

**City of Salem Planning Board and City Council
JOINT MEETING
Approved Minutes
Monday, November 27, 2017**

A joint meeting of the Salem Planning Board and the City Council was held on Monday, November 27, 2017 City Hall Annex, 93 Washington Street, Salem, Massachusetts.

Council President Milo opens the meeting at 6:30 pm

I. ROLL CALL

Those present were: Chair Ben Anderson, Kirt Rieder, Dale Yale, Bill Grisct (arriving late), Helen Sides and Noah Koretz

City Council Members: Elaine Milo, Presiding, Councilors Eppley, Turiel, Gerard, Furey, Sargent, Dibble, and Famico

Absent: Carole Hamilton and Councilors Ryan, Lovely

Also in attendance: Amanda Chiancola, Staff Planner, Stacy Kilb, Recorder, Assistant City Solicitor Victoria Caldwell, Chief of Police Mary Butler, Mayor Kim Driscoll, and Erin Schaeffer, Staff Planner

A continuation of a joint public hearing of the City Council and Planning Board will be held in the City Council Chambers, 93 Washington Street, second floor, on Monday, November 27, 2017 at 6:30 P.M. for the purpose of discussing amendments to Salem Zoning for the following:

- **Section 3.0 – Table of Principal & Accessory Uses relative to Marijuana Cultivator, Manufacturer, Testing Facility & Retailer**
- **Section 6.0 – Special Regulations relative to Marijuana Establishments**
- **Section 10.0 – Definitions relative to Marijuana terms and definitions**

The proposed Zoning Ordinance amendments are on file and available for review during normal business hours at the office of the City Clerk, 93 Washington Street, Salem, MA

Councilor Dibble recognizes his neighbors, Ms. LeVecchio and Ms. Sockel who recently passed away.

- **Section 3.0 – Table of Principal & Accessory Uses relative to Marijuana Cultivator, Manufacturer, Testing Facility & Retailer**

Erin Schaeffer, staff planner for the Zoning Board of Appeals (ZBA), clarifies why the North River Canal Corridor (NRCC) was not included in the zoning ordinance. This was considered, but the NRCC is a special district in and of itself, a separate and distinct zoning ordinance, and is not part of the table of principal and accessory uses. This issue will be taken up at a later date but cannot be included in the current discussion regarding the Table of Principal & Accessory Uses. Councilor Dibble feels very strongly that the City should be considered as a whole, and Councilor Eppley notes that the only current allowed use for medicinal marijuana is within the NRCC.

While he does not disagree about the importance of the discussion, Councilor McCarthy reiterates that the discussion must be limited to the Table presently before the Council. Councilor Turiel is comfortable only discussing what is before the Council at the moment, but also feels the NRCC should be addressed with a separate proposal for that Corridor submitted in the next week or two.

As he did not attend the last meeting, Councilor Eppley was not aware of the discussion regarding timing of local and state regulations, and is concerned about the City moving forward before the State has issued its regulations. He also feels that with the upcoming change in Council, this issue should have been decided earlier if this Council wished to weigh in on it. Councilor Furey disagrees and feels that businesses will be coming in soon so guidelines should be in place for them.

President Milo asks the Chief of Police about the pacing of the decision in terms of public safety. Chief Butler feels it would be helpful to be done in a timely manner but the ordinance does not provide a mechanism for State regulations to come into play once they are settled in March.

Councilor Turiel notes the timing of regulations as put forth by the State Cannabis Control Board; the basic zoning portion should be taken care of now. City regulations passed through the City Council and Board of Health (BOH) should be based on what the final state regulations look like, but the big picture, i.e. basic zoning usage, definitions, and numbers should be decided upon now.

Councilor Furey reiterates that this City Council has the responsibility to act now.

Mayor Driscoll addresses the Council, noting that this has been discussed internally; this is not the “finale” with how we would deal with recreational marijuana, but just setting basic ground rules, so we should work through the cap, local option on the excise, and rules regarding zoning. The Mayor explains that she went back with allowing shops in B5 and decided to take a conservative approach, given that this is such a new concept. But, if the City Council is willing, she feels the City would manage if B5 was added. Basic aspects of usage are ironed out here and she is hoping the Council will advance it. She feels the current medical marijuana facility was handled well. In reality, only three additional licenses are in question if a cap is decided upon. Adjustments to the Ordinance can be made later if necessary.

Additional extensive discussion occurs regarding the NRCC and why it was not included in this discussion, and Council Members’ concerns about that.

Ultimately Councilor Turiel reiterates that all Councilors would all like to see the NRCC addressed, and notes that the administration supports that, however for now, based on definitions, all marijuana related activity would be prohibited in NRCC by its nature, by definition, so the Council should refocus the hearing on the zones before it right now.

