

Subj: **Minutes of last weeks meeting**
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Recreational Marijuana Task Force
Meeting Minutes (DRAFT)
February 28, 2017

Members Present: Councilor Terry Berry (chair), John Shaw (proponent), Louis Sigel (proponent), Curtis Ayotte (proponent), Karen Tucker (opponent), Jack McMillin (opponent), Jaime Schorr (opponent), City Manager Scott Morelli (ex-officio), Police Chief Jim Toman (ex-officio), and Code Enforcement Officer Barb Skelton (ex-officio).

Non-Members Present: City Solicitor Jon Pottle.

Chair Berry called the meeting to order at 6:05 p.m. in the City Council Room. He provided an overview of the task force's charge. Members introduced themselves and discussed their interest in serving on the task force. Debby Willis, Chair of Ordinance Review Committee and the Planning Board, was in the audience and introduced herself.

Legal Overview

Mr. Pottle said this issue was an emerging area so there would not be any ultimate conclusions at this point in time. He noted some litigation about whether a municipality or a municipal official is immune under the Maine Tort Claims Act. He said this would be a bit different as it fell under the federal Controlled Substances Act. He said his sense was the task force was focused on the governmental function for the City of Gardiner and said there was also a proprietary function as well. Mr. Pottle said around 1937 the federal government enacted Marijuana Tax Act, which did not ban possession or use. He said in the late 1960s and early 1970s the U.S. engaged in a "war on drugs" which led to the current framework today. He said there was a classified system for drugs with five difference schedules, with marijuana being listed as schedule one. Ms. Tucker asked for clarification if this was a lower or higher classification and Mr. Pottle said it was higher and lumped with other drugs like cocaine and heroin. He said federal law controlled and was the supreme law of land, with some exceptions. He said this has led to interesting situations where states legalized marijuana. He said this meant it was still a federal crime, even if legal within the state. He said there were three relevant memorandums from the Department of Justice: 1) that DOJ would not prosecute for use of medical marijuana, provided it's in a state that has legalized it, 2) the Cole memo regarding enforcement priorities for DOJ involving recreational use, and 3) a memo focused on financial transactions and banks. He noted a court case brought against a private actor under the immunity

provision of the CSA. He said under federal statute, willfully trying to aid a criminal venture can rope you into aiding and abetting. In his view, he did not feel the city would not run afoul of this in its permitting process. He added that the City did not want to do something that directly contravenes federal law. He said nothing is risk free in this environment and given the current posture of the U.S. DOJ, which are subject to change, that the risk is manageable if you do decide to engage in regulating recreational marijuana. As an example, he is not aware of any federal action against banks who have helped fund marijuana facilities. He said with the new administration this could be subject to change. He suggested ongoing monitoring of developments in this area. He said members debating this issue would not cause the City any problems and reaffirmed that this issue was a manageable risk. He recommended the City not get ahead of the State of Maine in its efforts to enact regulations on this issue.

Chair Berry asked if this group and then Council moved forward with allowing some amount of recreational activities, what would the legal expense be to help craft regulations. Mr. Pottle suggested not reinventing the wheel and to watch what the State came up with, along with the resources of the Maine Municipal Association and other municipalities.

Mr. Sigel suggested the federal legislation was not legitimate and wondered if it was irrelevant. Mr. Pottle did not believe it to be irrelevant and noted that it was meant for federal law to be the supreme law of the land. He said it should be assumed valid absent a change by Congress or ruling of the courts. He suggested not getting too bogged down in the federal discussion for the purposes of what this committee is doing.

Ms. Tucker asked how the task force could stay within legal parameters. Mr. Pottle suggested reviewing the Cole memo and provided an overview of it. He reiterated the need to follow what the State was doing. Ms. Skelton noted other elements of the Cole memo regarding importing into other states and impaired driving.

Mr. McMillin asked when the memos were produced. Mr. Pottle said the memos were issued on October 2009, August 2013, and February 2014. Mr. McMillin asked if these were the result of executive order and Mr. Pottle said he thought they were. Mr. McMillin asked if these could be overturned by the current administration without going through Congress. Mr. Pottle said they could. Mr. McMillin noted a recent KJ article about most colleges and universities deciding to keep with federal law and not allow the use of marijuana on campuses for fear of losing federal dollars. He asked if the City received federal funds for any programs. Mr. Morelli noted several loan or grants through CDBG, USDA, the EPA, and DOJ. Mr. McMillin asked if the City would be at risk of debarment if it violated the CSA. Mr. Pottle said his initial impression was if the activity that was being funded would contravene the CSA, it would not be allowed. He said it would be unlikely that the City would be disbarred from receiving funds but noted the feds did have the power of the purse and could dictate terms of funds. He said he would look at this more in depth before providing a final assessment.

