



Committee on Legislative Matters and the Northampton City Council

Members

Councilor William H. Dwight, Chair

Councilor Maureen Carney

Councilor Alisa F. Klein

Councilor David A. Murphy

MEETING MINUTES

Date: May 14, 2018, Time: 5 p.m.

Location: City Council Chambers, 212 Main St., Northampton, Massachusetts

1. **Meeting Called to Order and Roll Call:** At 5 p.m., Councilor William H. Dwight called the meeting to order. On a roll call, the following councilors were present: Councilor Carney, Councilor Dwight, Councilor Klein and Councilor Murphy. Also present were Councilors Dennis Bidwell and Jim Nash.

2. **Public Comment:**

Ananda Lenox, Leeds resident and coordinator of the Northampton Prevention Coalition, commended the council for considering a cap on the number of retail marijuana establishments. By doing a quick google search she was able to see that, despite marijuana's fairly recent legal status, researchers are already starting to do studies on the effect of outlet density on statistics such as property crime rates.

Although numerous studies have found positive correlations between high **alcohol** outlet densities and high rates of violent crime, property crime and poor family health, statistics on marijuana outlets are harder to find because of its relatively recent legalization, she acknowledged. However, she did manage to find a few studies that indicated that higher outlet density correlates positively with higher rates of property crime and marijuana-specific crimes. These crimes did not happen in the immediate area around these retail outlets due to security measures there; however, reports showed crimes spilled out into adjacent areas, she said.

Of course, coming from a prevention standpoint, she'd like to see as few retail marijuana outlets as possible, Ms. Lenox conceded. However, moving forward, she'd like to advocate for adopting the new market in such a manner so as not to put the community at risk or overburden law enforcement officers.

She reiterated that she is very glad that the council is considering caps since the city has them for alcohol establishments. Since it is a new market and they are not sure how it is going to shake out, it seems that going slowly is the way to go, she suggested. She submitted a copy of the study for members' reference.

Ruth Ever of 17 Chestnut Avenue, who identified herself as a long-time public health advocate, urged city councilors to move 'slowly and cautiously' with respect to establishment of the retail marijuana industry.

“This is an industry that is going to be with us for the long haul,” she pointed out. There’s going to be plenty of time to add later, but once they open it up, it is going to be much harder to contain it, she suggested.

If they’ve learned anything from other legally-established drugs (she cited tobacco as an example), it’s that going backwards and trying to put the genie back in the bottle is much harder and takes much more of a toll on young people. “We have a responsibility to our young people . . . where we stand as a community sends a message to our youth.’ she asserted. If they take no stand and have a laissez-faire attitude, that sends a message, she observed.

She expressed the opinion that ten is too many but said she is encouraged that the council is considering any cap at all. They need to send youth the message that they think well of them, care about them and want them to grow up into healthy, responsible adults with their brains at the fullest capacity. What they know about all drugs is that the young brain is still developing, and the farther they can push drug use off, the better. They really don’t know what the impact of this industry will be. She repeated her admonition to move slowly and cautiously, knowing that they can always reassess at a later time.

Laurie Loisel of 4 Grant Avenue commented that it is somewhat unprecedented to have a whole new industry moving into the city. It’s going to be a really big money maker and no banks will serve it, so it’s going to be a cash-only business, she noted. State regulations allow local governments to set limits, and she doesn’t know why they would want ten pot shops in their city. If they start smaller, they can let more come if it’s not a problem. If it is a problem, they can’t close businesses once opened. Referring to package stores, she noted that they are on the edges of town and in grocery store parking lots where there’s not a lot of foot traffic. “That kind of makes sense to me,” she stated. Her concern is normalizing the use of marijuana for young people based on what she has heard about its effect on young brains. She has seen firsthand how it can derail lives and set young people up for a lifetime of struggle with addiction. She thinks they are being naïve if they think legalizing pot for adults will not make it accessible to children, since young people are presently drinking and smoking.

