>
 - Tentative approval to continue if these are met

- o Staff also considering a weighted lottery where applications are based on qualifications the council decides on. An example:
<https://portlandme.civicclerk.com/Web/GenFile.aspx?ad=2927>
 - o Pure lottery (not recommended)
 - o Purely merit based. It would require a committee to review and rate applications. (not recommended)
- Applications are currently reviewed at the staff level.
 - o Allows nimbleness to seek expert help as needed.
 - o Could be at planning board, council or other level.
 - o Any site plan would go through planning board but some proposals may not require sight plans (such as small operations)
- Application Highlights
 - o Community relations liaison required for to forward complaints.
 - o Landlord permission
 - Some landlords have restrictions on financing property owners due to federal laws and banks not working with property owners in the industry.
 - o Security Plan
 - o Waste disposal plan
 - o Odor mitigation plan
 - o Operations/Business plans (much of this is required at the state level.)
 - o Performance Guarantee: amount determined to responsibly wind down business.
 - Be able to not have excess product and materials in event of closure.
- Fee Schedule
 - o Program to pay for itself, including staffing needs.
 - Numbers are designed to start the new program then continue it.
 - o Made assumptions to numbers that can be adjusted
- Licensing qualifications largely track to the State's
- Disqualifying Factors (with time limits)
 - o Land Use violations
 - o Unpaid taxes
- Labeling requirements for adult use are comprehensive
 - o Not so with medical:
 - If it has been tested, results must be labelled.
 - Untested product must be labeled as such
 - Both must be labelled it contains THC.
- Manufacturing and retail must be separate.
- Kitchens where marijuana products are made must be separate from facilities where non marijuana food products are made.
 - o Expected conversation around requirements of shared kitchens
- Added sprinkling requirements
- Chapter 11 food licensing: added a special food license.
 - o Currently license only at retail (not manufacturers)
 - Would add manufacturing.
- Insurance and indemnification

- o Important due to the legality at the federal level.

Committee Questions:

- Going section by section.

Definitions

- Disqualifying Conviction
 - o Should class A, B, or C, conviction be listed other than felony.
 - It is a long list.
 - Mirrors State language
 - Medical rules do not list convictions
 - o Chair Ray was concerned about preventing someone from entering business who does not need to be but will research convictions herself

Enforcement

- History of law enforcement's disparate impact on people of color:
 - o Councilor Ali asked if it is possible to incentivize business owners who have historically been aggrieved by disproportionate enforcement.
 - o Marijuana convictions would not prohibit a license outside of trafficking violations
 - Out of state convictions will be reviewed using the Maine equivariant based on the crime itself.
 - The amounts other states would charge individuals for trafficking vary.
 - If a person has a felony trafficking conviction from another state that Maine would consider a misdemeanor possession, the applicant's conviction would be considered misdemeanor possession.

License Types

- Councilor Thibodeau asked about the five types of licenses
 - o Cultivation is counted as a license in the memo.
- Tiers: How many plants can be cultivated in each tier
 - o Staff will find the equivalents based on canopy area
- Shared Space: Are there other instances where communities have allowed for production of marijuana products and non-marijuana foods.
 - o Staff are not aware of communities in or outside of Maine that have addresses this issue.
 - Staff to look for examples and how they may have mitigated concerns.
 - o How could someone exercise control in a shared space such as at businesses like Fork Food Lab.
- 3 Cultivation tiers are based on plant canopy, but measured by how much square footage is measured
 - o These match up with the state tiers (outside of an even larger tier at the State the Portland will de facto prohibit due to it being too large)
- Land use:

- Due to setbacks and other zoning, the larger tiers may not be possible.
 - This will be address in the licensing process.