Discussion turns to zone B5 and why it was not included, especially if this use is being treated similarly to liquor stores, which are allowed there. Mayor Driscoll notes that B5 was kept out because lots of events and festivals happen there, and also because unlike containers, edible products would not be able to be monitored, and people could be impaired if large quantities of edibles were available. There were also concerns as to what this could mean from a public safety perspective, especially in October. On the other hand, financially, the option of “give the people what they want” was considered, but they still erred on the side of caution. B5 could be added after further discussion among the Council, City Offices, and Public Safety.

City Council’s main points:

- Councilor Turiel feels B5 should be included and is not concerned, as there are enough safeguards in place to prevent a business from becoming established where it is not wanted. The Mayor notes that for the sake of consistency, manufacturing is not allowed in B2 or B4, but cultivation is, though it is a larger scale operation.
- The pros and cons of allowing package stores as of right vs. marijuana retailers in B5 are discussed at length. If allowed as of right, residents will have no input in the licensing process; if establishments require a special

permit from the ZBA, not only will residents have the opportunity for input, but it is a great way from the operator to discuss how any issues will be addressed

- Councilor Famico is concerned about the hazards of raw materials; while early in the process, the Mayor notes that a building inspection would have to be done
- Extensive discussion lead by Councilor Dibble ensues, regarding excluding facilities near colleges, parks and playgrounds, in addition to the areas already excluded. He feels very strongly that this zone should be expanded to 1000'. He has received a letter from the president of Salem State University stating that he would not approve of facilities being located near the College. A discussion of the letters of non-opposition and other protections occurs; also, it is felt that expanding the prohibited zone to 1000' might push businesses where they aren't wanted, and Salem is not a large City. The logistics of keeping marijuana off college campuses is also discussed.
- Councilor Famico also asks about the 500' notice requirement, feeling that this is reasonable and in fact comes from a law cited in 5.B.3 stating that a license will be issued as long as the location is not within 500' of listed establishments, unless a City or Town adopts a bylaw reducing that distance. Thus, it could be reduced but not increased, and the notice is meant to let abutting entities know that an establishment is being considered.
- Discussion occurs regarding whether this notice would be sent to property owners, or could be amended to include operators
- A discussion of "park" vs. "playground" also occurs. The logistics of allowing usage near a location such as Salem Willows is also discussed. The Mayor points out that the idea is to design reasonable regulations for a small City, while making sure we are keeping establishments out of unsuitable locations. A maximum of three licenses are up for grabs; that is the cap right now, four licenses, as ATG is already here. This is not an enduring issue to be dealt with forever, and she feels those three licenses will be competed for. General details should be sorted out, but the Council and Administration cannot address every scenario, so again the letter of non-opposition process is crucial.
- The timing of the decision re the new City Council is also discussed; as no special meeting after Dec. 5th has been called, the four new Councilors will be the ones to ultimately vote on this measure. Public debate ends when the public hearing closes.
- Councilor Dibble notes that the possibility of allowing a property within Ward 7 to adopt state regulations for a small farm from two to five acres; with that, if this property is allowed to become a small farm and follow state zoning laws, he wonders if they would they be exempt from local zoning laws, and could grow marijuana. However, Erin Schaeffer points out that marijuana cultivation is not considered an agricultural use in the law currently.

President Milo opens to public comment, asking that public testimony be limited to the Table of Uses and to two minutes; also, if a member of the public has spoken before, please be succinct and not repetitive.

In favor.

- Councilor Elect Domingo Dominguez believes it makes sense to move the matter to the next Council; minorities are not currently represented in the current Council.
- Michael Latulippe of 190 Bridge St. feels discussion today was productive, and supports this with the change to B5. He echoes what Councilor Elect Dominguez stated. It is possible for an Applicant to demonstrate experience with communities and to have a fully operational business by July 1, 2018, so there is an opportunity to roll out the red carpet for economic empowerment organizations seeking host communities, many of whom will be represented by minorities. Also:
 - Removing the section that bars cannabis use inside is highly recommended. Everyone wants to keep marijuana from getting into the hands of children, but forcing parents to bring it home with them does not do that.

- The law makes it clear that unreasonable barriers to cultivation, manufacturing and testing cannot be put in place, but the requirement that they must generate power onsite is unreasonable and could trigger something from the AG or Cannabis Commission to reprimand the City if it were to engage in those proposals.
- Moving forward before changes and minority voices would be a tragedy for the City Council.
- Polly Wilbert of 7 Cedar St. comments on the accessibility of marijuana by college students; neighborhoods already face issues with alcohol that students go off campus to consume. She is concerned that they may wind up at parks or other open spaces. Also, as B1 is not a zone that would allow this use under the current proposal, she is concerned about inequity and that businesses would be limited to large corporations with deep pockets.
- Gary Gill of 12 Polk St. Salem is also concerned about business opportunities for small business owners, especially minorities. Accessibility by public transportation is also important. Zoning should be about meeting everyone's needs, not just the City rezoning to fit its intentions.
- Fuzzy of 4 Harrison Rd. is concerned about medical vs. recreational marijuana, and that medical facilities are not grandfathered in if they want to switch to recreational. This is taken care of on two levels. As part of the licensing process, a binding agreement with the City would have to be in place providing for only that one use. Additionally, a 20% cap would mean that only for or perhaps five licenses would be allowed, one of which is already taken by ATG. Any facility wanting to switch would have to go through the entire process.