Walking down Main Street on Sunday she smelled a huge amount of pot, she shared. In thinking about the kind of downtown they want, she hopes it’s not a place where people are smoking pot. That is not what she wants for their city, she commented.

Heather Warner of 115 Pine Street started by thanking councilors for entertaining a cap at all. On so many levels, it’s important to regulate locally as much as they can just as the state is regulating at the state level. This is a new industry, and they don’t know what it’s going to look like, she reminded. They do know that it’s market-driven. They’ve heard some great testimony from NETA and she would hope all retailers would look like that, but they don’t know that. She agreed that they need to consider what their downtown looks like and confirmed Ms. Loisel’s observation that stores selling alcohol are not generally located on Main Street. Her understanding is that they are not imposing any zoning restrictions other than the 200-foot buffer, so it really is a free-for-all.

People she knows who voted for the legalization of recreational marijuana did so because they wanted to reduce the black market, have quality control for the product and unclog jails for social justice reasons, Ms. Warner continued. Very few people voted for it because they wanted a free market industry to come in and take over the town. That isn’t the image they had when they voted yes, she suggested, referring to a ‘large circle of people’ she knows who are pretty passionate about this issue.

She cited some of the key reasons for a cap, noting that she would advocate for an even lower cap to start:

- ❖ The ability of marijuana retailers to plan accordingly (Some start planning years in advance, she noted.)
- ❖ Maintaining the integrity of downtown and Florence Center as family-friendly, healthy and vibrant places for both residents and tourists
- ❖ Decreasing crime in the neighborhoods
- ❖ Decreasing the normalization of marijuana, thereby protecting vulnerable individuals and those in recovery from unnecessary exposure (More than half the communities in Massachusetts have voted no and are banning recreational marijuana, she pointed out.)

3. Minutes of Previous Meeting

Councilor Carney moved to approve the minutes of the previous meeting. Councilor Klein seconded. The motion passed 4:0 by voice vote. (Note: The minutes of April 9, 2018 were not yet transcribed, so they were not able to be accepted for approval.)

4. Items Referred to Committee

By consent, members agreed to take up Item C, 18.080 An Ordinance Limiting the Number of Retail Marijuana Establishments in the City next.

A. 18.080 An Ordinance Limiting the Number of Retail Marijuana Establishments in the City - referred by City Council 4/5/2018

Councilor Murphy moved to approve the order. Councilor Carney seconded.

Councilor Klein asked the commentators if they or the sponsors could speak to the information presented about a rise in crime in neighborhoods adjacent to marijuana outlets. She is interested in whether true causality between crime rates and the presence of marijuana outlets has been shown, she indicated.

The statistic cited was based on a study in Denver, Heather Warner responded. She would have to get back to her on further specifics, she said.

Councilor Bidwell said he had not looked at the study but he suspected that information related to causality would not be included in early reports but would only be found in later studies.

Reading from the study's conclusions, Councilor Dwight noted that, "Data from the study showed that marijuana outlets contributed to 1,579 property crimes in Denver over 34 months compared to combined alcohol outlet contribution of 1,521, a difference of around 50." The study's author cautioned that a direct comparison is difficult because crimes for marijuana outlets take into account crimes in local and adjacent areas while crimes for alcohol outlets take into account only adjacent areas. There's some suggestion that they are comparing apples to oranges, Councilor Dwight concluded.

Councilor Klein also said she'd be interested to know how sponsors came up with the limit of 10.

There is no scientific basis for the proposed cap, Councilor Bidwell acknowledged. It was arrived at by looking at other examples and determining what "feels right."

He's not a libertarian on this issue, Councilor Bidwell stressed. He is not a proponent of unnecessary and unwise regulation in the market place, but he thinks this is an appropriate place for regulation. Sponsors

are proposing the cap not because there are exhaustive studies on causality, but because it is a relatively young industry and they don't have data on what its impact will be. He expressed the opinion that this makes a strong argument for caution and for taking it a little slow.

