INFORMATIONAL MEETING AGENDA

THURSDAY, FEBRUARY 14, 2019
6:30 P.M.
CITY HALL (COUNCIL CHAMBERS)

A. Items for discussion submitted by the City Council and/or the City Manager:

1. Proposed Zoning Changes for Medical Marijuana Retail Establishments – Mayor & Council
2. Sale of Tax Acquired Property at 1 Park Street (Adjacent to Queen’s Court Mall) – Mayor Rollins
3. Land Use Ordinance Amendment to Allow Parking as a Separate Use in Certain Zoning Districts Where Parking Availability is Limited – Councilor Elliott

B. Persons wishing to address the City Council who have submitted a formal request in accordance with Section 2-61 of the Code of Ordinances:

C. Open comment period for any persons wishing to address the City Council:
MEMORANDUM:

TO: City Council
    William Bridgeo, City Manager

FROM: Matt Nazar, Director of Development Services

DATE: February 8, 2019

RE: Medical and personal marijuana local regulation

At the January 10, 2019, City Council Informational Meeting the Council decided not to “opt-in” regarding adult use marijuana commercial sales, processing, or growing. Put another way, adult use marijuana commercial sales, processing, and growing will be prohibited in Augusta. By doing nothing, adopting no regulations at all regarding adult use marijuana, Augusta is prohibiting the uses. The newly adopted state law says that the state can only issue a license for a marijuana business to operate if:

TITLE 28-B, Section 402(1)

    A. The legislative body of the municipality has voted to adopt a new ordinance, amend an existing ordinance or approve a warrant article allowing some or all types of marijuana establishments within the municipality, including the type of marijuana establishment the person seeks to operate;

Unless Corporation Counsel recommends otherwise, city staff recommends no action regarding Adult Use Marijuana, and just let the existing moratorium expire. Taking no action equals prohibition.

The Council did decide to allow medical marijuana sales in the city per the new medical marijuana law. Some of the important criteria for municipal regulation on this topic are:

1. 22 MRSA §2429-D(1) prevents municipalities from prohibiting or limiting the number of medical marijuana caregivers in the city.

2. 22 MRSA §2429-D(2) is not applicable to Augusta because there were no existing caregiver retail stores, registered dispensaries, marijuana testing facilities and manufacturing facilities that are operating with municipal approval prior to the effective date of the state law.

3. 22 MRSA §2429-D(3) states that municipalities may not authorize registered caregiver retail stores, registered dispensaries, marijuana testing facilities and manufacturing facilities that are not operating on the effective date of this section to operate in the municipality unless the municipal legislative body, as defined in Title 30-A, section 2001, subsection 9, has voted to adopt or amend an ordinance or approve a warrant article allowing registered caregiver retail
stores, registered dispensaries, marijuana testing facilities or manufacturing facilities, as applicable, to operate within the municipality.

4. 22 MRSA §2425-A(12) states that both law enforcement officers and code enforcement officers can request verification of a Registry Identification Card for a Medical Marijuana Caregiver by contacting DHHS. DHHS will not provide municipalities with the list of Registered Caregivers within the city, but will provide verification of individuals as requested. The information provided is required to be kept confidential, except to the extent it’s used to verify the person is a Registered Caregiver legally operating in that location. Contrary to earlier discussions about Caregivers at Council meetings, the city cannot obtain a full list of Caregivers to identify the location of existing Caregivers.

Those are the basic bounds the Council must remain within. Additionally, there are number of standards for operation outlined in state law that may be better to reference rather than directly incorporate, so that when they change, the Council doesn’t have to take any action to update the local ordinance. Those standards include:

1. Our local licensing should make it clear that the food sovereignty ordinance does not apply to any product containing marijuana.

2. Define and manage the medical marijuana patient and provider system:
   a. Qualifying Patients must have been a resident of the state for at least 30 days and possess a written certification from a medical professional.
   b. Distribution of medical marijuana happens in three ways:
      i. A patient can grow his or her own marijuana. The marijuana must be in a cultivation area where access is limited to the patient, with some exceptions.
      ii. A patient can obtain medical marijuana from a Caregiver and there are two levels of Caregivers:
         1. Unregistered Caregivers (22 MRSA §2423-A(3)(C)) who act only as Caregivers to “Member of the Household”, or “Member of the Family”. Those are statutorily defined phrases.
         2. Registered Caregivers (22 MRSA §2423-A(2)) are those who are registered with the State and cannot have a disqualifying drug offense. There is no limit on the number of Qualifying Patients a Registered Caregiver can serve, however, they are limited to 30 mature plants, 60 immature plants, and unlimited seedlings. They can wholesale up to 30% of their product to other Caregivers or Registered Dispensaries. A Registered Caregiver can operate one Retail Storefront.
      iii. A patient can obtain medical marijuana from a Registered Dispensary. The Registered Dispensary laws are generally unchanged, except that the state will slowly increase the number of allowed dispensaries in the state over the coming few years. So while Augusta does not currently have a medical marijuana dispensary and all of the currently available state licenses are issued in other municipalities, a new dispensary could show interest in Augusta.
   c. Manufacturing and testing facilities for medical marijuana products are also regulated and managed via the new state laws regarding medical marijuana.

