

**LAKESWOOD PLANNING COMMISSION
PUBLIC MEETING
MINUTES**

January 6, 2010

COMMISSIONERS PRESENT:

George Brown III
Julia Burroughs
Carrie Mesch
John Plotkin
Rich Urbanowski

STAFF PRESENT:

Jay Hutchison, Director, Planning and Public Works
Tim Cox, City Attorney
Timothy Gelston, Manager, Development Review
Walter Jauch, Secretary to the Planning Commission

Following are the minutes of January 6, 2010 Lakewood Planning Commission Public Meeting. A permanent set of these minutes is retained in the office of the City Clerk.

ITEM 1: ROLL CALL

The roll having been called, a quorum was declared and the following business was conducted:

ITEM 2: CASE OA-09-003 – REGARDING AMENDMENTS TO TITLE 5 AND TITLE 17 OF THE LAKESWOOD MUNICIPAL CODE RELATING TO MEDICAL MARIJUANA.

MR. HUTCHISON began with a discussion of the background for the draft ordinance. In the fall of 2009, the City Manager formed a multi-departmental team with the specific task of developing a proposed ordinance relating to medical marijuana. In December of 2009 a joint study session with City Council and the Planning Commission was held and refinements were made to the draft ordinance.

He explained that in 2000 Colorado voters adopted Amendment 20 to the state constitution, which provides a defense against state prosecution for patients and primary Care-givers for the use and possession of marijuana and limits the quantity of marijuana that can be

possessed. The amendment further provides that the state health department is charged with maintaining a registry of patients.

However, Amendment 20 does not license Care-givers and does not address Care-giver Facilities at all. Amendment 20 also does not allow for possession by anyone other than registered patients or their Care-givers. This draft ordinance proposes to allow Care-giver Facilities to operate in the City of Lakewood, subject to licensing requirements and zoning standards.

Mr. Hutchison described several factors that contribute to an evolving landscape regarding medical marijuana including: the federal attorney general has decided not to enforce federal marijuana laws in Colorado and other states with medical marijuana laws; the potential for state legislation; recent and potentially future court decisions; and the wide range of local approaches being taken.

Mr. Hutchison explained that there is a need for City action now because (a) land use and safety issues are normally regulated at the local level; (b) Colorado voters have approved medical marijuana; (c) applications for medical marijuana facilities continue to be submitted; (d) other medical marijuana businesses are opening without necessary City approvals; (e) the uncertainty surrounding state legislation on the subject; and (f) the potential negative secondary effects. He further stated that some of these items are fluid, and that staff recognizes that revisions may be necessary in the future.

He stated that Amendment 20 does have provisions regarding patients. Essentially, the use by a patient is medical in nature and a private activity. Amendment 20 states that use of medical marijuana cannot endanger others and consumption should not be in plain view or a public place. In addition, laws against driving while under the influence remain in place whether marijuana is used for medical purposes or otherwise.

Regarding the draft ordinance, staff focused on balancing the needs of legitimate patients and Care-giver Facilities with safety concerns for the community at large. The focus is on keeping the facilities crime-free. The ordinance would license the operation of Care-giver Facilities, locate them in commercial zone districts that encourage retail uses as they function similarly to other retail uses, and disperse facilities rather than have them concentrated in one area.

He pointed out that staff had made a few minor revisions to the draft ordinance since the study session, all designed to clarify portions of it without changing the substance: add the two words "process, prepare" to the definition of Care-giver Facilities; modify the text of the ordinance to be consistent with the map showing the Care-giver Facilities in all CMU-Roadside and CMU-Community parcels; identify existing ordinance sections by name (e.g., "3-C Community Commercial") rather than merely by section number; and clarify the provision regarding Planned Development (PD) zone districts to state that the use would be allowed in PDs only if specifically listed as a permitted use.

The draft ordinance provides that Care-giver Facilities would be permitted in 1-C, 2-C, 3-C, 4-C, 5-C, TMU-Commercial, CMU-Roadside and CMU-Community zone districts and, if explicitly named, in the PD district. Care-giver Facilities would not be allowed as a home occupation,

and parking ratios for new facilities would be consistent with the retail parking ratio currently in the zoning ordinance.

