

**ASSEMBLY STANDING COMMITTEE  
COMMITTEE OF THE WHOLE  
THE CITY AND BOROUGH OF JUNEAU, ALASKA  
MINUTES**

April 4, 2016, 6:30 PM.

Municipal Building - Assembly Chambers - Start time to immediately follow the Special  
Assembly Meeting which begins at 6 pm.

Assembly Worksession - No Public Testimony

**I. ROLL CALL**

Deputy Mayor Kiehl called the meeting to order at 6:20 p.m. in the Assembly Chambers.

Assemblymembers Present: Mary Becker, Jamie Bursell, Maria Gladziszewski, Loren Jones, Jesse Kiehl, Ken Koelsch, Jerry Nankervis, Kate Troll and Debbie White.

Assemblymembers Absent: None.

Staff present: Kim Kiefer, City Manager; Amy Mead, City Attorney; Mila Cosgrove, Deputy City Manager; Laurie Sica, Municipal Clerk; Rorie Watt, Engineering and Public Works Director; and Bryce Johnson, Police Chief.

**II. APPROVAL OF AGENDA**

Hearing no objection, the agenda was approved as presented.

**III. APPROVAL OF MINUTES**

**A. February 22, 2016 Committee of the Whole Minutes**

Hearing no objection, the minutes of the February 22, 2016 Committee of the Whole meeting were approved as corrected.

**B. March 14, 2016 Committee of the Whole Minutes**

Hearing no objection, the minutes of the March 14, 2016 Committee of the Whole meeting were approved as corrected.

**IV. AGENDA TOPICS**

**A. Ordinance 2015-38 An Ordinance Amending the Land Use Code to Provide for the Regulation of Marijuana Use and Marijuana Establishments, and Providing for a Penalty.**

Ms. Kiefer said staff was available to answer questions.

Ms. Gladziszewski distributed a sheet of proposed changes, which would add a new section 49.65.\_\_\_\_, titled "Marijuana cultivation facilities in the D-1 zoning district" and spoke to each item in the section.

MOTION, by Gladziszewski, to amend, as follows:

*(a) Marijuana cultivation facilities located in the D-1 zoning district shall be an accessory use. An owner or manager must live on site.*

*(b) In the D-1 zoning district, the minimum setback distance shall be at least 25 feet from the marijuana cultivation facility to any property line. (Current setbacks are 25 feet from front and back and 15 feet from side lot lines)*

*(c) In the D-1 zoning district, exterior lighting must be oriented or otherwise designed so as not to project directly onto surrounding property.*

*(d) In the D-1 zoning district, a marijuana cultivation facility may not emit constant noise that is audible from the property line. Recurrent or intermittent noise of no more than 65 dBA at the property line during the day or 55 dBA at night may be allowed.*

Mr. Jones objected. He said state rules define a marijuana cultivation facility as a licensed premise, and questioned the ability of a person to live in a licensed premise.

Ms. Mead said on site meant on the parcel. The licensed premise in Title 49 must be an accessory use to the main residential use. Someone can not purchase a lot with the sole purpose of running a marijuana facility.

Mr. Nankervis said items (c) and (d) would be part of the planning commission review and seemed redundant. He did not support the motion.

Ms. Gladziszewski said there was something in the ordinance about odor, but there was not a standard for lighting or noise that was dissimilar from other conditional use requirements and this could give extra assurance for neighbors.

Ms. Becker asked how the conditions in the CUP and the conditions in the code applied to pulling any locally issued license. Ms. Mead said the licenses would be issued through the Community Development Department (CDD) and if there were issues of non-compliance with the CUP or the code, then those would be subject to enforcement through the tool of license review. The ordinance set minimum conditions that the Planning Commission (PC) would need to consider as it made site specific conditions in permits before the PC. Ms. Mead referred to the accessory use definition - an owner or manager must live on the same lots as the licensed premise.

*MOTION*, by Gladziszewski, to amend (a) to read ...An owner or manager must live on the same lot as the licensed premise.

Hearing no objection, Mr. Kiehl accepted the amendment to the motion.

Ms. Troll said in general this was the right direction. She understood there is a Conditional Use Permit (CUP) process. I looked at the one permitted operation and the applicant will meet all of the stipulations provided in the ordinance, and as she understood, those applicants were "model applicants." It behooved the Assembly to take that model and put that in our ordinance, which gives clarity and assurance to the neighbors that this is the type of operation we expect in D-1. Making this an accessory use is an important policy call and Ms. Gladziszewski's four additions are a good response to the public concerns.