3. Regulates how extraction can occur and the products that can be used to extract oils from marijuana plans to be used in medical marijuana products.
Within that context, it is my understanding that the City Council wants to do the following with respect to medical marijuana:

1. Prohibit the cultivation of medical marijuana by a qualified patient for personal use, unregistered caregiver growing for a member of their household or family, or adult use marijuana for personal use on property where the user is not domiciled. This addresses Councilor Lind’s concern about “community gardens” or large cultivation areas managed by multiple individuals being created. Patients and adult use users could only grow for themselves at the place where they live.

2. Allow medical marijuana registered caregivers to operate in the same zoning districts throughout the city as other retail businesses, industrial businesses, medical businesses, and agricultural businesses with no limit on the number of caregivers allowed to operate in these zones.

3. Prohibit medical marijuana registered caregivers from operating in any capacity in residential zoning districts. Provide a 2 year timeframe for registered caregivers operating in prohibited locations to sunset their use completely or relocate it to an allowed zoning district.

4. Allow medical marijuana registered dispensaries in the same locations as registered caregivers.

5. Create a set of standard to cover the local concerns about marijuana growing that are not covered under state law. Those standards are:
   a. Odor management.
   b. Distance of caregiver operations from sensitive uses such as churches, schools, and daycares, to the extent the caregiver is not providing services to an individual at the sensitive location.
   c. Managing caregiver cooperatives.
   d. Providing evidence from a licensed Master Electrician of compliance with the most recent National Electrical Code for the spaces within a structure being used by a Registered Caregiver or Registered Dispensary.

6. Create a licensing system for both registered caregivers and registered dispensaries. Corporation Counsel will provide this item separately.
The existing Land Use Ordinance contains some limited regulation of Medical Marijuana uses based on prior state laws. Medical Marijuana Registered Dispensaries are allowed as a Permitted Use in the Medical Zone, which is generally around the existing MaineGeneral hospital on Old Belgrade Road. However, they are lumped in with another use, methadone clinics, as a "Specialized Medical Clinic". The LUG also regulates what we called "Medical Marijuana Grow-Only" facilities. That use includes the cultivation and manufacturing of medical marijuana products. Medical Marijuana Grow-Only Facilities are a Permitted Use in the Medical and Industrial zoning districts. Based on Council Conversation as well as changes in state law, both of these definitions need to be changed or eliminated and new definitions substituted.

Amend the Land Use Ordinance as follows:

Add the following definitions to Section 300-202 (Other Definitions):

- Indoor Medical Marijuana Cultivation Area. An Indoor Medical Marijuana Cultivation Area is an indoor area used for medical marijuana cultivation in accordance with state law that is enclosed and equipped with locks or other security devices that permit access only by a person authorized to have access to the area under state law.

- Outdoor Medical Marijuana Cultivation Area. An Outdoor Medical Marijuana Cultivation Area is an indoor area used for medical marijuana cultivation in accordance with state law that is enclosed and equipped with locks or other security devices that permit access only by a person authorized to have access to the area under state law.

- Medical Marijuana Manufacturing Facility. "Medical Marijuana Manufacturing Facility" means a registered tier 1 or tier 2 manufacturing facility, as designated by state law, or a person authorized to engage in marijuana extraction under 22 MRSA §2423-F.

- Registered dispensary. "Registered dispensary" or "dispensary" means an entity registered under 22 MRSA §2425-A that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana or related supplies and educational materials to qualifying patients and the caregivers of those patients.

- Marijuana testing facility. "Marijuana testing facility" means a public or private laboratory that is authorized and accredited in accordance with state law.

- Medical Marijuana Registered Caregiver. "Medical Marijuana Registered Caregiver" means a person or an assistant of that person that provides care for a qualifying patient in accordance and is registered with the state in accordance with state law. A Medical Marijuana Registered Caregiver may operate in a variety of ways including operating one retail store, in accordance with state law.

