

----- Original Message -----

Subject: Boigan amendments to MMD proposed ordinance
Date: Thu, 24 Dec 2009 14:17:37 -0700
From: Brown, Charlie - City Council District #6
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To: <info@cannabistherapyinstitute.com>

My colleague Councilmember Carol Boigon has sent all council members the following email regarding her desire to amend the MMD ordinance that will be introduced to Council on Monday, January 4.

In a recap she stated:

BOIGON proposed amendments:

1. Dispensary shall be located at least 1,000 feet from each other.
2. Add to list of protected sites, now schools and licensed child care sites: city libraries, recreation centers, ball fields in City parks.
3. Grow operations, defined and to be located in where current greenhouses can be located and meet all standards currently in place for greenhouses plus the security standards for dispensaries.
4. Dispensaries and grow operations must provide secure delivery vehicles and adopt procedures, supervision and operations standards and training for delivery persons.

Please share this recap and message below.

Thanks

Charlie

-----Original Message-----

From: Kurtz-Phelan, Rachel A. - City Council on behalf of Boigon, Carol S. - City Council At Large
Sent: Thu 12/24/2009 10:02 AM
To: # City Council Councilmembers
Cc: Neureiter, Nora H. - City Council; Dannemiller, Lauri J. - City Council; Broadwell, David W. - Department of Law; Smith, Shelley - City Council; Kurtz-Phelan, Rachel A. - City Council
Subject: Boigon comments on mj bill

Colleagues:

I have spent some time working my way through the marketing and mj lit, talking to members of the board of health, pulling maps on locations of schools, licensed child care centers, rec centers, libraries and parks, reviewing Lauri's map on dispensary sites before and after Dec. 1, checking in with human services and reviewing medical licenses. Here is my thinking so far on key issues in the Denver draft mj bill.

1. SPACING OF SITES: A quick look at the retail literature abstracts suggests product concentration or dispersion strategy effectiveness depends on product differentiation by characteristics of quality, design, attributes or price. Highly differentiated products tend to concentrate for consumer shopping. Non-differentiated products disperse for market penetration. This data suggests to me that, in the case of the monopolistic design of the medical marijuana market in Colorado where a patient is assigned to

one caregiver, dispersion will be the most effective model for dispensary profitability. Caveat: I did not buy any of the complete articles. Searches I used contained these keywords in a variety of configurations: retail geographic dispersion or concentration, consumer behavior, single-line product, marketing strategies for location, retail strategies, drug stores, medical services. I avoided research focused on international, multi-product, broad range product line, price dispersion (a very popular topic).

Based on this abbreviated lit review, I think it is likely to be good both for neighborhoods and the Denver mj dispensaries to disperse sites, not concentrate them. I am interested in anything you are learning.

2. SPACING FROM SCHOOLS, ETC: Many, many of the sites, before and after Dec. 1, are within the pure 1,000 foot radius of public and private schools and licensed child care centers. I did not track the actual rights-of-way 1,000 foot walking distances that the City uses for licensing, which typically describe a shorter radius than the simple 1,000 foot circles. Those simple circles partially protect libraries, rec centers and ball fields, not completely. As I said in the last Safety meeting, I am very concerned about the unattended child in the out of school hours, typically 4th to 9th graders. This is a very vulnerable age where immature choices, especially in poor neighborhoods, can lead to life-altering actions. Therefore, I still think we should add rec centers, libraries and at least ball fields in parks to the list of facilities with the 1,000 foot radius separation from mj dispensaries.

3. START DATES OF Dec. 1, Dec. 15 or Jan 1: About 113 facilities were in place before Dec. 1. Another approximately 110 between Dec. 1-18, many too close to facilities protected in the current draft. Lauri says her map is not complete and GIS is working to perfect it. If the spacing requirements, addressed in No. 2, are going to mean anything, I believe we must go with Dec. 1. Would-be mj dispensary owners who tried to squeeze in during December after the draft ordinance was heard in committee in November but before final adoption knew they were gambling that they would be allowed. In effect, they played street "chicken" with us. It was a risky move, they knew it and they chose to place a long-odds bet. I personally do not feel a duty to protect their risk-taking at a time when clearly they know the Denver rules are in flux, that City Council would be taking action quickly and that we are balancing families, neighborhoods, existing businesses and mj dispensaries, which are named NO WHERE in the 2000 med mj law. I talked to at least one business consultant who represents clients successfully to us on a regular basis and that consultant has been advising potential mj clients that the risk of quick action is great and to wait until the Denver ordinance is adopted before proceeding with their business plans. I will support a date of Dec. 1, 2009.