Other non-zoning components of the proposed ordinance are: the requirement for a one-half mile separation between Care-giver Facilities; it would prohibit mobile Care-giver Facilities, but would allow delivery; the Police Department's Crime Prevention Through Environmental Design (CPTED) program would be used to mandate security requirements at the Facilities; and no consumption of marijuana would be allowed at Care-giver Facilities. Cultivation, processing, and storage would only take place at Care-giver Facilities and for personal use at patients' homes; sales can only take place at Care-giver Facilities; signs must have the word "medical" if words like marijuana or cannabis are used on the sign, etc; display of marijuana and marijuana products visible from public rights-of-way would be prohibited.

He stated that the anticipated schedule of this draft ordinance at City Council is for the first reading to take place on January 25, 2010 and the second reading on February 8, 2010.

Public Comment OPENED at 7:27 p.m.

MR. NORTON ARBELARZ representing MR. STEVEN RODRIGUEZ owner of property at 8700 W Colfax Avenue, Lakewood, CO 80215. His property is zoned CMU-N with CMU-R and CMU-T surrounding his parcel. Mr. Rodriguez gave notice to the City of Lakewood more than two months ago that he intended to operate a Care-giver Facility. He has, in good faith, held up the opening of his facility so that he can obtain certainty and clarity on this issue from Planning Commission and City Council. He feels that barring his facility in the CMU-N district would restrict the patients' access to medicine and create certain constitutional barriers, which the City would have to deal with in litigation. He brought to the Commissioner's attention the case of CannaMart vs. the City of Centennial where zoning issues were a part, and that zoning cannot be used as a de facto form of prohibition and barring access of patients to this medicine. He asks the Planning Commission to take into consideration the motives behind Amendment 20, which is to allow sick patients access to medicine that a physician has determined is beneficial. The main concern is for the safety, welfare, and health of the citizens of Lakewood. Any action, which in the eyes of patients, bars them from access to the medicine would find itself in litigation.

MR. CRAIG WRENTZ, 1720 Ulster Street, Denver, CO 80220. He has been a medical marijuana patient and professional Care-giver for over eight years. He was part of the first dispensary established in the state and has a fair amount of experience in the industry and he supports Mr. Rodriguez' application for a Care-giver Facility. He wished to discuss 5 good reasons to allow a Care-giver Facility at 8700 W. Colfax Avenue: 1) They are here to give, not take; 2) They have over 85 patients of a wide variety of occupations and types with varied medical reasons; 3) They will be giving to the City of Lakewood via tax revenue; 4) The property is ideal for the use, one-acre in size with two entrances from different streets. The property has three buildings with plans for one dispensary and the other a wellness center. It is handicap accessible and the security and fire detection systems are already in place. No residential properties are on that block and it is seven blocks from the nearest school; 5) Mr. Rodriguez has used the proper channels to open his facility.

MR. BRIAN PAULSON, 1810 Brentwood Street, Lakewood, CO 80215. He is a Morse Park Neighborhood Organization (MPNO) board member. His biggest issue is with regard to the one-half mile separation. He is not against the dispensaries, but is concerned there could be up to 7 dispensaries in his neighborhood. He believes a one-mile separation is appropriate, and that changing that to something less later is an option, if it is necessary. He is also concerned about the lack of buffering from schools and believes this ordinance should have a 1,000 foot buffer.

MS. PHYLLIS HENDRICKSON, Lakewood, CO. She is a member of the MPNO. She wished to thank staff for attempting to get this ordinance correct the first time, and for delaying the granting of licenses until consideration of who is affected by this type of business is understood. She stated that the medical marijuana amendment was passed to provide alternative medical assistance for a small portion of the population who could not obtain it by other means. It should be treated as what it was voted to be, a clinic or a Care-giver Facility, and not a retail business. Rules should govern how many licenses are granted, where facilities can be located and the rules should be based on the needs of the surrounding population instead of overloading one area.