Add the following uses to the Land Use Table:

- Indoor Medical Marijuana Cultivation Area – Permitted in CB, CC, CD, IA, MED, PD, PD2, RRES, RPDS, RR, RV
- Outdoor Medical Marijuana Cultivation Area – Conditional Use in RR, RPDS
- Medical Marijuana Testing Facility – Permitted Use in IA, PD, CC, CD, MED
- Medical Marijuana Manufacturing Facility – MED, IA, PD, CC, CD
- Medical Marijuana Registered Caregiver – Conditional Use in MED, IA, CB, CC, CD, KBD1, KBD2, PD, PD2, RD, RPDS, RR, RRES, RBV, RV (This will allow Caregivers to operate in between 85% and 90% of the geography of the city, but not in any of the zoning districts primarily geared toward residential uses).
- Registered Dispensary – Conditional Use in MED, IA, CC, CD, PD.

Include a new section in the LUO as follows:

§300-533 Medical Marijuana Businesses

This section regulates Medical Marijuana uses within the City of Augusta. The permitting standards outlined here shall be adhered to for all medical marijuana businesses, in addition to other applicable standard in this and other ordinances or state law. Medical Marijuana Businesses, for the purposes of this section, include Indoor Medical Marijuana Cultivation Area, Outdoor Medical Marijuana Cultivation Area, Medical Marijuana Testing Facility, Medical Marijuana Manufacturing Facility, Medical Marijuana Registered Caregivers, and Registered Dispensaries.

A. Medical Marijuana Businesses shall not locate within 500 feet of a Place of Worship, state licensed daycare of any size, or school. Measurement shall be from the exterior wall of the Medical Marijuana Business to the property line of the protected use. This section shall not prohibit the activity of a caregiver or other authorized individual from administering medical marijuana to a qualified patient who is located within one of these protected areas.

B. Medical Marijuana Businesses shall not have any odor of marijuana detectible beyond the area controlled by the business, whether that be a lease or owned area that is a portion or all of a recorded parcel of land. Odors shall be controlled by whatever best-practices exist.

C. Medical Marijuana Registered Caregivers shall not occupy a space larger than Y square feet for all aspects of their operation. No single property or building shall allow more than five Medical Marijuana Registered Caregivers occupying a total of \((Y \times 5)\) square feet.

D. As part of the licensing process, Medical Marijuana Businesses shall provide certification from a licensed Master Electrician indicating the electrical system of the space being occupied is adequate for the use being proposed. That use shall be clearly outlined in detail so that the Master Electrician’s certification is easy to understand.

§300-534 Marijuana for Personal Use

All marijuana cultivated for personal use shall be grown on the property where the user is domiciled.
MEMO

To: Bill Bridgeo
From: Keith Luke
CC: Matt Nazar
Date: December 10, 2018

Queen’s Court Property – 1 Park Street

The City of Augusta acquired the 1 Park Street property, which is located behind Queen’s Court (Dairy Queen) on Bangor Street, in 2009 at the same time it acquired other properties that had been part of the Augusta Tissue mill. A large smokestack that served the Tissue Mill was subsequently demolished and removed from the site.

The vacant land was held off the tax-acquired property list until recently due to its location adjacent to the Riverside Cemetery. In the summer of 2018 the conservation committee reviewed the property and determined that it was not suitable for any expansion of the cemetery, clearing it for listing as a tax-acquired property for the city.

The assessed value on the 1.85ac property is $32,400. There are issues which impact the developable area including a significant slope over much of the property. It is in the Kennebec Locke zone district, which is among the city’s most flexible multi-use zoning districts.

The city can either market the property through seal bid, or use its designated real estate broker for tax-acquired properties. The broker commission would be 8% of the sales price or $2,000 – whichever is greater. If offered by sealed bid, the city would have advertising costs of $1,000 or less.
City of Augusta, Maine
DEPARTMENT OF DEVELOPMENT SERVICES

MEMORANDUM:

TO: City Council
    William Bridgeo, City Manager

FROM: Matt Nazar, Director of Development Services

DATE: February 8, 2019

RE: Parking as a primary use on a property

Augusta has some very tight neighborhoods built before the automobile making on-site parking challenging to impossible for some buildings. The current land use regulations don’t accommodate the desire of a landowner to purchase a nearby, but not adjacent, parcel of land to use strictly for parking. If the LUO allowed this type of use, it could make some of the buildings in these more densely developed neighborhoods more commercially viable and therefore easier for a landlord to sustain and improve.

Councilor Elliot brought this issue to staff’s attention most recently due to the needs of a constituent on Jefferson Street. But the issue has come up a number of times in the past in other parts of the city. Staff recommends that the Council request that the Planning Board review this parking problem and make a recommendation back to Council to alleviate parking problems without inadvertently allowing other “off-site” accessory uses that could have unintended effects on a neighborhood.