Mr. Jones said if a property has a variance to the setback, due to having a narrow lot, and they have a detached garage that is already existing, if they ask for a CUP to turn the garage in a grow facility, does this set them up for rejection by the PC. Ms. Mead said variances are for design and dimensional standards. CDD is going through the code to review the variance process and right now the PC has the authority to grant variances. Mr. Jones asked if there can be a variance to light and noise. Ms. Mead said no, because it was not a design or dimensional standard, but that could change as CDD went through the variance amendment process. Mr. Jones spoke about the issuance of a waiver to noise requirements due to construction in the tidal zone that was outside of the permitted working hours. Ms. Mead said under the current process the PC has broad discretion on light and noise. This amendment sets a specific standard. Under the current standards, if the establishment was in an area without neighbors, they could vary the conditions.

Ms. Bursell said the purpose of Article 10, was to establish reasonable regulations to promote health, safety and general welfare. She asked if the committee would be willing to get some input from Police Chief Johnson regarding the safety aspect of this motion. Ms. Bursell said she would like input from JPD in general due to conflicting laws from federal, state and local regulation. She asked if he had any recommendations. Chief Johnson said that this was a new industry, and his best, educated guess was that these businesses will cause some sort of problems in the neighborhood. He believed the CBJ should allow the businesses to grow in Industrial areas before they are allowed to move into residential areas.

Ms. Troll said the decision had already been made to allow the use in D-1, so to require that this use is an accessory use and the owner or manager must live on the same lot should address some safety concerns. She asked him if the initial requirement to have someone live on site would help - and he said he thought it would help.

Mr. Kiehl asked if the issues of odor and lighting would be enforced by CDD rather than JPD and Ms. Mead said that was the case.

Ms. Bursell said she believed that regarding enforcement, people would first think to call JPD.

Mayor Koelsch asked if there was a certain amount of time a person had to live on site and if they could have a vacation home elsewhere. Ms. Gladziszewski said that a majority of the Assembly said the CUP would address this use in D-1, and it has been thought of as an accessory use, not a non-attended facility. Ms. Mead said there would need to be a reasonableness standard and if there was a complaint that no one was living on site, there would be an investigation, a compliance order, an opportunity for the property owner to explain themselves and it would not be a black and white situation.

Mr. Koelsch asked if the Rural Reserve zone would be addressed. Ms. Gladziszewski said that she was only intending this motion to apply to the residential zone of D-1 as more uses were allowed in RR zones.

Mr. Jones said if a person who was living on the property applied for a license, they needed to be eligible for the PFD according to state licensing law. Someone could lease the house, and if they have control of the property, or if they were a manager, that person would likely be an employee with a marijuana handler's permit.

Chair Keihl called for a vote on each item in the proposed section.

Roll call, item (a):

Aye: Becker, Bursell, Jones, Gladziszewski, Kiehl, Troll, White

Nay: Nankervis, Koelsch

Motion passed 7 ayes, 2 nays.

Roll call, item (b):

Aye: Bursell, Jones, Gladziszewski, Kiehl, Troll

Nay: Becker, Nankervis, White, Koelsch

Motion passed, 5 ayes, 4 nays.

Roll call, item (c):

Aye: Bursell, Gladziszewski, Kiehl, Troll

Nay: Becker, Jones, Nankervis, White, Koelsch

Motion failed, 4 ayes, 5 nays.

Roll call, item (d):

Aye: Gladziszewski, Kiehl

Nay: Becker, Bursell, Jones, Nankervis, Troll, White, Koelsch

Motion failed, 2 ayes, 7 nays.

*MOTION, by Gladziszewski, to amend Note AB of the Table of Permissible Uses at CBJ 49.25.300 to add the underlined text: Use is prohibited in the urban service area but allowe outside the urban service area as an accessory use. An owner or manager must live on the same lot as the licensed premise.*

Roll call:

Aye: Bursell, Jones, Gladziszewski, Kiehl, Troll

Nay: Becker, Nankervis, White, Koelsch

Motion passed, 5 ayes, 4 nays.

Mr. Jones asked Ms. Mead to clarify if "article" or "chapter in terms of enforcement of 49.65.

Mr. Jones said the application for a license section contained the same requirement as at the state level and could the section be amended so that the license application was not as lengthy a process as a conditional use permit application. All of the information required would be provided by getting a copy of the license from the state. Perhaps substitute the applicant must meet 3AAC306015. Ms. Mead said that there was discussion about not requiring a state license first. Both are required to operate, but the state license wasn't required first. This is somewhat duplicative to the state license for ease of application. Ms. Mead said this license is not as substantive, it is more of a routine and the important part is the enforcement tool. Mr. Jones objected to the idea of a "proforma license." Item six is to approve it with conditions. What conditions would you put on a license if you have already gone through CUP and conditions of state license? It does not seem like a pro-forma process.