In her area on Colfax Avenue between Sheridan Boulevard and Simms Street there are four major grocery stores with pharmacies and an additional pharmacy that sells sundries. This total of five pharmacies seem to meet the market needs of this area. She believes that the number of facilities should be determined by what the area's population and what it could sustain. She believes the one-half mile separation would result in an overwhelming number of medical marijuana facilities. She stated that this current ordinance would result in 10 or more clinics on Colfax Avenue alone. Having this many facilities suggests that the majority of the City's population along Colfax is using medical marijuana. She believes that having this many dispensaries would not be sustainable with the current population. She also believes that Wards 1 and 2 would be bearing the brunt of crime and traffic associated with these facilities. She asked that the Commission: 1) consider increasing the one-half mile separation; 2) look at what is really needed for the medical marijuana patients, in conjunction with the surrounding neighborhoods; 3) add buffers from schools, daycare centers, and community buildings.

MR. JESSE MOREHOUSE, 11504 W Colfax Ave, Lakewood, CO 80215. He has been a Lakewood resident since childhood. He has committed himself to a property on West Colfax Avenue to open a Care-giver Facility and by doing so through the proper channels. He is asking why there are some small pieces that are not available for use along Colfax Avenue. He also asked why only 2 of the 3 Colfax subdistricts allow the Care-giver Facilities. There are no schools or residential housing near the property. There is a pawnshop next door and a bar across the street. He wants the Commission to take into consideration that this property should be available for his facility.

MR. STEVE MEADOWS, 9100 W. 20th Avenue, Lakewood, CO 80215. He was the first to be licensed in Lakewood and believes the separation requirement should be one mile because he

believes over-saturation is unnecessary. Within one-half mile of his facility there are approximately 5 dispensaries at this time. He believes this is too many.

MR. MOE SAFI, 20125 E. Ruby Ranch Place, Parker, CO 80134. His business property would not be zoned to allow a Care-giver Facility even though it is appropriately constructed for this business, is up to code, and has handicap facilities. The property is far from schools or other dispensaries. He is a Care-giver for a lot of patients and feels this is an ideal location for his patients. He suggested that all property fronting Colfax allow Care-giver Facilities.

MR. GORDON SEUFERT, 265 S. Harlan Street, Lakewood, CO 80226. He asked how the City is going to determine which Care-giver Facility will get approved and how long until this approval. He asked how conflicts will be resolved between facilities in close proximity and what criteria will be used for this decision. He also asked how property owners will know if their property is in conflict with other properties so that they can supply the required notarized statement along with the application.

MR. STEVEN RODRIGUEZ, owner of the property at 8700 W. Colfax Avenue, Lakewood, CO 80215. He applied two months ago at this address and it is zoned as CMU-N. He purchased the property two years ago. He feels he has a lot to offer, and intends to include a dispensary and asked the Commission to consider adding the CMU-N zone district as one of the districts to allow Care-giver Facilities.

MR. WARREN EDSON, 2801 E. Colfax Avenue, Suite 201, Denver, CO 80226 and is here as an attorney on behalf of Lakewood Patients Resource Center and appreciates the way the City has approached this topic. He also expressed appreciation for the notice given and the appellate process that the City provides. He believes the dispensary business is market driven but nobody knows the total number of patients. By his calculations, there are approximately 60,000 to 70,000 patients in the state. He stated that the City is welcome to limit the number of facilities but asked them to keep in mind the potential amount of tax revenue the City would be relinquishing.

He asked the Commission to look to Oakland, CA, where the City Council reportedly limited the number of facilities to 4 to see what happened when facilities are severely limited; just one of those facilities has approximately 40,000 patients and \$40 Million in revenue. He also wished to point out that a lot of the information is HIPAA protected and that Amendment 20 does not require patients to have cards and that by adding this requirement in this ordinance it would be violating the constitution.

MS. NATALIE MENTEN, Ward 5 in Lakewood, CO. She attended the Centennial court hearing regarding the CannaMart case. She wanted to mention that the restrictions in this proposed ordinance drives costs higher, which is passed on to the patient. She believes that the reason costs are so high for this product is because of the restrictions and regulations of the government. She wants there to be a limit on how this is regulated by the government. She asked the Commission to keep in mind the patients and their needs.

Public Comment CLOSED at 8:00 p.m.

COMMISSIONER URBANOWSKI asked if the Centennial CannaMart case has any affect on this ordinance.

