MINUTES
Planning Commission
Committee of the Whole
CITY AND BOROUGH OF JUNEAU
Nicole Grewe, Chair

January 26, 2016

I. ROLL CALL

Nicole Grewe, Chair, called the Committee of the Whole meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in the Assembly Chambers of the Municipal Building, to order at 5:01 pm.

Commissioners present: Nicole Grewe, Chair; Ben Haight, Vice Chair; Bill Peters, Michael LeVine, Percy Frisby, Nathaniel Dye, Matthew Bell, Paul Voelckers, Carl Greene (telephonically)

Commissioners absent:

Staff present: Rob Steedle, Community Development Director; Beth McKibben, Planning Manager; Laura Boyce, Senior Planner; Chrissy McNally, Planner II; Robert Palmer, Assistant Municipal Attorney

II. REGULAR AGENDA

Title 49 Amendments related to marijuana establishments

Staff Recommendations

The main question before the Commission with regard to Ordinance 2015-38 is how to conduct enforcement for noncompliant marijuana businesses. There are three options for enforcing compliance issues with regard to marijuana business:

1. Adopt Ordinance 2015-38 as proposed and give CDD the option of using the local license to enforce CUP conditions and special use regulations as well as the option of issuing civil penalties.
2. Amend Ordinance 2015-38 to only address CUP requirements and special use regulations to be enforced through the corrective order and civil penalty approach.

3. Amend Ordinance 2015-38 to only address CUP requirements and special use regulations to be enforced through the corrective order and civil penalty approach. Further, amend Title 49.10 Article VI Enforcement with regard to the CUP revocation process.

Ms. McNally told the Commission that recreational marijuana was legalized in Alaska in 2014. Staff has been working with the Marijuana Committee throughout 2015 on zoning for marijuana uses and the special use ordinance, noted Ms. McNally. The Table of Permissible Uses (TPU) was amended for marijuana establishments in November, 2015, she said. This amendment to the TPU added four types of marijuana establishments:

- Cultivation
- Product Manufacturing
- Testing
- Retail

This ordinance under consideration has Conditional Use Permit (CUP) application submittal requirements, explained Ms. McNally. A CUP is required for each type of marijuana establishment in all zoning districts, said Ms. McNally. The CUP process will address specific concerns based upon the given circumstances of a specific proposal, said Ms. McNally. This permit would run with the land, (as do all CUP's) so that if a marijuana business licensee sells the business to a new entity, barring any major modifications, a new CUP would not be required, she said.

A CUP is examined for its compliance to Title 49, said Ms. McNally. Conditions can be placed upon a CUP relevant to time, place and manner, she added. This ordinance has special regulations which apply to all marijuana establishments, said Ms. McNally. There is also a business license requirement within the ordinance which will be addressed, she said.

Generally a CUP is site specific, it runs with the land, and it is reviewed for overall compliance with Title 49, said Ms. McNally. Additional conditions may be placed upon the permit by the Planning Commission, she added.

This ordinance includes specific submittal requirements for marijuana establishements, such as a floor plan, which is notable because there are two types of cultivation facilities: those limited to 500 square feet and facilities with unlimited square footage, said Ms. McNally. It would therefore be important for the staff to know exactly how much space is being used for cultivation, she said.

The security plan is a State condition which requires security cameras, an alarm system, and specialized locks and doors, said Ms. McNally.

Commission Comments and Questions
Mr. LeVine asked if the conditions would apply to any licensed marijuana facility, whether it is for cultivation, testing, retail, or product manufacturing, or if the conditions varied according to the type of marijuana facility.

Ms. McNally answered that the conditions vary according to the type of marijuana facility, and that this is outlined under "Marijuana Establishment Conditional Use Permits" within the ordinance.

Mr. LeVine confirmed that although the process is the same for all facilities, that the conditions for each facility are specific to each type of facility.

Ms. McNally concurred.

There are three special use requirements contained in the ordinance which include:

- The hours of operation with a general time set for 8:00 a.m. to 11:00 p.m., Monday through Sunday
- Additional internal signage related to health and public use consumption
- Odor control which has been identified as a significant issue with marijuana

Commission Comments and Questions
Going back to his earlier question, Mr. LeVine stated that it was still unclear to him as to how the conditions were applied to the different types of facilities. He said he read the term "marijuana establishment" as a term applying to all of the four different types of facilities. He asked if the first three items which did not specify a certain type of facility listed under "Marijuana Establishment Conditional Use Permits" applied only to marijuana retail stores, or one of the other types of facilities.