*MOTION, by Jones, to remove on page 3, line 23 - 24, "approve with conditions."*

Ms. White asked for Ms. Mead's opinion. Ms. Mead said all of this drafting is based on policy calls. The intent of having the condition language on the license is that it is a new industry, it is heavily regulated, and the idea was to give CBJ as much discretion to regulate. It is not a conditional use permit - the license is intended as an enforcement tool.

Mr. Jones said that in order to have a license there must be a conditional use permit, so other conditions on the license are not needed.

Mr. Kiehl said Mr. Jones concerns reflect the discussions at the marijuana committee. If the committee is not prepared to set the sideboard for conditions, that would come later when a future CDD director applied conditions on the license. Ms. Mead said these conditions could be based on conditions other than those on the conditional use permit, perhaps based on other code sections in CBJ code, that would require other conditions be outlined.

Ms. Troll said that this recalled the actions taken on liquor license, such as taxes must be paid by a certain date, or some paperwork must be submitted. Ms. Mead said that was her understanding, though not based on taxes.

Mr. Kiehl asked if could this be addressed through a corrective order. Ms. Mead said no, that this idea to add conditions to address "bad actors" who were getting their licenses back to allow the CDD director to add additional conditions for the future, rather than based on something they have already done wrong.

Ms. Troll said she would vote against the amendment since the enforcement people need to have tools to be flexible.

Roll call:

Aye: Jones, Kiehl

Nay: Becker, Bursell, Gladziszewski, Nankervis, Troll, White, Koelsch.

Motion failed, 2 ayes, 7 nays.

Mr. Jones, said Page 4, line 22, references "has relinquished legal control to any other person." Under state law, that is not possible. The state licenses are not transferrable. Ms. Mead said this referred to management agreements, which were not legal and if those occurred there could be license action. The entire reason why the local license piece came up and the intent behind it was to give the municipality direct control over these businesses and not having to rely on the state to take action.

*MOTION, by Jones, to change language as suggested by Ms. Mead, on Page 4, 49.65.1120 (e) "Licenses shall automatically renew on January 1, conditional upon a timely remittance of annual license fee and proof of inspection." Hearing no objection, it was so ordered.*

Mr. Jones said that violation of "any condition" was broad language and that decision is only done by director of CDD, and it doesn't refer to "substantial compliance."

Ms. Gladziszewski said the overall purpose is to give the local municipality control and we were unsure as to how much enforcement the state would be able to do and this is to have an ability to have an immediate effect on local businesses to make them comply with local laws.

Mr. Kiehl said the difference of having a corrective order gives another tool to achieve compliance than is available with just enforcing conditions on a conditional use permit.

Mr. Jones said he supported the ordinance but had concerns with rules being set by the Director of CDD and not coming through the Assembly. Ms. Mead explained the revocation process regarding CUPs, which was quite onerous, and said the intent was to address compliance without needing to use that process.

The Assembly discussed denial of a license, the appeal process and what might happen to a business or the product during this process. Ms. Mead explained the ability for an appellant to request a stay and the Assembly's ability to grant a stay. CBJ did not have a seizure process and CBJ did not have a facility to seize and keep product. Mr. Jones said this is a perishable product and if we revoke a license we can cause irreparable harm. Ms. Mead said CBJ had authority to enforce our regulations. The state will look at our decision and determine whether to take license action. CBJ's decision is appealable to state court.

*MOTION, by Jones, in 49.65.1145 Marijuana Establishment Conditional Use Permits, to add a new item (1), a copy of the complete application to the state for its license process, and renumber all items.*

Mr. Jones said that the state would require many of the items listed in this code section, and he wanted a transparent process that showed the same information to the municipality as it did to the state.

Ms. Gladziszewski objected due to timing issues. She said the state license and the CUP can go along concurrently and there may be unnecessary delays. Mr. Jones agreed but if CBJ gives a CUP before a complete application to the state, there is no way to match what they propose to the state. The state won't look at our CUP, and if they change something and the state issues the license, there is no double check.

Ms. Gladziszewski said she wouldn't object if there was a way to address the concern about the timing. Ms. Mead said this came up because we started this before the state was done with its regulations. There was discussion that the state would require proof of how they would operate on the site. There is a way to create a condition to require a consistency check by CDD before operating - as a condition on the CUP.