Mr. Shaw said if the administration changed its policy, the City would know about it and he wondered if a small town in Maine like Gardiner would be chosen by the administration to be penalized. Mr. Berry said there was a shift ongoing regarding this issue and suggest the City manage

the change rather than going against it.

Mr. Ayotte asked Mr. Pottle if he saw something different in Gardiner than other Maine communities in terms of this matter. Mr. Pottle said he did not.

Mr. Sigel said that the threat to withhold federal funds as a result of the "Sanctuary City" issue was not legal because it had to be written into the terms by which the funding was originally given. Mr. Pottle said he hadn't looked specifically at the immigration issue but thought this would be true.

Police Department Comments

Chief Toman said that he and the Maine Chiefs of Police are in opposition of the legalization of marijuana. He said certain parts of the law were in place now and that they would deal with issues as they arose but they were also in a wait and see mode. He said the chiefs were concerned about the drug driving problem that may result from this. He said even if Gardiner prohibited it could be used elsewhere and brought into Gardiner. He noted the issues with testing for operating under the influence of a controlled substance. He said one officer had been trained in being a drug recognition expert.

Mr. Shaw said that there were people currently using medical marijuana and what the police response was. Chief Toman said if someone was pulled over there would be probing questions as well as field sobriety testing. Mr. Shaw said a lot of states were dealing with the question of what's impaired drug driving. He said when someone was drunk it was clear but with marijuana it was not as clear and that impairment from marijuana was more of an assumption. He said there were many legally prescribed substances that were impairing people's driving and felt there was a big difference between use of alcohol and marijuana when driving. He said clients who switched from alcohol to marijuana saw decreases in dangerous activities.

Anne Davis, Library Director and incoming Interim Manager, entered the room at 7:01 p.m.

Chief Toman said he needed to ensure his staff was afforded the opportunity to receive the training needed to test people roadside.

Mr. Ayotte asked how often the Drug Recognition Officer (DRO) was on duty and what the training requirements were. Chief Toman said the currently trained officer was on for 1 am to 1 pm and would require at least six to be trained to have 24 hour coverage. He discussed the needed training. Mr. Ayotte asked for the cost to train and Chief Toman said at this time it was minimal but not all officers would want to do this or be qualified to do so. Mr. Ayotte asked if the police could get six trained. Chief Toman said no.

Mr. Sigel asked if the chief's organization had a model set of ordinances to recommend to municipalities. Chief Toman said they did not. Mr. Sigel asked if the chief had a set of recommendations as to how to deal with this issue. Chief Toman said he did not and that his goal was to try and be objective to assist this group.

Chair Berry said the police department would be dealing with this issue regardless of what Gardiner

decided to do. He asked how many DROs the State Police had. Chief Toman said they had a “good amount” of staff trained.

Ms. Schorr asked if there had been a change in criminal activity since new law passed and Chief Toman said no because it was only in effect for a short period of time. She asked about the effect of the medicinal facility downtown. Chief Toman said they were a great business partner and had no concerns about the business aspect. He said their concern was the illegal diversion of medicinal marijuana by the patients and noted a few instances where it had gotten into the hands of kids and wound up in the schools. He said it was not a daily or monthly issue but rather an occasional issue.

Mr. Sigel asked if there was anything to be learned from Colorado or Washington. Chief Toman said there were articles and trainings, including one attended today by Detective Todd Pilsbury, where an official from Colorado presented. He said one of the concerns noted in today’s training was edibles and the ability to ingest large quantities. He noted a spike in ER visits in Colorado as a result due to people not following the guidelines. Mr. Shaw said that marijuana use has been around for a while and did not expect legalization to provide a big bump in instances of these types of things. Chief Toman said one of his concerns was who would be responsible for enforcing what aspects of the law.

Code Enforcement Comments

Ms. Skelton confirmed the moratorium in place. She said there were 60-70 bills aimed at this law. She said there was a possibility that medicinal dispensaries could be given “fast track” priority to sell recreationally.