Ms. McNally responded that the first three items listed which include conditions for a site plan, a security plan and a waste disposal plan applied to all four types of marijuana facilities. She added that the remaining items under "Marijuana Establishment Conditional Use Permits" were specific to the facility which was named.

Licensing
Ms. McNally said the Marijuana Committee was divided over the issue of whether a marijuana facility should require a license from the City and Borough of Juneau. The primary intent of requiring a license from the municipality was to maintain local control over the facilities, said Ms. McNally. If the municipality felt the need to close down an establishment, explained Ms. McNally, it would not be able to do that easily with a Conditional Use Permit but it could do that if a specific license had been issued by the CBJ to the facility.

The main reason for not requiring a license was because it would increase the number of steps involved in acquiring a permit, said Ms. McNally. Those on the Committee not in favor of a license felt that enforcement could be handledd with the State through its license procedure, she said.

Enforcement
There are two enforcement options within the ordinance, explained Ms. McNally. Corrective orders could be issued as is the current practice with CUP's, she said, and that could be accompanied by a civil penalty. In addition, the portion of the ordinance under "Penalty" contained the added provision that the City and Borough may seek a court order enjoining the continued operation of any business whose owner or operator failed to comply with the correction orders issued under the "Corrective Order" portion of the ordinance.

The other option listed in the proposed ordinance is suspension or revocation of the license, said Ms. McNally. This would only occur under extreme circumstances where the need was seen to actually shut down a marijuana facility, she said.

The Marijuana Committee recommended that the CUP fees remain the same as they are for any other Conditional Use Permit, said Ms. McNally. They recommended a $50 licensing fee, she added. They also recommended that the same civil fine schedule under Title III be applied to marijuana facilities as to any other land use permits.

There had been discussion suggesting that a position be created within the community development Department (CDD) that would be the licensing officer and that it be funded by marijuana license fees, she said.

Commission Comments and Questions
Mr. Voelckers stated there was a statement from a member on the Marijuana Committee that the State could fulfill the function of license control eliminating the need for a business license. He asked if the CDD staff had confidence that the State could act as an enforcement arm should a marijuana facility need to be penalized.

Ms. McNally responded that the Marijuana Committee was basing their analysis upon existing laws controlling liquor establishments. In that instance it was felt by members of the Committee that the State was not helpful in enforcing local issues with those establishments. That is where the desire for a local business license originated, she said.

Chair Grewe commented that she did not think a local $50 business license would be controversial. She said she thought the density of licenses would be controversial. She asked if the community would want to regulate marijuana establishments as it does alcohol

which limits the number of establishments allowed per an established number of the populace. She asked if the issue of density had been addressed by the Committee.
Ms. McNally responded this issue had been raised in previous meetings of the Marijuana Committee, but that it never got to the point of limiting licenses.

Chair Grewe said that the issue of density for marijuana facilities has been of primary importance in other communities.

Ms. McNally added that the Committee had asked the CDD staff for a recommendation on limiting the number of marijuana facilities. She said the staff did not recommend the addition of any additional restrictions because that issue is already heavily addressed in State regulations regarding buffers from schools, churches and recreational facilities. They are also limited to only specified zoning districts within the CBJ, said Ms. McNally, which further limits the possible location of the marijuana facilities.

Mr. Voelckers asked if there was any background on the origin of the $50 amount specified for the business license. He said a state license was $4,000 a $5,000. He asked why the amount was so minimal and what the idea was behind this low fee. He said he felt it should either be a meaningful amount or eliminate the $50 requirement entirely.

Ms. McNally said she felt it was arbitrary number, not meant to be cumbersome for the applicants. She said she did not feel the intent was to make money off of the license but to simply set a minimal fee. The goal was to establish a license procedure enabling the CBJ to possess this regulatory tool, she added.

Mr. LeVine asked about the origin of the recommendation that marijuana facilities only be allowed to operate from 8:00 a.m. to 11:00 p.m.

Ms. McNally replied that this number had been named by the staff as the general operating hours of a package store. They were trying to keep the hours as close to an alcohol establishment as they could, she added.