Licensing Procedure

- The year to open the business is from the date of approval, not application.
 - It may take longer than a year if a building is being built.
 - This may be changed to include the ability of staff to extend the one year.
- If a license is granted, does an applicant have an ability to transfer it to someone else or another business.
 - Licenses are tied to the applicant and their business.
 - Licenses cannot be transferred.
 - A new owner would need to apply
 - The business must be closed during the new application process.
 - A 10% change in ownership is the threshold for a new application.
- Requirement for Owned/Operated Maine Businesses.
 - Councilor Batson is concerned out of state business interested would supplant local entrepreneurship.
 - In the rules:
 - Out of state individuals can form a Maine LLC.
 - Adult Use: State level already limits use: Must all be a natural person who is a resident of the state of Maine, A majority of the shares must be Maine Residence.
 - The State would check this.
 - Medical use: care giver licenses require Maine residency.

Background Checks

- Where are background check requirements indicated in City Code?
 - Chapter 35-17
 - Individuals would need to meet background check requirements.
 - LLC: managers, directors, officers and general partners.
 - Applicant has burden of proof; exactly the same language as alcohol.
 - At the State it is by certain positions and managers.

Performance Guarantee

- Open and broader than others
 - Surety bond
 - Letter of credit
 - Escrow account
 - Other evidence that the City finds acceptable.

Fees and Costs

- Cases in which the fee can be refunded:
 - Withdrawn application prior to granting of the license
 - Denied license

- o If notifies the City applicant is abandoning the city prior to opening.
- Why would the City refund the abandoned fee?
 - o There are two fees, at application fee to cover most of application process and then licensing fee.
 - o 1 and 2 make more sense to Chair ray as they are before the license has been granted; why refund a license that has been granted?
- Councilor Costa asked about the actual cost do know the fees are actually covering the cost. He is concerned of future increases and would prefer getting them right at the start.
 - o These are based on assumptions that will change thought he planning process, but the fees are designed to start up a program.
 - o Feedback from the community and changes to the ordinance will influence the final fees.

Limitations on Production and Manufacturing of Food Products.

- A separate kitchen may be onerous to bakeries and other businesses.
 - o Businesses already must mitigate against cross contamination with allergens; are there ways to mitigate against contamination that do not require a separate kitchen.
 - Safety Plans
 - Quality Control Plans
 - o Other options require much more staff time when separate facilities or equipment
 - o Councilor Costa asked if disposal requirements could mitigate.
 - Shared spaces would be difficult, would people who work after a marijuana producer know or be able to mitigate
 - o Chair Ray is interested in alternative to the separate kitchen requirement.

Additional Retail Store Requirements

- Business Cap
 - o Councilor Batson asked about communities that have had retail spaces for a longer period of time.
 - Staff were concerned of economic drivers: what cab a population the size of Portland sustain?
 - Concentration
 - Tourism
 - Compared with Boston;
 - Boston's cap would overwhelm the market; staff want to avoid a crash.
 - o Councilor Batson requested research on outcomes and what existed in those communities' regulations.
 - Lack of distance restrictions led to concentrations in Albuquerque created a marijuana district.
 - Staff will research other communities.
 - o Councilor Batson is not sure about a cap due to other limiting requirements.
 - He further is struggling to reconcile the disparity with alcohol which does not have a cap (outside of agency liquor store)

- Anne cautioned analogizing it to alcohol as it is a new industry and agency liquor stores are retail spaces and acknowledged the current cap may not be reached due to other regulations.
 - Councilor Thibodeaux referenced Air BnB Regulations and would like to start small and evaluate annually then adding more licenses as part of a growth plan.
- o Councilor Thibodeaux has some concern on residency and Minority Owned Businesses but is most concerned by the weighted lottery and likes the first come first served basis while at the same time wanting those first served are fully qualified.
 - He is skeptical about the point system
 - If no cap thinks the language has quality control. Anne extrapolated that minimum qualification across the board could insure this.
 - He would like additional information and diversity in the businesses granted licenses
 - The one year time period is designed for new businesses who may need more time to launch.
- o Other caps dictated by ordinance:
 - Short term rentals.
 - Taxes (Anne will find out more)
 - Entertainment is not capped but limited by distance.
- o Councilor Mavodones: over time the market will dictate success
 - This has mitigated having too many formula businesses in the past
 - Can the market performance dictate an effective cap?
 - He is concerned with any number of cap
 - How do applications submitted at once be ranked?
 - Chronologically at submitting down to the time of day (Process for short term rentals)
- o Councilor Costa asked if there is a public health concern were the number of retailers not capped; is there a public health component or just an economic development concern.
 - HHS was not part of the planning process and will research the public health considerations.
 - A flooded market place where businesses fail would likely see the smaller businesses fail first; a cap could help this.