Mr. McMillin asked if this would apply just to people with a medical card. Ms. Skelton said it would be open to anyone off the street over 21. Mr. Ayotte confirmed this was just a proposal and not yet law. Ms. Skelton confirmed. Mr. Shaw asked how realistic this was. Ms. Skelton said she was just reporting what was presented at a training she attended. Mr. Sigel said all substantive rules needed to be approved by the legislature.

Ms. Tucker said if “fast tracking” were to pass, Gardiner would still need to allow it to happen and that is part of what this committee needs to look at. Ms. Skelton confirmed this. Ms. Schorr asked if there were plans to open an additional medicinal facility in Gardiner. Ms. Skelton noted there were state limits on the number and did not feel that another one would open in our vicinity. Mr. Ayotte asked how many caregivers were in Gardiner. Ms. Skelton said DHS would not provide this information except in the case of an investigation.

Ms. Skelton reviewed the local powers available to communities like Gardiner:

- Can prohibit recreational marijuana except recreational personal use and possession
- Limit number of licenses in community
- Allow only in certain zones & limits where can be located
- Enact local licenses (above and beyond what State requires)
 - Ms. Skelton said she would not recommend this. Mr. Sigel said communities would receive half of the state fee and could make stricter regulations so he wondered why Gardiner would not want to implement such a process. Ms. Skelton said she would

need to look into the matter further. Mr. Pottle noted some of the benefits of licensing.

Mr. Sigel asked if Gardiner would still receive half of the fees if it did not have its own licenses process. Mr. Pottle was unsure but he said Gardiner could enact its own fee for its own licensing process on top of the State fee. Mr. Shaw asked why we would not want a local license. Ms. Willis said we were not qualified and if the State issued a license that should be good enough. Ms. Skelton said for other things like being a contractor, the City could not require a license if the entity already had one from the State.

She said Lewiston has enacted a prohibition on the retail activities until the State had its regulations set. Chair Berry asked if we were running parallel with the State process. Ms. Skelton said it was possible the task force could recommend things different than what was enacted by the State. Chair Berry confirmed that one of the issues the task force needed to decide was whether or not to allow the retail uses.

Mr. Sigel said one of the proposal was for a local option marijuana sales tax. Ms. Skelton said that was not discussed at her workshop.

Ms. Skelton asked Mr. Pottle about clubs/facilities that might be rented out such as the American Legion and how laws on smoking would apply as a private rental would allow smoking as opposed to a bar which cannot allow it. Mr. Ayotte said the Elks, for example, would not allow it to occur on their grounds. Mr. Pottle said he would look into it. Mr. Ayotte said that the marijuana social clubs would mostly be new establishments. Ms. Skelton said it could be existing and Mr. Pottle said these clubs would be subject to a regulatory process. Mr. McMillin wondered if a private facility could rent out their hall for marijuana parties. Mr. Pottle said he would need to look into it.

Ms. Willis said she would provide a copy of the PowerPoint and her notes from today's training.

Mr. Sigel said there was a strong feeling among the advocates for this issue that the medical marijuana dispensaries should not be given an advantage over other retailers so he did not feel it was a given.

Next Steps

Chair Berry said he did not feel the task force would be able to report back to Council within the timeframe given. He asked if the group wanted to break up the issue into different, manageable pieces. Mr. Pottle suggested coming up with a framework document. Ms. Skelton said she saw two broad categories: 1) social clubs/retail sales, and 2) cultivation, testing labs, and processors/manufacturers.

Mr. Shaw clarified that the group was advisory and would be providing recommendations to the Council.

Mr. Sigel agreed about a framework and focusing on specifics.

Mr. Morelli noted the rationale for the May 8 deadline to report back to City Council. He said to

process to enact a moratorium was the same as adopting an ordinance, which required public notice, two readings, and took 30 days upon final passage to go into effect.

Mr. Ayotte said moratoriums affected business owners and if Gardiner wasn't ready when the law comes into effect, we could lose business to a community that was ready.

Chair Berry asked if someone was interested in working on a framework document with him. Mr. Sigel and Mr. Ayotte said they were. Mr. Pottle said to be sure this was the committee's document and to spend at least a meeting reviewing it.

Ms. Tucker suggested weekly meetings for at least a month and then reevaluate.

Next meeting set for Tuesday, March 7 at 6 p.m. and March 14 at 6 p.m.

Meeting adjourned at 8:16 p.m.

Respectfully Submitted,
Scott Morelli, City Manager

APPROVED BY THE TASK FORCE ON MARCH ____, 2017