Mr. LeVine asked if the operating hours of 8:00 a.m. to 11 p.m. were the normal operations of a package store.

Ms. McNally responded that the normal hours recommended for the operation of a package store were not as limited. She thought they went to 3:00 a.m. or 4:00 a.m.

Mr. LeVine responded that he did not know why the hours would be more restrictive for marijuana facilities than they were for stores that sold alcohol.

Ms. McNally responded she felt it was because marijuana establishments were allowed in the rural reserve districts and potentially some neighborhoods. She added that the hours of operation could be detailed within the CUP.

Mr. Voelckers said in the staff memo that volatile chemicals may be used in marijuana extraction, but that he did not find this concern addressed in the proposed ordinance. He said this seemed to him to be a critical piece, and that he was curious if there was some mechanism which had been discussed where the Fire Department had some oversight due to some potential hazardous operations.

Ms. McNally said it is addressed in the Conditional Use Permit submittal requirements, where it stipulates that product manufacturing facilities need to identify what type of extraction technique would be used. The Fire Department would need to be notified if items were being used which were potentially flammable or combustible, she said. The CO2 usage is also related to the Fire Department, she said, which isinvolved in pre-application conferences required for all conditional use applications.

Mr. Voelckers commented he felt the amount of potentially combustible or flammable items used could trigger the requirements, and that he felt the ordinance could be more specific in this regard.

Mr. LeVine noted that an appeal was granted in the ordinance for revocation or suspension of an ordinance. He asked why an appeal process was not outlined for the initial denial of a license.

Mr. Palmer responded that he did not know if this was specifically addressed other than a license is automatic as long as the criteria are met, and that if the criteria are not met then no license would be issued. He said therefore the thought was that there would be no need for an appeal for the initial denial of the license.

Mr. Frisby asked if the business license was denied and there was no appeal process, then the option of the applicant would be to re-apply for the license to see if the criteria were met.

Mr. Palmer responded that would be one option open to the applicant.

Mr. Haight pointed out that the denial, revocation, or suspension of the marijuana establishment license is appealable in accordance with CBJ 01 .50.

Mr. Peters said that his concern regarding the requirement of a CBJ license for marijuana establishments was that it was burdensome to the applicant and the City, and that it was not really needed when these issues could be addressed in the CUP process. He said from a business perspective he was not in favor of requiring an additional business license on top of the licensing process for the State and the CUP requirements that were being proposed.

When they were working through the zoning process, noted Chair Grewe, one of the big concerns expressed was that there was little enforcement power within the existing CUP process. She asked if the requirement of a license would give more enforcement capabilities to the municipality, and if so, what they were.

Ms. McNally responded that the intent was to enable the CBJ to have more enforcement power if a marijuana facility needed to be shut down. This was a concern not addressed within the CUP process, she said. The license would be issued to the operator of the facility, she said. It would not run with the land as other items within the CUP process.

Mr. Haight asked how much of the criteria listed in the ordinance are duplicative within the State statutes.

Ms. McNally responded that the hours of operation, the signage, and the odor are of local origin. The submittal requirements are for the most part similar to the State requirements, she said. The idea was that additional work would not be required from the applicants since they would already have to fulfill those requirements with the state.

If there was an issue with the establishment such as with the hours of operation, commented Mr. Haight, that would be a local problem.

Mr. Frisby asked if other communities have been monitored as to how they were handling their local ordinances for marijuana facilities.

Ms. McNally said that Fairbanks has adopted zoning regulations and they have adopted other special use regulations, but she did not think that Anchorage has yet adopted any local ordinances regarding marijuana facilities.

Mr. Frisby commented that if a license was required that the fee would need to be higher because a lot more action would be required from the municipality.

The license would be issued by the Community Development Department, it would not come before the Planning Commission, responded Ms. McNally. If the licenses are limited to around six facilities within the community, then it should not be too burdensome to the municipality in terms of enforcement, said Ms. McNally. She said this was hard to determine until they had established how many facilities there would be within the community.

Mr. Frisby commented there could be a vast amount of applicants during the first year or two of marijuana facility operation before the market decided how many marijuana facilities the community could support, and that this would be a great number of facilities for the municipality to monitor. He added he did not think it would be effective to rely upon the State to monitor the facilities.