Opposed:

- None

Councilor Sargent notes that the laws as they are now cover most scenarios, but these are a work in progress.

Allowing businesses in the B1 zone is discussed at length, as is allowing onsite consumption in B5. The difference between marijuana retailers and liquor establishments is discussed. In general, it is felt that the cap on the number of licenses will take care of things.

Table of uses, as currently proposed:

	RC	R1	R2	R3	B1	B2	B4	B5	I	BPD
Retail marijuana cultivator	N	N	N	N	N	BA	BA	N	BA	BA
Marijuana product manufacturer	N	N	N	N	N	N	N	N	BA	BA
Marijuana testing facility	N	N	N	N	N	Y	N	N	BA	Y
Marijuana retailer	N	N	N	N	N	BA	BA	N	BA	BA

The table and how decisions were made regarding which activities were allowed where are discussed.

Motion to close the public hearing carries. A motion to refer the matter to the Planning Board is made by Councilor Turiel, seconded by Councilor Gerard, and the motion carries.

Section 6.0:

Some issues have already been discussed above, but are brought up again.

Councilor Dibble moves to change 6.10.6 paragraph 5 to 1000 feet and to add "and colleges and universities" to the list, however that cannot be changed at a public hearing. Instead, Councilor Dibble suggests these changes, along with adding "park" before "playground."

The timing and logistics of amendments is discussed.

Councilor Eppley suggests within Item 12, that the item be stricken or amended significantly to allow for onsite consumption, at least in some areas.

Councilor Sargent suggests considering adding a prohibition of such activities next to a funeral home.

Councilor Famico again asks about playgrounds vs. parks. She would also like to see it added that emergency plans also go to the Fire Dept. and mention that the Planning Dept. should have emergency work on file. Plans should also take into account that it is a cash based business, so the safety of cash and business operations should be taken into account.

Councilor Eppley asks about cultivation facilities and what he feels are onerous requirements on new enterprises, with regards to the "green" requirements. However, energy consumption for cultivation is not trivial. On the other hand, only large growers may be able to comply.

Cultivation vs. retail is discussed; opportunities for small businesses should be encouraged.

Kirt Rieder of the Planning Board asks for clarification on the green areas in the City.

President Milo opens to public comment, limited to 1 minute per person:

Polly Wilbert asks about the exact language regarding public safety; these questions should be directed to that Department.

Michael Latulippe notes that Colorado should not be used as an example for Massachusetts, as they are rural and have to generate their own electricity for cultivating, whereas Massachusetts does have the capability of supplying energy. The Cannabis Advisory Board lists tiers of licenses 1000 ft and below, and other categories for larger cultivators. Please ensure there is no limit for small cooperatives and cultivators, and for agricultural use by right – none for marijuana, but it can be zoned in agricultural zones if so inclined.

Councilor Famico wonders if a bakery would count as a manufacturing facility; it would. Same for a candy store.

Councilor Turiel motions to close the public hearing, is seconded by Gerard, and the motion carries.

Councilor Turiel motions to refer the matter to the Planning Board, is seconded by Gerard, and the motion carries.

Section 10.0 Definitions

It is questioned whether or not parks, open space, etc. could be defined in this section. The Assistant City Solicitor would have to examine the rest of the Ordinance to ensure there was no conflict. Additional discussion re parks, playgrounds and open space ensues. Some feel that the intent is to exclude businesses from areas where children congregate, but it is unclear how to define such areas and how they would relate to Conservation Zones. It is again noted that no licenses will be granted within 500' of a K-12 school zone, but the notice must go out to all other entities within 500' and the Mayor and Council will have to agree on the letter of non opposition. It is not that the usage is prohibited, but the discussion of which parks and playgrounds to notify would be counterproductive as there are so many.

Councilor Famico again notes that the lessor, occupant vs. owner should be notified, if different. Also with regards to bakeries being considered "manufacturing;" bakeries are not allowed downtown.

Councilor Dibble still feels strongly that the setback from public elementary schools should be expanded and should include universities, parks and playgrounds. However, that discussion has been closed.

Matt Veno notes that the Planning Board would entertain suggestions and asks the Staff and City Solicitor for suggestions on defining playgrounds, parks, etc. to be considered when the Board meets.

The President opens to the public but there is no comment.

Councilor Turiel motions to close the public hearing, is seconded by Councilor Gerard, and the motion carries.

Councilor Turiel motions to move the matter to the Planning Board for its recommendations, and the motion carries.

The meeting ends at 9:00 PM

Respectfully submitted,
Stacy Kilb, Recording Clerk

Approved by the Planning Board on 12/21/2017

Know your rights under the Open Meeting Law M.G.L. c. 30A § 18-25 and City Ordinance § 2-2028 through § 2-2033.