MR. TIM COX stated the case is illuminating since there is not much case law regarding this topic and the case provides insight into one judge's interpretation of some of the provisions of Amendment 20. However, that case has very limited applicability to our context for the following reasons: 1) that case was specific to a City's reliance on federal law in order to prohibit a use at the local level; 2) it was a decision on a preliminary injunction in order to allow the continued operation of the business, not a final trial on the merits of the case; 3) The case was decided in district court of Arapahoe County, and is not binding in Jefferson County.

COMMISSIONER URBANOWSKI asked about the thought process for the choice of zone districts for this use.

MR. HUTCHISON stated that the thought was to look at the activities of this use and find comparable uses already in the ordinance. Generally, patients make their way to a facility, obtain a product, and then leave. In many ways this operates similar to a retail store. Staff looked at those districts that are primarily geared to retail use to allow the Care-giver Facilities. Such districts include 1-C, 2-C, 3-C, 4-C and 5-C. Solely residential districts were excluded. Planned Development (PD) district were excluded because of how they are designed: they are customized districts designed by the landowner with input from surrounding landowners and neighborhoods. Typically a major component of designing a PD is defining the specific uses that will be permitted and specific uses that will be prohibited. Some PDs are purely residential, some are purely non-residential and some are a mix of uses. Therefore, it is not recommended that PDs be uniformly included. Rather, Care-giver Facilities can be added to a specific PD through a rezoning.

Mixed-use districts presented complications. Most of the subdistricts of the CMU and the TMU do permit some form of retail. TMU has a specific commercial subdistrict. CMU-N was excluded, as it is more neighborhood-oriented. CMU-Community and CMU-Roadside are more citywide/community type retail and so were included as districts allowing Care-giver Facilities.

COMMISSIONER JULIA BURROUGHS asked how the one-half mile separation distance was determined.

MR. HUTCHISON answered that there was lengthy discussion regarding separation and alternatives. Several types of uses have varying separation requirements, some at 750 feet, some at 1,000 feet and even one at a mile. One-half mile seemed to be a reasonable approach to disperse the facilities and to ensure there are opportunities in Lakewood for Care-giver Facilities.

COMMISSIONER URBANOWSKI asked how many Care-giver Facilities would be possible in Lakewood with the proposed ordinance.

MR. HUTCHISON responded that an evaluation has been done and if placement of the Care-giver Facilities were perfectly optimized there could be approximately 50 total Care-giver Facilities in the City of Lakewood.

COMMISSIONER BURROUGHS asked if there was potential for growth.

MR. HUTCHISON responded that there is potential for growth if Planned Developments are modified to permit Care-giver Facilities or if a property is rezoned.

COMMISSIONER CARRIE MESCH asked if it were likely this maximum number would be reached.

MR. HUTCHISON answered it is not likely as it requires perfect optimization.

COMMISSIONER MESCH asked for clarification about the retail aspect of the CMU-N subdistrict.

MR. HUTCHISON responded that all of the CMU subdistricts do allow retail, City staff looked at what the major intent was for each subdistrict and the CMU-N is more neighborhood oriented retail and was the reason for the differentiation.

COMMISSIONER MESCH asked if Care-giver Facilities are less neighborhood oriented than liquor stores.

MR. HUTCHISON indicated that an interpretation could go either way.

COMMISSIONER JOHN PLOTKIN asked what the implications would be for Lakewood as a home rule city if the state law changes.

MR. COX responded that it depends on that legislation. Generally, home rule cities can regulate in areas that are not of statewide concern. The state could declare the matter to be one of statewide concern, but if cities believed the state was overstepping its bounds, litigation would likely result and the courts would decide whether home rule cities were subject to the state legislation.

COMMISSIONER PLOTKIN asked if it is correct that Planning Commission and City Council can determine where things go, unless the state says otherwise.

MR. COX responded that this is correct.

COMMISSIONER PLOTKIN asked what would happen if, through a change in federal administration, there is a change in the federal enforcement policies.

MR. COX answered that this is a risk the Care-giver Facilities bear as the federal law has not changed and only the prosecutorial discretion has changed. Nobody can state with certainty that this philosophy will remain for the future; the current administration could abandon this

approach or the next administration could take a different view. This is not a question of local zoning, and the federal government could arrest those in violation of federal law.