Mr. Palmer drew a distinction between a license and the compliance order within the CUP process stating that currently the code provides that once a CUP is granted, that it runs with the land. For example, he said, what if the marijuana retail establishment was in operation in town and subsequently shut down its operation. Someone could then buy that piece of property and start another marijuana facility. If the new owner turned out to be substandard in their operation, if the business license was required the City would have a means to implement control over that operation. The license would be attached to each individual business, noted Mr. Palmer, and not necessarily run with the land as it was through the CUP.

The question before the Planning Commission, said Mr. Palmer, is if a business license is a tool that it would like the CDD to have for enforcement purposes.

Mr. Voelckers said the local CUP conditions have nothing to do with the State, but may still be all about whether a marijuana facility is being a good neighbor. He said since this was a new business for the community, there were still a lot of unknown factors, and that a business license could assist in the enforcement of potential harm from a facility to the community in an effective and timely manner. He said he has already heard at various Assembly meetings the concerns expressed that current Conditional Use Permit holders are monitored by very lax enforcement from the municipality.

Mr. LeVine said he was curious about the conditions that a CUP run with the land. He asked if it would not be advantageous, if possible, to divorce the provision that a CUP run with the land from the permit.

Ms. McNally said she did not know the answer to the entire question, but that she did know that the Marijuana Committee had moved some of the initial requirements for the business license back to the provisions of the Conditional Use Permit.

Mr. LeVine said he guessed they moved those requirements back to the Conditional Use Permit because anything requiring review would be run through the Planning Commission and the conditional use process.

Mr. Palmer said currently the Title 49 code gives Conditional Use Permits for the life of the property. There is no reason that the provision pertaining to the life of the property within the Conditional Use Permit could not be changed, he added.

Ms. McKibben asked for clarification from Mr. LeVine, inquiring if he was thinking of something similar to a liquor establishment where it is an allowable use in whatever district it resides, whether it is manufacturing or retail, and that all of the operational components would be handled through licensing.

That was one option, said Mr. LeVine, the other option being to specifically change this type of Conditional Use Permit so that it did not run with the land. He added he felt that Ms. McKibben's suggestion was a much simpler and clean idea.

Mr. Green said that he envisioned a marijuana establishment to be similar to a liquor store, and that he would appreciate more information about the current operation of liquor stores regarding licensing and Conditional Use Permits.

Ms. McKibben replied that an alcohol package store is just a retail business. Wherever a retail store is allowed, a person can operate a liquor store with appropriate alcohol licenses from the state. A restaurant serving alcohol can operate wherever a restaurant can operate, a brewery or a winery can operate wherever a manufacturing facility is allowed, with whatever permits are required, she explained.

Ms. McKibben said she believed the requirement limiting alcohol stores to one per every 6,000 residents was a state requirement.

Chair Grewe said that she liked the idea that a Conditional Use Permit for a marijuana facility did not run with the land. She said she's been trying to figure out how to treat marijuana facility regulation equal with alcohol facilities, especially the limitation of the number of facilities per a set number of population. She added that she did not know how the Borough would limit the number of establishments, whether it would be through a lottery system or licenses. She said she did not know how this could be accomplished without creating an extremely tense and competitive environment falsely escalating the cost of real estate.

Ms. McNally responded that if all of the conditions related to land use were placed under the business license, that it would make the procedure of going through the conditional use process irrelevant. If a license required everything encompassed under the Conditional Use Permit, then the Table of Permissible Uses would have to be amended, she said. Businesses do have to go through a fairly rigorous license process with the State, said Ms. McNally. She said she did not see the City being unaware of any change in ownership.

Mr. Peters said one reason the Marijuana Committee moved business license requirements back under the CUP, is so the process would remain open to public comment, which would not be the case with the business license. Mr. Peters added that even if the CUP runs with the land, and the current operation goes out of business, a new potential owner of the business would still have to go to the State and obtain a license for the business. He said he felt the state process and the CUP process worked hand in hand to monitor marijuana facilities. Requiring a license to be issued by the municipality instigated a fear process, noted Mr. Peters. This is a requirement that is not necessary for a liquor license, noted Mr. Peters, nor for day care, nor for other businesses within Juneau. To require a license beyond what is required for other businesses within Juneau did not make sense, said Mr. Peters.

Mr. Voelckers said he felt the normal requirements of the CUP should be necessary for marijuana facilities, but that there are particular aspects of the physical operation of a marijuana facility that are germane to licensing.