Ms. Gladziszewski asked if Ms. Mead had suggestions for language. Ms. Mead said the business has to have an approved state license before they operate, a CUP and a CBJ license, so it would not impede the business to submit the completed application as a condition of the conditional use permit.

Hearing no objection, the city attorney was directed to have such language proposed.

Mr. Nankervis, line 25, asked if a waste disposal plan was the same as a private septic system and Ms. Mead said they were different.

Ms. Bursell asked, regarding waste disposal, how the license would be revoked or shut down, how would the crop be disposed if the product was not legal or useable.

Mr. Jones said the state requires for destruction or disposal of product not saleable or useable, every facility has to submit a plan for this type of disposal and it has to be rendered unusable by humans. it can't just be composted or dumped.

Mr. Nankervis asked about specifics on addressing harmful mold. Mr. Jones said any person that grows the crop has to have it tested for mold, insecticides, pesticides, so he was not sure why it was included. Ms. Mead said that came from harmful chemical substances released into wastewater so the applicants had to address this if they were going to use chemicals on mold.

Ms. Becker asked why the hours for closing marijuana establishments was different than in previous drafts. Ms. Mead said that the PC wanted consistency with the alcohol regulations.

*MOTION, by Becker, to change 1 am to 11 pm in the proposed ordinance.*

Mayor Koelsch objected and said the hours should be similar to how bars were managed.

Ms. White asked about package store hours or facility hours. He said he would leave it at 1 am.

Roll call:

Aye: Becker, Jones, Nankervis, Troll

Nay: Bursell, Gladziszewski, Kiehl, White, Koelsch

Motion failed 4 ayes, 5 nays.

Mayor Koelsch asked about a conflict of language in 49.65.1150 Hours of Operation, and the statement "the same day." Ms. Mead read language that matched alcohol standards and there was no objection to Ms. Mead revising the ordinance to that effect. Mr. Nankervis noted that he had no objection, but the alcohol standards were different.

Mr. Jones, asked about odor on Page 10, and said state law allows local control over odors - this code uses a standard of "a reasonable person of ordinary sensibilities" and said this is in no way definable or quantifiable and there is no way that this can stand up for enforcement.

Ms. Mead said this language came from Supreme Court case law and the reasonable person standard does come from case law. She understands that it is mushy language. The first concept was an odor plan, but we have no staff that is able to review such a plan, and to measure compliance with such a plan. The idea was to revert back to the reasonable person standard.

Ms. Troll said the reasonable person standard was used in the noise ordinance. Ms. Troll said for readability "would find affect..." should be "would find that it negatively affects..."

Hearing no objection, Ms. Mead said she would clarify the grammar in that section.

Mayor Koelsch asked about the language requirements for signage referring to "marijuana should not be used by women who are pregnant or breastfeeding." and asked if there was a presentation on this topic. Mr. Kiehl said there were peer reviewed studies and in the scientific community there is outstanding question as to whether marijuana is safe for pregnant and nursing women, so we thought it was advisable to match the alcohol signs, and that is the origin of the recommendation.

Ms. Gladyszewski said we discussed two signs - one about health warnings, and the other about Alaska specific laws, such as don't take this on a ferry and don't smoke in public. Ms. Troll said the language was similar to CO and WA. Mr. Jones read the marijuana label regulations which will require that language. Ms. Mead said in the packet, page 31, her memo to the planning commission, was the direction to duplicate the state language with reference to alcohol.

Mr. Jones asked and Ms. Mead explained the penalty language of "each and every day as a separate offense." She said this language is tied to the issuance of a citation.

Ms. Troll said she thought the \$450 fee for a marijuana license was too high.

Ms. Kiefer said is was a new business we are still trying to figure out what the costs will be. We are matching a state license to a local license - there is a higher check and balance because of the state piece - and on the back end there is a higher compliance cost.

Mr. Jones read off the state license fees and suggested that the state control board is required to be self-sustaining so their costs are higher, and our license fees might be graduated on the type of license. If someone has to have a separate license for each type of facility, it can get costly. We have discussed reinstating the compliance officer position.

Mr. Nankervis thought the license fee should be lower. There is no fiscal note for this ordinance. It would be nice to get an idea of the cost to do something. We have not factored in the rate of revenue of taxing this industry at all and that taxation may pay for permitting and enforcement. He was reluctant to set up a fee structure without a fiscal note.

Ms. Kiefer said that CBJ was factoring in \$200,000 in revenue in marijuana sales tax in future budgets and the Assembly needed to have a future discussion on a 5% or an 8% sales tax.

Mr. Nankervis did not think a license should be assigned, but if one was, it should be lower.