A lot of what he and Councilor Nash learned came from a City Services Committee meeting where they heard presentations from many of the same folks who spoke today. Speakers were persuasive in presenting their concerns and arguing that if city officials impose a cap, they can always raise it, but they can't go back and close businesses once opened. He shares sympathy for the public health coalition, Health Director and members of the Board of Health, all of whom are in favor of imposing a cap. Studies have demonstrated the impact of marijuana on youth brain development, and Chief Kasper cited studies that indicate that traffic accidents, ER visits and incidents of OUI increase as a result of legalization. He spoke to the chief today, and she reminded him that she is on record as favoring a cap of 10.

As to how they arrived at ten, Easthampton put a cap of six in place based on its population. He thinks three or four is too few given that they want to send a message that they are open to this new industry and 15 or 20 would be too many. As he's said before, he doubts that, at least initially, a cap is necessary, given the hurdles that must be overcome to receive a license. He'd rather be cautious and put a cap in place instead of finding that a large number of establishments do make it through the licensing process and problems ensue. That is the approach of the police chief and Director of Public Health, he confirmed.

Councilor Dwight asked if there are studies that prove the efficacy of caps for reducing negative impacts such as crime. Councilor Bidwell said he doubted it since it's not possible to compare conditions before and after a cap since caps can't be put in place after the fact.

In his view, the city does not impose caps on alcohol establishments; the state does, Councilor Dwight noted. The reason liquor stores are not on Main Street has nothing to do with zoning, it is due to market forces, he added. "We as a community don't regulate any other business in this way," by limiting the number of establishments, he observed. His concern is that it is unprecedented.

However, the Board of Health regulates where tobacco products can be sold, it was noted.

It is unprecedented, Councilor Bidwell agreed, but he thinks it is appropriate because it is a brand new industry and they could be surprised by its public health and public safety impacts.

"We are embarking down a new path with an industry that we know will present problems," Councilor Nash continued. Advocates from the prevention community have said marijuana may impact a person's ability to drive, affect brain development in teens and young adults and be addictive to those predisposed to dependency. The DEA still lists marijuana as a schedule one substance with no currently-accepted medical use and a high potential for abuse. These views are from the Board of Health, the District Attorney's office, the Police Department and the network of people dedicated to preventing drug and alcohol abuse in their community. The cap they are proposing will give the Northampton community space and time to educate, acclimate and grow into this new industry. While he welcomes retail marijuana and supports the new industry, he is not naïve to think they are welcoming a typical new industry into their community. The state has allowed municipalities a means to proceed with a measure of caution. The proposed cap is a 'surge protector' providing the cannabis industry room to grow yet insuring they do not have a tidal wave of cannabis shops changing the city in ways they are not prepared for.

Northampton resoundingly supported the idea of retail marijuana, he acknowledged. However, they know there are going to be real impacts, such as more people driving impaired by marijuana once it is allowed to be sold legally.

Councilor Klein asked if there is any data or transferrable knowledge from other drugs showing that when something becomes legalized it automatically increases the number of users.

Councilor Nash deferred to public health and prevention representatives, noting that the proposed cap is based on their concerns. Heather Warner presented that, in looking at the state of Colorado as a whole, marijuana use by youth has gone down since marijuana has been banned in some communities. However, in looking at specific communities where marijuana has been legalized, youth use has really increased. In Massachusetts, youth use increased after decriminalization and the legalization of medical marijuana, she confirmed.

Legalization is associated with a perception of lesser harm among youth, Ms. Warner suggested. Another thing to consider is the potency of products that will be available once recreational marijuana is legalized. Access to high-potency products and edibles will be much greater than it was prior to legalization, she asserted.

Councilor Dwight expressed his understanding that prevention advocates do not want to normalize the use of marijuana and believe a cap will send the message that city officials are discouraging marijuana's use.

She thinks a cap does send a message, Ms. Warner confirmed. The other reason for a cap is to prevent the possibility of a high-density and high-visibility of marijuana shops to teens, although they don't know if this will be the case, she said. Sending an appropriate message and preventing the proliferation of marijuana outlets is the dual purpose of a cap, she indicated.