Mr. LeVine asked if a marijuana business was sold to another individual, if the CUP could be modified at the time the new owner took over the business.

The new owner would need to obtain a license with the state and a license with the City if that was required, answered Ms. McNally. If there was a significant change to the business a new CUP could be required, she said. It would be up to the Director's discretion to ascertain if it was a minor change in the business or a big enough change to generate a new CUP review, said Ms. McNally. If the new business exactly mimicked the old business, then a new CUP review would probably not be generated, said Ms. McNally.

Mr. Palmer said the Director cannot add a condition to a CUP. He said it would need to come before the Planning Commission.

Instead of divorcing the CUP from the land, said Chair Grewe, maybe a periodic review every five years or so could be required. This could provide the Planning Commission the opportunity to ascertain if the business was still in compliance with the CUP, and open up that process to the public again for comment, said Chair Grewe.

Ms. McKibben stated that a gravel extraction operation is required to obtain a new permit every 10 years. She added she felt some of those permits had an evaluation period of five years written into them.

Chair Grewe asked if the 10 year review for gravel extraction operations involved an entirely new CUP process.

Ms. McKibben responded that she felt this was the case.

Mr. LeVine said he supported that idea, and that it addressed almost all of his concerns about the CUP running with the land.

Referring to the code pertaining to sand and gravel, Mr. Steedle said the initial language stated: "Each permit shall expire upon a date determined by the Commission."
Mr. Palmer said in other jurisdictions in which he had worked, that Conditional Use Permits do not run with the land. To alter that current CUP process in Juneau, noted Mr. Palmer, it would require some amendments to the existing code. The Commission could add whatever time period for review of the CUP it felt was necessary.

Mr. Frisby asked if the Commission altered the code if they would then have to go back and alter all of the previous CUP's which had already been allocated.

Mr. Palmer answered that existing CUP's would not have to be altered to adhere to new code requirements. There is a "Cole memo" (former U.S. Deputy Attorney General James Cole) which has been issued which has eight points of emphasis for states which desire to legalize recreational marijuana, said Mr. Palmer. The Department of Justice expects these states to establish strict regulatory schemes that protect the eight federal interests identified in the Department's guidance. The memo stipulates that states may legalize recreational marijuana as long as it is not legalized for children, among other points, said Mr. Palmer. Marijuana is a very highly regulated industry, and it is very special and unique, said Mr. Palmer. Because it is still such a new and unique operation, said Mr. Palmer, it would not set precedent for other types of operations. It could easily be distinguished from other types of land use, he added.

Chair Grewe unofficially polled the Commission to see what its current stance was on whether a business license from the municipality should be issued. All commissioners said they were in favor of a local business license except for Mr. Peters, who had already stated his reasons against a local business license being issued, and Vice Chair Haight, who said he liked the sunset idea stipulated within the CUP itself.

Chair Grewe stated that she was definitely in support of the license, and did not see any disadvantages to its requirement. She said she felt a license was warranted since this was an entirely new activity for the community, and that there would be a lot of knowledge to be gathered about legalized marijuana recreational operations as the process proceeded.

Commission Review of the Ordinance by Section

49.65.1105 License required
Mr. Peters said that he would like to add the word "approved" prior to "a conditional use permit", and remove "and a valid license issued by the state of Alaska" and place that verbiage in the CUP section of the ordinance (Marijuana Establishment Conditional Use Permits).

Mr. Voelckers clarified with Mr. Peters that the presumption is that for a person to apply for a Conditional Use Permit that they already had been granted a state license.

Mr. Peters responded that this is how he envisioned the process. He said as a Commission member if he was to review a CUP for a marijuana facility, that he wanted to know the applicant had already obtained a state license for the facility.

Ms. McNally interjected that she believed for the State to grant a license that it would first require local approval of the applicant's operation.

Mr. LeVine said that he concurred with Mr. Peters' suggested edits to the ordinance; that it seemed redundant to have a local ordinance dictating that a state license was required when it is already something that the applicant would need to obtain.

Mr. Palmer stated that the legal staff would appreciate the opportunity to add their own language to the edits offered by the Commission, and then bring that back to the Commission for its approval.

Mr. LeVine said he felt that the language which Mr. Peters had suggested be moved to the CUP section of the ordinance ("and a valid license issued by the state of Alaska") be placed under the "Application for license" section of the ordinance.