COMMISSIONER PLOTKIN asked how many pharmacies would be allowed along Colfax Avenue.

MR. HUTCHISON responded that the market would make that determination. Many properties are zoned to allow pharmacies and there is no requirement that would reduce that availability.

COMMISSIONER PLOTKIN asked why staff felt that a Care-giver Facility is unique with respect to crime in comparison to businesses such as banks, jewelry stores, liquor stores, and drug stores.

MR. HUTCHISON answered that Care-giver Facilities are in an unusual situation, as their product is both legal and illegal at different levels and it has substantial value in both legal and illegal markets. Several incidents of crime at Care-giver Facilities have been reported, including some in Lakewood. The intent is to maximize safety at the Care-giver Facilities and minimize impacts.

COMMISSIONER PLOTKIN commented that he was involved in the discussions regarding the Colfax Mixed Use zoning and also the Transit Mixed Use zoning through task forces and committees and that Medical Marijuana was not discussed, as this really wasn't on any radar-screen at the time. This is a more recent topic. This proposal is legislative in nature, a broader approach is required and specific properties can be re-zoned through the rezoning process available to them. He is not sure that this is the right mix of zone districts and does not see a basis for differentiating the CMU-N subdistrict from the other subdistricts.

COMMISSIONER URBANOWSKI asked if the draft ordinance could be practically revised to include the CMU-N subdistrict to allow Care-giver Facilities only on Colfax fronting parcels.

MR. HUTCHISON responded that this change would be practical as the zoning ordinance already distinguishes Colfax-fronting parcels from non-fronting parcels.

COMMISSIONER URBANOWSKI asked what would occur if an existing business changes to a Care-giver Facility but cannot meet that ratio.

MR. HUTCHISON stated that the zoning ordinance lists a table of ratios for uses and retail uses are generally required to provide at least 4 parking spaces per 1,000 square feet (s.f.) of building footprint for a new development. For the CMU and TMU zone districts, there is a separate ratio table as these districts are intended to encourage pedestrian activity and less vehicle activity. This ratio is a minimum of 2 spaces/1,000 s.f. and a maximum of 4 spaces/1,000 s.f. There is a process for administrative approval for an exception for a business moving into an existing building and the City would exercise some flexibility.

COMMISSIONER URBANOWSKI commented that he believes the Crime Prevention Through Environmental Design (CPTED) approach to be reasonable, but has concerns about the

mandatory requirement for this one particular type of business. He prefers that it be highly recommended rather than required.

COMMISSIONER PLOTKIN asked what other associated activities there may be with a Care-giver Facility.

MR. HUTCHISON responded that it will vary by each Care-giver's business model and that there are no specific restrictions in place.

COMMISSIONER PLOTKIN asked how the order of applicants would be determined.

MR. HUTCHISON answered that it will be a chronological order based on submission of a complete application for Sales and Use Tax License. Those applicants that have already applied for a Sales and Use Tax License would have priority over those who have not, provided they submit an application for a Care-giver Facility license in a timely fashion.

COMMISSIONER BROWN asked what zoning is required to open a pharmacy.

MR. HUTCHISON responded that pharmacies are allowed in the same districts as proposed for Care-giver Facilities as well as the Office (OF) zone district, the Industrial district, CMU-N and several TMU subdistricts.

COMMISSIONER BROWN asked for clarification about buffers around schools and daycare.

MR. HUTCHISON responded that this draft ordinance does not include any buffering, only the one-half mile separation between Caregiver Facilities. There was a lot of discussion about buffering and it was not recommended for the following reasons: 1) our society is very mobile and 1,000 feet can be traversed walking in a few minutes; 2) schools either supervise and restrict students to a campus or the students are allowed to leave and are very mobile through vehicle use or on foot.

MR. COX also stated that the decision ties into CPTED, in that staff focused on what impacts the buffer requirement would protect against. Some businesses for which buffer requirements may be imposed, such as sexually oriented businesses, have been the subject of extensive studies which conclude that the area around the regulated use may see an increase in certain activities, such as crime, alcohol abuse, prostitution, etc. The situation is unusual with medical marijuana businesses: there are not many studies about this type of use, but in a relatively short period of time we've seen a fairly intense record that these facilities are targets of crime. Staff had extensive discussions about how much protection a buffer would provide for children when they are most likely driven to school, to friend's houses, and to other events. It was determined that the best approach is to try to prevent the crimes at the site through better design, security, and maintenance.