Councilor Dwight voiced the opinion that built into state regulations is a high threshold for prospective business owners to reach to open a shop. In order for the industry to blossom in line with some of the predictions, applicants must make a significant investment, successfully undergo vetting from the state and complete a public outreach process. No other business in this city has to go through this, he noted.

Discussion continued, with Ms. Warner drawing committee members' attention to regulatory differences that distinguish the marijuana industry from the liquor industry. Among other things, marijuana retailers are able to control the growing, processing and sale of marijuana products while the state imposes a tiered system on the alcohol industry in which alcohol manufacturers must sell to wholesalers who in turn sell to retailers. The purpose of the tiered system is to maintain pricing, Ms. Warner contended. By contrast, with recreational marijuana, "We have a fast growth industry where [applicants] can own multiple tiers," Ms. Warner pointed out.

"We don't know what that means," she presented. If they don't ever think they're going to meet that cap of ten in Northampton, then what's the danger of setting it? she asked.

What they're hearing is a lot of concern that the industry is going to grow faster than they're ready for, Councilor Nash recounted.

To Councilor Dwight's point that no other industry is regulated in this way, zoning does dictate where particular uses can be located and spell out specific requirements for some uses, Councilor Nash noted.

However, as mentioned in earlier discussion around porn shops, constitutionally, city officials are precluded from singling out one particular legal industry for regulation, Councilor Dwight said.

But, in this case, the state allows cities and towns to regulate retail marijuana, Councilor Nash countered.

"No argument there," Councilor Dwight responded.

Creating laws out of concern is important and makes sense, Councilor Dwight continued. However, they need something with a little more veracity and solidity in order to create law. Historically, legislators have made bad laws based on concerns that are never realized. He cited concerns about city sidewalks being choked with segways as an example. He resisted requests to limit the number of these personal transportation devices, and the concern about crowding never materialized.

Coming out of a prohibition, he understands the concern about the possible proliferation of marijuana shops, Councilor Dwight remarked. However, comparing marijuana with alcohol is not proportionally fair as alcohol is a much more deleterious drug. The fact that it is classified as Schedule I is not definitive since Schedule 1 was designed politically and not medically, he contended. Cocaine, oxycontin and methamphetamine are all structured the same but their medically deleterious impacts are vastly different. His concern is that their impulse now is predicated on excess caution. He understands the concerns but, for him, they haven't reached the threshold to justify unprecedented law. 'If it's to send a message to youth, that's a terrible reason to do it,' he added.

He acknowledged that there will be cultural effects but said he didn't think they should create a law to moderate or ameliorate that cultural shift.

Councilor Dwight stressed that he was speaking for himself and clearly not speaking for the rest of the committee. He offered other councilors the opportunity to speak, but they declined.

Discussion continued. Councilor Bidwell stressed the particular public health threat posed by edibles, but Councilor Dwight asked how a cap would reduce that threat. Councilor Bidwell said he tends to believe there will be greater impacts with more stores. Councilor Dwight asked him to explain why.

Councilor Bidwell said he doesn't happen to believe that the market will serve the same number of clients regardless of whether there are three stores or 15. He believes there is some point in the marketplace where a place becomes known as a major distribution point and attracts more customers. He'd rather put the law in place and be told in four years that it was bad law, he concluded.

In the world of prevention, public health officials are always putting pre-emptive regulations in place, Ms. Warner noted. But, he has not heard about the efficacy of a cap in addressing the concerns prevention advocates have expressed, Councilor Dwight responded.

It is hard to measure, but they do know that the World Health Organization lists outlet density, advertising and pricing as the three top reasons for increases or decreases in adult or youth alcohol consumption, Ms. Warner said. Outlet density has to do with exposure, she explained.

We would potentially create a competitive manipulation, Councilor Dwight opined. In so far as they are the legislative body, he is particularly reluctant to make laws that manipulate the market, he elaborated. The Board of Health is capable of making rules and regulations independently, he noted.

But, policy is one of the most effective tools of public health, Ms. Warner observed. It's cheap and it's really necessary. Councilor Dwight suggested that she just put her finger on it. The Board of Health makes policy, while the City Council makes laws.