Mr. Green suggested that under the "License required" section that the language begin with the addition of "entity" after "person" be added.

Ms. McKibben stated that according to a memo to the Planning Commission from the Municipal Attorney that in legal terms the word "person" encompassed entities as well.

Referring to the item "(b)" under the "License required" section of the ordinance, Vice Chair Haight asked what the term "geographic location" referred to.

Mr. Palmer answered that the concept of interjecting the term "geographic location" was to limit the license to a particular parcel of land and to a particular business entity. However, he noted, sometimes a business operation occupied multiple parcels of land, so they attempted to use a broader description to include operations which occupied more than one contiguous parcel of land.

As an example, Ms. McKibben said that although the Alaskan Brewing Company is one business operation, that it occupies six or eight lots of land.

Mr. Voelckers suggested that it may be worthwhile for the Law Department to add additional descriptive language to accompany “geographic location” such as “for each parcel of Land” or the occupation of “a contiguous geographic location”.

49.65.1110 Prohibited Acts
Mr. LeVine suggested that the verbiage under item (e) was redundant. He suggested that the words “to do” (an act) were superfluous.

Mr. Palmer concurred with Mr. LeVine’s suggestion.

49.65.1115 Application for License
Mr. Peters suggested that item (7) be added to this section regarding the verbiage removed from the “License required” section of the ordinance (“and a valid license issued by the State of Alaska”).

Mr. Haight asked for an explanation of item (1): “If the applicant is not a natural person, the organizational documents for all entities identified in the application;”.

Mr. Palmer answered that the concept of item (1) is that a corporation versus a sole proprietor type of business may require that different types of organizational documents be generated. This is meant to be a broad statement to capture whether or not the applicant is a natural person (an individual) or a specific type of business entity.

Mr. Voelckers said he had been speaking earlier about the value of identifying the volume of flammable chemicals that an operation might have.   He said this may be the section of the ordinance in which to add more specific language regarding the detailed plans of the operation. He asked if this would not be more of a licensing aspect rather than a CUP aspect to be addressed.

Ms. McNally answered that the benefit to keeping issues such as flammable gases or combustibles under the CUP process made it available for public comment, with the public being notified about the plans. She said the proposed local license does not currently have a public notice requirement. Any conditions would be placed within the CUP, thus being enforceable by the subsequent license, added Ms. McNally.

Mr. Voelckers asked for an example of any “additional documentation” referenced in item (6) of this section.

Mr. Palmer said item (6) is the “kitchen sink” added to this section to cover unusual circumstances of a project which may necessitate additional documentation.

Mr. Dye asked if the copy of the lease or deed for the property upon which the marijuana establishment would be located referenced in item (2) of this section could engender individuals to discover confidential information of the applicant's business such as confidential lease rates for downtown properties.

Mr. Palmer answered that currently this item does not state that items could be redacted from required submitted documents. He said Mr. Dye was correct that anything submitted by an applicant is assumed to be a public document. If there was a concern about potential proprietary information, it would have to be carefully addressed, because the municipality may actually require certain information which the applicant may deem confidential. He said he would explore with the legal staff whether there could be a statement added about certain proprietary information which could be redacted from submitted documents.

Mr. Dye said his biggest concern was that the cost of square footage for leased property may be made public.

Mr. LeVine suggested that rather than try to edit the existing provision that proof of ownership or proof of the legal right to operate the business be required.

Saying that he felt Mr. LeVine may have a valid point, Mr. Palmer said the Law Department would do some additional work on this section of the ordinance.

49.65.1120 Term of license; renewal

Referring to item (d) in this section, Mr. LeVine asked if the requirement that the annual license fee be due by January 1, may cause a problem since it states that this is for licenses which expire December 31. He asked if a potential problem might be created if the license could lapse between midnight December 31 and when the payment arrived on January 1 or perhaps later if it was a weekend. He asked if perhaps the payment should not be due by December 31, to eliminate any possible lapses of the license.

Mr. Palmer said he viewed this as more of an internal processing question for CDD rather than a legal issue. He added that in a completely unconnected legal issue which he was researching that the Doctrine of Substantial Compliance arose. *(Doctrine of Substantial Compliance is a legal principle which says that if a good faith attempt is made to perform the requirements of the agreement even if it does not precisely meet the terms of the agreement or statutory requirements, the performance will still be considered complete if the essential purpose is accomplished.)* Recognizing this doctrine, said Mr. Palmer, if payment was due on January 1, which perhaps fell on a weekend so it was not received in the office until January 2, or 3, and processed the next day, that the business would still be in compliance.