4. GROW OPERATIONS -- I think these must be confined:

- At least to locations that now permit greenhouses, or
- At best to industrial areas.

White papers from California describe the hydroponic operations as noisy with 24-7 power and water usage, malodorous with drying operations and fertilizers, busy with buyers coming at many hours. These do not seem compatible with multi-unit office and store configurations. They seem to be a bad fit, too, in residential neighborhoods. We already have size standards and other limitations for green houses. Grow houses are like greenhouses in their agricultural functions. They are like light industry in their drying, packaging and wholesaling operations. In all ways, they are more intrusive than many of the retail and office uses allowed in the broad range of business districts now in the draft ordinance and are materially different from stand alone dispensaries. I believe they should be treated differently by licensing and by zoning.

Where the two functions are combined in one operation and at one site, I believe the more restrictive licensing and zoning standards should apply to the combined enterprise.

5. SECURITY: The on-site provisions of the bill look pretty strong and I defer to experts. But I raise again the question of transportation security, similar to banks. Armored cars? Something to minimize shoot outs and robberies by hardening the targets.

6. DEPENDING ON STATE, FEDERAL ACTION - As you know, the State Board of Health postponed its Dec. action item. My research so far has been:

- * Reviewed Board of Health minutes of July 20, 2009,
- * Read the Clendenin case and the additional comments by judges in that case,
- * Talked with members of the State Board of Health, including the chair, Glen Schnable who is a lawyer with Sherman and Howard in Colorado Springs, and another member who is a county commissioner. I have a call in Dr. Phil Mehler of Denver Health.
- * Still looking for the 2007 LaGoy ruling by Denver District Judge Larry Naves that precipitated this situation.
- * Consulted with Pat Wilson-Pheanious of Denver Human Services

The BOH votes taken on July 20 were very divided, with Dr. Mehler and Mr. Schnable regularly on the side of restoring the administrative rules that Judge Naves said required formal adoption by the Board of Health. A slightly changeable majority coalition voted against those rules in a series of votes. As I am coming to understand, it was the majority belief that a ratio of 5 patients to one dispenser or caregiver would lead to a dispensary on every corner -- even though that situation did NOT happen under the administrative rules in place through 2007. The majority now prefers to wait for the Legislature to act. Like the rest of us, they did not know there were partial, restricted medical licenses in Colorado or that my recommendations mostly were being written by doctors on restricted licenses.

The member of the BOH majority that I spoke with did not know that synthetic marijuana, called "Marinol," synthetic THC for oral use, was available through fully licensed physicians by true prescription at regular pharmacies. (Sativex, a more complete mj derivative for inhalant prescription use, has been available since 2005 in Canada, but not in the U.S. Inhalant Marinol is being tested in U.S.)

STATE LEGISLATURE: In the City's conversations with Sen. Chris Romer, I think Denver should ask the Senator to require that:

- * MJ recommending doctors hold the complete, unrestricted, active Colorado medical licenses and have medical malpractice insurance;
- * Address caregiver definition to be more than a drug transaction;
- * Define the caregiver-patient ratio;
- * Redefine eligible medical conditions to be more specific, especially on the diagnosis of "pain."
- * Require education for legal med mj users on safe practices around children in the home with legal medical marijuana. Denver already is seeing complicated problems creeping into its caseload with actions by police, hospitals and social workers working off the protocols for illegal drugs, as mj is according to the federal law.

I believe that voters never authorized back-door legalization but that is what is happening with lax State rules on doctors and caregivers. Voters never voted to criminalize legal mj users because of some accidents that can happen in a household, even with ordinary prescription drugs. But that is happening, too. In addition to patient training protocols, Denver should consider creating a working group of police, hospital and human services staff to develop appropriate protocols for the type of issues that already are occurring and to work through the challenges as they occur. This is a very new area unfolding very quickly with surprising reach into many of our services.

FEDERAL LAW: On the federal level, I believe we ought to urge FDA to complete testing of vaporized delivery of Marinol and approval of Sativex. I believe that if we require fully licensed docs to authorize med mj and they have access to better, effective, fully legal options that are covered by insurance and available through regular pharmacies, then dispensaries will be used less often and voter intent that "sick people have the medicine they need" will be satisfied. This should be a high priority in our federal lobbying program this year.

Note: I am not opposed to the CHUN proposal on notice.

Carol