He acknowledged the actions of Amherst and Easthampton in setting caps, recognizing that they've done what they think is best to protect their communities. "I have a different perspective," he stated.

Councilor Carney said she shares some of the same reticence as Councilor Dwight based on her experience with attempts to adopt zoning for adult entertainment. She is reserving judgment and does not know what recommendation will come forward from the committee.

Councilor Klein said she is undecided as to whether to support a cap. She is sympathetic to the argument that legislation can create policy that helps discourage things detrimental to public health. However, she also agrees with the reluctance to regulate markets expressed by other councilors and so is feeling a lot of internal conflict.

Councilor Klein informed fellow members that Arts Council Director Brian Foote shared his perspective with her that, for arts and tourism purposes, adults in their 20's and 30's need outlets for gathering for use of something that is not as dangerous as alcohol. He feels giving 20-somethings and 30-somethings a way to gather around arts events and around the shared use of a substance that is now legal can be a huge boon to the arts community and the city. He feels like a cap would be misguided, and she took this to heart. He made a very cogent argument for why allowing marijuana to flourish in whatever way it develops could be a real boon to the city. Especially in Northampton, an overwhelming number of people favored legalizing marijuana, and she doesn't think they can assume people didn't envision pot shops on Main Street. "I do think the voters in Northampton made a statement," she observed. There are strong arguments on both sides around a cap and other kinds of regulations, and she is really in a quandary, Councilor Klein acknowledged.

Councilor Carney suggested sending the ordinance with a neutral recommendation to allow them to hear from their colleagues on the full council. Councilor Murphy withdrew his motion for a positive recommendation. **Councilor Dwight accepted Councilor Carney's suggestion as an alternate motion for a neutral recommendation. Councilor Klein seconded. The motion carried 4:0.**

B. 18.072 Ordinance Relative to Parking on Hooker Avenue - referred to TPC and LM, 3/15/2018
Councilor Carney moved to forward the ordinance with a positive recommendation. Councilor Klein seconded.

There is presently a prohibition against parking on Hooker Avenue overnight (from 11 p.m. to 5 a.m.), and this would eliminate that ban, Councilor Carney explained.

Transportation & Parking Commission (TPC) members were unable to learn the history of the initial action to ban overnight parking but found out that the ordinance was adopted in 1987, Councilor Nash related.

The assumption is that it had to do with some business that was taking advantage of overnight parking. It wasn't enforced for ages, but 'No Parking' signs were recently installed after first responders had difficulty accessing the street due to parked cars. The ordinance received a positive recommendation from TPC.

The motion passed unanimously 4:0.

C. 18.073 Ordinance Relative to Parking on Vernon Street - referred to TPC and LM, 3/15/2018

This ordinance was triggered by problems with snow removal operations, Councilor Nash advised. The request was for parking to be allowed on one side of the street but not the other. TPC members recommended prohibiting parking on the southeast side of the street. Parking does get filled up on the street when the high school is in session, Councilor Nash acknowledged.

Councilor Klein said she would be concerned about residents of the street questioning where visitors are supposed to park. Councilor Dwight asked if he knew how many spaces were being eliminated, and Councilor Nash said he did not.

Councilor Carney suggested asking the DPW for additional information and forwarding the ordinance with a neutral recommendation. **She so moved, and Councilor Klein seconded. The motion carried 4:0.**

D. 18.098 Ordinance to Delete Sewer Use from Chapter 260 of the Northampton Code - referred by City Council 5/3/2018

Councilor Dwight read the text of the ordinance. He spoke to the city solicitor, who drafted the ordinance. He expressed the understanding that it is a housekeeping measure to change the location of DPW regulations.

Councilor Murphy moved to forward with a positive recommendation. Councilor Carney seconded. The motion passed 4:0.

5. New Business

None.

6. Adjourn

Councilor Klein moved to adjourn. Councilor Carney seconded. The motion passed unanimously 4:0. The meeting was adjourned at 5:27 p.m.

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