49.65.1125 Corrective orders

Mr. Voelckers said he felt that the purpose for having a license and the Director's authority was to have some control over the operation. He said he felt it would be very useful to add in this section an item (4) under (a) that lists that the licensee has failed, refused or neglected to comply with any general or special term of the development Conditional Use Permit. “Conditional Use Permit” is not currently referenced in this portion of the ordinance, said Mr. Voelckers, and he said he felt that is one of the key substantive points.

Mr. LeVine said he thought Mr. Voelckers’ suggestion was a good idea. He also asked if there is a specific reason why it was specified in this section that the licensee may request an “informal meeting” with the Director. He asked if there was a formal meeting with the Director.

Mr. Voelckers stated he also felt that this was questionable phraseology.

Mr. Palmer answered that the term “informal” in this context was specific within the legal realm of “formal” versus “informal”. “Informal” within this context would mean that any documents deemed by the applicant as important could be submitted and it would be up to the Director to determine if they were relevant and/or if they were authentic. In contrast, said Mr. Palmer, a formal process could demand that higher standards of document authenticity be required. For example, there may be a formal requirement for the document to be notarized, said Mr. Palmer. He added this was phrased as it currently stands to get around the evidence and hearsay rules that traditionally follow a formal legal process.

Mr. LeVine said that was a very well justified reason for the current language.

49.65.1130 License suspension or revocation
Chair Grewe he noted that the term “revocation” is permanent. If a license is revoked, she said, it is removed. In contrast, she said, the term “suspension” implied that the removal of the license was not permanent, but rather for a period of time. She asked if there was any supporting information on what the general time frame for a suspension would be. She said both terms were lumped together in this section.

Ms. McNally said she did not see a problem with adding language to the criteria for a suspension.

Chair Grewe said she felt the two terms should be distinguished from each other. More specificity in this section would be helpful if an applicant challenged their license revocation and said that it should have been a suspension, for example, said Chair Grewe.

The “Appeal” section of the ordinance deals with denials, revocations, or suspensions, said Mr. Palmer. If a business feels that the revocation denial or suspension is too harsh, said Mr. Palmer, they have the right within CBJ code to appeal. Currently, said Mr. Palmer, there are several provisions within the code which address the differences between a revocation and suspension. Currently the Director has the discretion to determine, based upon the circumstances, whether a license should be suspended or revoked. Marijuana is such a new industry, said Mr. Palmer, that there are still a lot of unknown factors. As this burgeoning industry develops within the community, said Mr. Palmer, there could be developing case law to address legal issues as they arose.

49.65.1140 Inspection of premises
Addressing the last sentence within this section, Mr. Voelckers said he felt the reference to providing access to business records and the inventory tracking system to be somewhat invasive. Providing this intelligence could be releasing proprietary information of the business, he added.

Ms. McNally said the state license requires an inventory tracking system based upon the database which the state will adopt. She added that a database has not yet been identified. She said because this is a completely cash-based business, and to be in adherence with the Cole memo mentioned by Mr. Palmer earlier, it was deemed that the local authority should have the ability to have access to the tracking system and to the business records to make sure that nothing is sold on the black market, for example.

Mr. Haight said that he also found this language to be a bit intrusive. He said he could understand why the state may need this information, but he did not understand why the municipality needed this information.

Ms. McNally said if the State was not providing adequate enforcement and there was not a great relationship between the municipality and the State, that if a business was found to be pushing some of their product onto the black market, for example, then the municipality would have the ability to view the inventory tracking system of the business. The marijuana business is required to track every plant from the time that it is cloned to when it is sold, she said.

49.65.1145 Marijuana establishment conditional use permits
Mr. LeVine noted that there appears to be a numbering issue within this section. He said he felt that the first three numbered items should remain under section (a), but that the subsequent numbers four through seven should have their own alphabetic references because those items addressed the different types of marijuana facilities. The first three items pertain to all of the different types of facilities, he said.

Mr. Palmer acknowledged Mr. LeVine's remarks and said that they were duly noted.