Zoning

- Councilor Ali asked if due to school zones and other rules, will there effectively be a concentration like the concentration of bars in the old port?
 - o Maps show that retail areas are allowed in multiple areas: old port and bayside up the B zones to through Forest Ave (dark green on Map)
 - o Manufacturing zones are marked by leaf symbols.
 - o From a business perspective there is nothing to preventing a concentration in the old port outside of the 250 ft requirement.

Cap

- Councilor Thibodeau asked Economic Development on Industrial spaces
 - o Rents: there is about a 1% vacancy of industrial space.
 - o What are the vacancy rates downtown?

Additional Retail Spaces

- Chair Ray is still interested in allowing the sale of non-marijuana consumables and marijuana consumable in the same space.
 - o Originally the prohibition was on any non-marijuana consumables.
 - o Industry input led to no on-site consumption.
 - Enforcement was the true issue as one cannot tell if a brownie has THC in it or not.
 - Take out service without seating would be allowed.
 - Chair Ray is not sure if she is satisfied with the compromise.
 - o Other uses prohibited
 - Staff were mainly concerned about entertainment
 - One must be a retail store or not (cannot be one type of business with a small addition marijuana retail)
 - o Leaflet to mitigate overdoses and that marijuana products have doses within a product that are different than the servings of a product.
 - Compromise with the medical/retail labeling and prohibition on public consumption.
 - Could this be accomplished with a sign or optional leaflet
 - The requirement could lead to litter.
 - Public health can help with the health warning in the leaflet.
 - Councilor Costa asked about general warnings and labels like alcohol content with liquor; there is no standard equivalent.
 - Councilor Batson is concerned about the word choice “overdose” and suggested overconsumption may be more appropriate.
 - o Over consumption is not lethal like an overdose
 - o Are there retail stores operating in the City
 - Yes
 - o Will these stores be grandfathered
 - No

Signage

- Chair Ray asked why a marijuana leaf plant cannot be on a sign?

Cultivation

- Outdoor growing is prohibited for everyone?
 - o Just for business use in this ordinance.
 - o Personal use is not addressed in this ordinance

Councilor Costa asked about the process going forward

- Split between HHS&PS focusing on public health and Economic Development

- o Meet and find a reasonable division between questions?
 - o Continue joint meetings?
- Councilor Batson would like to delay deciding now.
- Councilor Mavodones agreed as he is wary of splitting and duplicating work and preferred to do it together.
- Councilor Thibodeau is amenable to staying in joint meetings, if the group decided to split, we would want to decide when that division of questions would be discussed.
- Chair Ray asked about the timeline.
 - o The state timeline is in the Fall but may take longer. (State's take effect in September and likely working in October/November)
 - o Staff is able to work as long as needed.
- Chair Costa agreed to stay operating jointly and prioritize public health considerations and flagging things people will want to talk about especially with the cap.
 - o Uncharted territory and would like easy to understand language
 - o Consider the lower level resources of local businesses.
 - Reflect in specific numbers.
 - o When internal next steps are communicated, future planning will be announce.
- Chair Ray confirmed staff know what is asked of them and would like to see the local and minority owned business considerations in the weighting in other communities, and further examples of weighting.
- Councilor Mavodones is expecting aggrieved applicants (cap vs. no cap) and what potential litigation and responses exist in the ordinance as it stands.
- Chair Ray asked about the placeholders.
 - o A redline of those chapters can be provided the next meeting, but what is currently outlined is the major content of the ordinance.
 - Not needed for the next meeting.
- Taxes: so far there is no benefit from state taxes to the City.

The meeting adjourned at approximately 7:20 PM.