COMMISSIONER BROWN asked if there are buffer requirements between liquor stores.

MR. COX responded that regulation of liquor stores is mostly through state law.

MR. HUTCHISON further responded that the City does not impose buffering requirements around liquor stores.

COMMISSIONER PLOTKIN made a MOTION that Planning Commission adopt the Findings in the staff report and recommend City Council APPROVAL of Case No. OA-09-003 and its draft ordinance to amend Article 17 as contained in sections two through fifteen of the draft ordinance and that City Council also consider allowing Care-giver Facilities in the Colfax Mixed Use – Neighborhood subdistrict, perhaps limiting the addition to those parcels that front Colfax.

Motion was SECONDED by COMMISSIONER MESCH.

COMMISSIONER MESCH commented she leans toward not regulating unless it is necessary and this is one of the instances where the regulations are appropriate, such as those in the CPTED requirement.

COMMISSIONER BURROUGHS commented that pharmacies are regulated at a Federal level with respect to how they dispense, store, and secure products. The CPTED is similar in function to those regulations and requirements and is also for the benefit of the patient. There was also much discussion with City Council about patient rights and HIPAA regulations.

COMMISSIONER PLOTKIN commented that the balance staff has tried to achieve is commendable. As a lawyer, he is struck by how bizarre this situation has become, with the federal law versus the state level constitutional amendment creating a situation that will be in flux for some time. He is concerned that it is possible that all these facilities can literally go dark overnight due to enforcement of the federal laws. He hopes all the business owners understand that potential risk.

COMMISSIONER BROWN commented that he sees this as a balanced approach and product. He has seen other cities' extremes and believes that it is the best for the citizens of Lakewood to receive this balanced approach. He also feels comfortable with the one-half mile separation requirement.

COMMISSIONER URBANOWSKI commented that staff did a great job and the draft ordinance is a comprehensive and a fine product to move forward to City Council. He does have concerns about the CPTED requirements for a single type of business. However, he still believes it to be a balanced and thorough approach. He also is comfortable with the one-half mile separation requirement. He appreciates the recommendation that CMU-N be considered by City Council.

VOTE TAKEN -

Five Ayes - Commissioners Brown, Burroughs, Mesch, Plotkin, Urbanowski

Zero Nays.

One Absent – Commissioner Nightengale-Luhan.

MOTION PASSED.

ITEM 3: DESIGNATION OF PUBLIC PLACE FOR POSTING NOTICES OF PUBLIC MEETINGS DURING 2010 PURSUANT TO C.R.S. 24-6-402(2)(c)

COMMISSIONER MESCH made a MOTION for ADOPTION of Resolution 2010-1-PC.

Motion was SECONDED by COMMISSIONER BURROUGHS.

VOTE TAKEN -

Five Ayes - Commissioners Brown, Burroughs, Mesch, Plotkin, Urbanowski.

Zero Nays.

One Absent – Commissioner Nightengale-Luhan.

ITEM 4: APPROVAL OF MINUTES

Minutes from the Regular Meeting of December 16, 2009

COMMISSIONER MESCH made a MOTION for APPROVAL with noted correction of typographical error.

Motion was SECONDED by COMMISSIONER BURROUGHS.

VOTE TAKEN -

Five Ayes - Commissioners Brown, Burroughs, Mesch, Plotkin, Urbanowski.

Zero Nays.

One Absent – Commissioner Nightengale-Luhan.

GENERAL BUSINESS:

MR. TIM GELSTON advised the Commission that, in the interest of timing, the minutes for this evening would be distributed via e-mail for approval.

MR. GELSTON also mentioned that the Zoning Improvement would be kicking-off workshops in each ward beginning on January 14, 2010. He urged members to attend at least one of them and a flyer has been given to each Commissioner.

Also, an Election of Planning Commission Officers will be queued up for the next regular meeting.

ADJOURNMENT

Meeting adjourned at 9:01 PM.

January 14, 2009

Date Approved



Walter M. Jauch, Secretary
to the Planning Commission