Mr. Voelckers said that he had an issue with paragraph (1). He said he felt there should be a clause at the end of that paragraph which clarifies that instead of just the total floor area of the building, that it should specify the specific size and configuration of the cultivation space.

Mr. Voelckers noted that item (2) references a security plan and item (3) references a waste disposal plan. He said he wondered if there should not also be the requirement of a visual screening plan. He said he recalled that there was the requirement that the product could not be viewed from the street.

Mr. Voelckers added that item (5) in his opinion would be a good place in the ordinance to insert a statement that combustible solvent use should be identified along with safe handling and storage provisions.

Mr. Palmer said there is an ordinance going before the Assembly for a public hearing in early February that addresses combustible issues related to marijuana production. He said he would investigate that ordinance to see how it relates to the criteria in this ordinance before the Commission.

Chair Grewe asked if the Commission wanted to sunset the Conditional Use Permit if that provision would go in this section of the ordinance. She said she would definitely like the staff to give this option some thought to either prohibit the CUP from running with the land or to insert a sunset provision within the CUP.

Mr. Palmer said he was not sure where this provision would best fit at this time but that the staff would work on these issues and report back to the Commission.

Chair Grewe added that she contemplated that divorcing the running with the land provision from the CUP may eliminate the false escalation of property values.

49.65.1150 Hours of operation – marijuana retail stores
Mr. Peters said he was curious why closing of marijuana retail stores was stipulated at 11:00 p.m. Rather than stipulating that all marijuana retail stores close at 11:00 p.m., Mr. Peters suggested that neighborhood harmony could be inserted as a reason for a set closing time for the store. He felt the set times within this section defining the hours of 8 a.m. to 11:00 p.m. to be arbitrary.

Mr. LeVine said he supported this suggestion of Mr. Peters, stating that he felt the hours should be the same as those of package stores or bar hours. He added that this section suggested limiting the hours of all the different types of marijuana facilities. He said it may prove necessary in some cases and unnecessary and others.

Ms. McNally asked if they were recommending that the hours of operation be eliminated altogether since the State had no such limitations, and address the hours on a case-by-case basis with the Conditional Use Permit.

Mr. LeVine said that could be one approach. This portion of the ordinance could simply say that the Planning Commission may limit the hours of operation if necessary to comport with State or local concerns.

Mr. Voelckers concurred, stating they should have some language indicating that this was within the purview of the Conditional Use Permit process to establish hours. He agreed that 11:00 p.m. seemed to be an arbitrary time.

49.65.1155 Documents to be displayed
Mr. LeVine asked where the language was derived in this first section stating that a license shall be prominently displayed in the same size and font as the original license issued by the Director, and that it be in a conspicuous location inside of the licensed premises near the main entrance.

Ms. McNally said she recalled that this was to mimic signs which have a required placement in liquor establishments.

49.65.1160 Odor
Ms. McKibben suggested that this section specify where the odors should be detectable from the premises to adhere to this section of the ordinance. Would this be from right outside the licensed premises, or from the property line, or from a set number of feet away from the property. She stated she thought there was some language within the Administrative Code regarding industrial uses and that the property line was specified.

Chair Grewe stated that "a reasonable person of ordinary sensibilities" was rather vague language. Should a neighbor be able to detect an odor at all on their own property from the facility, she asked. She stated she felt this would be a good section of the ordinance for the Law Department to review for specificity.

Mr. Voelckers said he felt the property line was a logical place to start. The property line defined the legal boundaries of the operation, he added.

49.65.1170 Penalty
Mr. LeVine said it was his understanding from the memorandum that it was up to the Commission to decide what the penalties would be. He said he would like to request that the staff come up with some comparisons for other penalties so that the Commission would have a basis from which to render its decisions.

Section 4. Amendment of Section

Mr. LeVine said he took issue with the marijuana license fee that Mr. Voelckers had mentioned earlier. He said that a $50 fee was not substantial enough to generate revenue. He said his inclination was that the municipality should make some meaningful revenue off of the fee. He said it seemed a strange amount of money and he suggested they flag this issue to come up before the full Commission during the public hearing so that the Commission could receive public input on the subject.

III. OTHER BUSINESS - None

IV. REPORT OF REGULAR AND SPECIAL COMMITTEES - None

V. ADJOURNMENT

The meeting was adjourned at 6:57 p.m.