

**KENDALL COUNTY
REGIONAL PLANNING COMMISSION**

*Kendall County Office Building
Rooms 209 & 210
111 W. Fox Street, Yorkville, Illinois*

Special Meeting Minutes of September 10, 2019 - 6:30 p.m.

Chairman Ashton called the meeting to order at 6:33 p.m.

ROLL CALL

Members Present: Bill Ashton, Roger Bledsoe, Tom Casey (arrived at 6:40 p.m.), Dave Hamman, Karin McCarthy-Lange, Larry Nelson, Ruben Rodriguez, and Claire Wilson (arrived at 6:39 p.m.)

Members Absent: Bill Davis

Staff Present: Matthew H. Asselmeier, Senior Planner, Scott Koeppel, County Administrator

Others Present: Elizabeth Flowers, Scott Gengler, Judy Gilmour, Matt Kellogg, Matthew Prochaska, Commander Jason Langston, Amy Cesich, Randy Cesich, Robyn Vickers, Dr. Amaal Tokars, Jackie Kowalski, Steve Gengler, Brad Blocker, and Katie Finlon

APPROVAL OF AGENDA

Commissioner Nelson made a motion, seconded by Commissioner McCarthy-Lange, to approve the agenda. With a voice vote of six (6) ayes, the motion passed unanimously.

PUBLIC COMMENT

None

NEW/OLD BUSINESS

Discussion and Possible Amendment to Petition 19-31-Request from the Kendall County Planning, Building and Zoning Committee for Text Amendments to the Kendall County Zoning Ordinance Pertaining to Recreational and Medical Cannabis Uses

Mr. Asselmeier summarized the request.

On June 25, 2019, the Governor signed the Cannabis Regulation and Tax Act (Public Act 101-027). This Act legalized certain recreational cannabis uses and allowed County to enact reasonable zoning regulations related to these uses.

On August 9, 2019, the Governor signed an Act related to Banking-Cannabis Businesses (Public Act 101-363). Among other actions, this Act amended the Compassionate Use of Medical Cannabis Pilot Program Act by removing the expiration deadline of medical cannabis related uses and changing the location where medical cannabis dispensary may locate.

On August 26, 2019, the Kendall County Planning, Building and Zoning Committee voted to initiate text amendments to the Kendall County Zoning Ordinance pertaining to medical and recreational cannabis uses. The Committee wanted medical cannabis related use to be regulated similarly as recreational cannabis uses from a zoning perspective. The Committee also wanted to have these regulations in place by January 1, 2020.

In summary the changes are as follows:

1. The previously adopted zoning regulations for medical cannabis uses are repealed in their entirety.
2. Definitions of Adult-Use Cannabis Business Establishment, Adult-Use Cannabis Craft Grower, Adult-Use Cannabis Cultivation Center, Adult-Use Cannabis Dispensing Organization, Adult-Use Cannabis Infuser Organization or Infuser, Adult-Use Cannabis Processing Organization or Processor, Adult-Use Cannabis Transporting Organization or Transporter, Medical Cannabis Cultivation Center or Cultivation Center, and Medical Cannabis Dispensing Organization or Dispensing Organization or Dispensary were added to the Zoning Ordinance. These definitions come from the Cannabis Regulation and Tax Act and the Compassionate Use of Medical Cannabis Program Act.
3. Adult-Use Cannabis Craft Growers are proposed to be special uses in the A-1, M-1, M-2 Zoning Districts. They are to be at minimum one thousand feet (1,000') from the property lines of pre-existing public or private nursery schools, preschools, primary or secondary schools, day care centers, day care homes, residential care homes, pre-existing properties zoned or used for residential purposes, pre-existing forest preserves, public parks, and places of worship. This distance requirement is the same distance requirement for outdoor shooting ranges.
4. Adult-Use Cannabis Cultivation Centers and Medical Cannabis Cultivation Centers are proposed to be special uses in the M-1 and M-2 Zoning Districts and will be minimum two thousand five hundred feet (2,500') from the protected uses listed in number 3 previously. Medical Cannabis Cultivation Centers are currently special uses in the M-1 and M-2 Zoning Districts. The distance requirement was set by the Compassionate Use of Medical Cannabis Program Act.
5. Adult-Use Cannabis Dispensing Organizations and Medical Dispensing Organizations are proposed to be special use in the B-3, M-1, and M-2 Zoning Districts and will be at least one thousand feet (1,000') from the uses listed in number 3 previously except pre-existing properties used or zoned residentially. They can be at minimum two hundred fifty feet (250') from residentially used or zoned property. Public Act 101-363 removed the distance requirements for Medical Dispensing Organizations. Onsite consumption of cannabis by the public is not allowed. Hours of operation will be from 6:00 a.m. until 8:00 p.m.
6. Adult-Use Cannabis Infuser Organizations are proposed to be special use in the B-3, M-1, and M-2 Zoning Districts and will be at least one thousand five hundred feet (1,500') from the uses listed in number 3 previously except pre-existing properties used or zoned residentially. They can be at minimum two hundred fifty feet (250') from residentially used or zoned property.
7. Adult-Use Cannabis Processing Organizations are proposed to be special use in the B-3, M-1, and M-2 Zoning Districts and will be at least one thousand five hundred feet (1,500') from the uses listed in number 3 previously except pre-existing properties used or zoned residentially. They can be at minimum two hundred fifty feet (250') from residentially used or zoned property.
8. Adult-Use Cannabis Transporting Organizations are proposed to be special use in the M-1 and M-2 Zoning Districts and will be at least one thousand five hundred feet (1,500') from the uses listed in number 3 previously except pre-existing properties used or zoned residentially. They can be at minimum two hundred fifty feet (250') from residentially used or zoned property. They can only transport cannabis unless allowed by the special use permit.
9. The proposal updates Appendix 9 to reflect the addition of cannabis related uses and correct citation errors caused by adding these uses to the Zoning Ordinance.