*MOTION, by Troll, to lower the license fee to \$100.*

Mr. Jones objected. Fees are based sometimes on the seriousness of the issue before them and we show a particular mindset if we revoke a lower cost license than a higher cost license.

Ms. White said that as a business owner with an occupational license, the cost was less relevant than the ability to be able to do business. Ms. Mead said that the amount of legislation around this issue would show a court that the body took the matter seriously.

Mr. Kiehl said at one point he envisioned a full time position for permitting and enforcement for marijuana, and without a solid base about how many businesses there will be there is not interest in setting up this type of position. This is going to be an industry unlike any other due to federal rules and we are mandated to tightly regulate this, so there is a strong argument to charge more for a license that it actually costs. Some charge for the license makes sense and \$100 does not seem to recoup an annual inspection cost. \$450 seems high.

Ms. Gladyszewski said the initial idea for this was simply a mechanism to ensure compliance with local rules, it was not to raise revenue. It was assumed taxes on the industry or product would pay those costs. It was the Planning Commission that came up with \$450 to recoup some costs. The fee as it left the Marijuana Committee was \$50.

Ms. White said \$50 matched the state business license fee. If we require a specific local business for one license there could be a lawsuit that requires it on every business in town, and that would be an additional fee on every local businesses. Every business in town has a license issued by the state. She supported lowering the fee because she thought it might trickle down to every business in town.

Roll call on \$100 license:

Aye: Bursell, Gladziszewski, Troll, White.  
Nay: Becker, Jones, Kiehl, Nankervis, Koelsch  
Motion failed, 4 ayes, 5 nays.

*MOTION, by Becker, to change the license fee from \$450 to \$250.*

Roll call:

Aye: Becker, Bursell, Gladziszewski, Kiehl, Troll, White  
Nay: Jones, Nankervis, Koelsch  
Motion passed, 6 ayes, 3 nays.

*MOTION, by Kiehl, to amend specific to marijuana retail businesses, that CBJ puts a buffer zone of no less than 150 feet of a public entrance from one marijuana retail establishment to another.*

Ms. Gladziszewski objected.

Mr. Kiehl said there are areas in town that the clustering of alcohol businesses are a problem. He is also concerned with a "green mile effect" that can change the feel of an area. His concern is that where a small buffer like this can have an effect is in the downtown tourist core. This will result in not more than one business per side of the block. This has an impact of spreading the businesses out a bit. He came up with sixteen locations in the downtown area and he did not think this would stifle economic opportunity.

Ms. White objected and said this would give an unfair advantage to those establishing businesses closest to the cruise ships and she would prefer to do the same action for jewelry stores.

Ms. Gladziszewski said these are retail stores, not bars, with no consumption on site, and they will be fairly inconspicuous.

Mr. Kiehl said there are package stores that also do not allow consumption on site that have issues. He thought the public consuming would be higher than with alcohol and envisioned a "green block." We have an ability to avoid some problems with this industry on the front end.

Ms. Troll said he defined some arguments for marijuana clubs. She said there were other businesses that were clustered and she was concerned about singling out one business.

Ms. Becker said that having retail stores spread out reflects the impression of their importance in the community and she favored the motion for a buffer.

Roll call:

Aye: Becker, Bursell, Kiehl  
Nay: Jones, Gladziszewski, Nankervis, Troll, White, Koelsch  
Motion failed, 3 ayes, 6 nays.

Mr. Nankervis asked about suspension vs. revocation. Ms. Mead said it is a matter of severity, if suspension does not do the job to achieve compliance and there are further issues, then revocation may be necessary. Mr. Nankervis said if it is a grow operation, there may be a taking, as the crop could be gone. Ms. Mead said that was a possibility.

Mr. Nankervis asked about buffers on school zones. Ms. Mead said that was addressed in state law - no use within 500 feet - cited state 3 AAC 36.010 - license restrictions. Mr. Nankervis asked if 500 feet needed to be defined as to how it is measured. Ms. Mead said state law has defined that and direction from committee was to not duplicate state law.

Ms. Kiefer said this was referred from Assembly to COW and if it was ready, a motion to move it back to Assembly, with a public hearing on May 2 was in order.

MOTION, by Jones, to refer Ordinance 2015-38, as amended, for a public hearing on May 2.  
Hearing no objection, it was so ordered.

**V. COMMITTEE MEMBER / LIAISON COMMENTS AND QUESTIONS**

None.

**VI. ADJOURNMENT**

There being no further business to come before the committee, the meeting adjourned at 9:13 p.m.

Submitted by Laurie Sica, Municipal Clerk