At least one (1) Planning, Building and Zoning Committee member favored having cannabis uses in stand-alone buildings.

Maps showing the potential location of cannabis uses were provided.

Townships were notified of this proposal and the September 10th meeting on August 28, 2019.

ZPAC met on this proposal on September 3, 2019. ZPAC issued a neutral recommendation and requested that information regarding surveillance, security, and security related structural requirements be added to the proposed amendment. ZPAC also requested that cannabis uses not be allowed in the B-3 District. The vote was five (5) in favor and one (1) in opposition. Fran Klaas said the County should not create zoning regulations for cannabis because it is illegal federally.

Planning, Building and Zoning Committee Chairman Prochaska emphasized the importance of having some type of zoning in place by January 1, 2020, and the implications of not having zoning regulations in place by that date.

Member Kellogg explained the purpose of this meeting and that the proposal was intended to be a working document. Changes to the proposal are anticipated.

Commissioner Wilson arrived at this time (6:39 p.m.).

Commissioner Nelson suggested having a more restrictive regulation at the beginning because the difficulties of taking a use away at a later date. He expressed concerns regarding the ability of a cannabis related use going anywhere in the County, if no zoning regulations are in place. The regulations could be modified in the future

Commissioner Casey arrived at this time (6:40 p.m.).

Member Flowers expressed agreement with Commissioner Nelson's suggestions. She expressed opposition to co-location of cannabis uses.

Member Gilmour favor a minimum of distance of one thousand five hundred feet (1,500') from cannabis uses to other protected uses. Planning, Building and Zoning Committee Chairman Prochaska and Member Kellogg favored a one thousand foot (1,000') distance.

It was noted that Planning, Building and Zoning Committee members did not agree on a stand-a-lone building requirement for cannabis uses. Discussion occurred regarding potential odors and odors from other types of businesses.

Regional Planning Commission Chairman Ashton if there was any update from the State regarding regulations. Mr. Asselmeier responded that the Department of Agriculture has not released any information regarding its rule-making progress.

County Administrator Koeppel stated that infuser and transporter applications will not be available until January 1, 2020. Growing applications will be available October 1, 2019.

Discussion occurred regarding enforcement. Commission Hamman asked who was going to be oversee these regulations. Mr. Asselmeier responded that the Zoning Inspector will be responsible for enforcing Kendall County's specific zoning regulations and that the Sheriff's Department and other law enforcement agencies will

be responsible for those enforcement areas assigned to them. The two (2) main areas of zoning regulations were zoning districts where the uses might be allowed and distances from protected uses as determined by the local government.

Mr. Asselmeier summarized that ZPAC did not want cannabis uses in the B-3 district, they wanted greater security information, and they wanted the Sheriff's Department to have access to the security system of cannabis related uses. Commander Langston explained the Illinois regulations as they relate to security system access. The law uses the phrase "upon request" as it relates to access to security systems. Security systems would not be live feed. Facial recognition use was discussed, but was not specifically required in State law. Commander Langston explained that video records must be retained for ninety (90) days and as long as necessary in cases of loss or theft. The Sheriff's Department is not responsible for dictating where security cameras must be placed.

Discussion occurred about placing cannabis uses in the B-3 District and the impact of odors on neighboring retail businesses. Discussion occurred about placing a cannabis related business in the former Caterpillar property; this property is zoned M-2. Commander Langston explained the Sheriff's Department's concerns about placement of cannabis uses in the B-3 District.

Commissioner Wilson asked why the setback distances were different for each use. Mr. Asselmeier explained that the distances related to craft growers were based on the distance used for outdoor shooting ranges. For cultivation centers, the distance came from State law. For dispensing organizations, the distance from schools was from State law and the distance from residential uses was from the Illinois Municipal League's template ordinance. For the remaining cannabis uses, the distances came from the Illinois Municipal League's template ordinance.

Brad Blocker, Na-Au-Say Township Supervisor, pointed out that the special use reference section for A-1 was incorrect; it should be Section D and not Section C. He noted that craft growers cannot co-locate with dispensing organizations and infuser organizations in the A-1 because only craft growers were allowed in the A-1 and the two (2) uses were not allowed in the A-1. He questioned the logic of using the distance measurement for gun ranges; he favored using the distance requirement for craft breweries. Member Kellogg said one thousand feet (1,000') was used by counties in Colorado; gun ranges were not the reason the distance was proposed at one thousand feet (1,000').

Member Kellogg suggested adding setbacks from halfway houses and correctional facilities to the proposal.

Commissioner Wilson expressed concerns regarding a medical dispensing organization locating within two hundred fifty feet (250') from residential uses and residential zoned property.

Commissioner Wilson asked about the definition of adult and the possibility of having a business license revoked similar to a liquor license. According to State law, the legal age to buy cannabis products is twenty-one (21). Discussion has occurred at the County level of an ordinance similar to the Liquor Control Ordinance that restricts the number of cannabis related businesses in the County and establishes a license similar to a liquor license. Discussion occurred about the difficulty and amount of time necessary to revoke a special use permit compared to revoking a liquor license. There was uncertainty about whether or not the Sheriff's Department would do compliance checks with cannabis businesses similar to the checks they do for liquor establishments. The consensus of both the Planning, Building and Zoning Committee and the Regional Planning Commission was to ask the State's Attorney's Office for an opinion whether or not a County can

designate a person with similar powers as the liquor commissioner but for cannabis related business and if the County can restrict the number of cannabis businesses similar to the way the County restricts the number of liquor establishments.

The State will put licenses out for the first seventy-five (75) dispensaries on October 1, 2019. If someone is awarded a license on January 1, 2020, they will pursue securing necessary zoning permits at their property after the preliminary award. If they secure applicable zoning permits, then the State will grant final licensure in May 2020. The licenses will be awarded on a points system. A medical dispensary can be awarded a recreational license on January 1, 2020. There will be a total of three hundred (300) dispensary licenses by the end of 2021.

Dispensaries can sell paraphernalia. The special use permit can restrict the other products sold at the establishment.

Randy Cesich explained the procedure for entering a cannabis dispensary in Colorado, the layout of the store, and the visible security presence inside the facility.

Discussion occurred regarding the interconnection of dispensaries regarding cannabis purchases.

Discussion occurred regarding using credit cards to purchase cannabis. Cash was not the way to purchase cannabis.

Discussion occurred regarding increased crime in Colorado since the legalization of cannabis.

Member Flowers asked Dr. Tokars if the new regulations will assist with addressing the opioid crisis. Dr. Tokars responded that the new law does not add anything to existing medical cannabis availability.

Planning, Building and Zoning Committee Chairman Prochaska asked Dr. Tokars about second hand smoke from cannabis uses. Dr. Tokars responded that little research exists about the impact of second hand THC.

Commissioner Wilson asked about tests that law enforcement can use to identify people under the influence of cannabis similar to an alcohol breathalyzer test. Commander Langston responded that no tests were currently available in Illinois.

Discussion occurred regarding fencing requirements; barbed wire is not required in State law.

Steve Gengler, Kendall Township Supervisor, agreed with the Sheriff's Department regarding the B-3 District. They did not foresee cannabis uses in the B-3 District; they favored cannabis uses in the M-1 and M-2 Districts.

Commissioner Wilson asked about the impact of legalization of cannabis businesses on the black market. Commander Langston responded that the black market did not pay taxes for sales of cannabis and still existed.

Discussion occurred regarding the intergovernmental agreements for zoning and the potential of those municipalities to opt-out. Mr. Asselmeier responded that a municipality could still opt-out in the same way that the County's zoning might allow alcohol in a specific zoning district, but the township where a given property is located is dry. Townships cannot opt-out.

Discussion occurred regarding the procedures to opt-out and potentially opt-in at some point in the future.

Discussion occurred regarding the potential tax revenue. The County can levy a sales tax at a maximum three point seven five percent (3.75%) in the unincorporated areas and a maximum three percent (3%) in municipalities. Municipalities can impose a three percent (3%) sales tax. A dispensary would have to pay six percent (6%) sales tax if they located inside a municipality and both the municipality and the County levied the maximum sales tax. Commissioner Nelson asked if the County could still collect taxes on cannabis sales inside a municipality if the County opted-out. County Administrator Koeppel thought the County could collect sales tax, but he did not have a legal opinion on the subject. The consensus of both the Planning, Building and Zoning Committee and the Regional Planning Commission was to ask the State's Attorney's Office if the County can still levy a tax on cannabis related business inside a municipality if the County opted-out.

Mr. Asselmeier presented the timeline for adoption. The proposal goes to the Regional Planning Commission on September 25th, the Zoning Board of Appeals hearing on September 30th, the townships would have the month of October to review and file objections, the matter would go to the Planning, Building and Zoning Committee and County Board in November. There is a one (1) month space for leeway.

The opt-out question will be at the Committee of the Whole on September 12, 2019.

COMMENTS FROM PRESS

None

ADJOURNMENT

Commissioner McCarthy-Lange made a motion, seconded by Commissioner Rodriguez, to adjourn. With a voice vote of eight (8) ayes, the motion passed unanimously. The Kendall County Regional Plan Commission meeting adjourned at 7:55 p.m.

Respectfully submitted by,
Matthew H. Asselmeier, AICP
Senior Planner