

LEGISLATIVE REVIEW COMMITTEE

Thursday, March 3, 2022

Via WebEx

Committee Members Present:

Commissioner Russell Edwards, Chair

Commissioner Jesse Houle

Commissioner Carol Myers **Arrived at 1:28 p.m. and left at 2:16 p.m.*

Commissioner Ovita Thornton **Left meeting at 1:48 p.m.*

Commissioner Allison Wright

Committee Members Absent:

Staff:

Niki Jones, Assistant Manager

Sherrie Hines, Chief Assistant Attorney

Lisa Pappas, Assistant Attorney

Deborah Gonzalez, District Attorney

C.R. Chisholm, Solicitor General

Harrison Daniel, Police Department

Suki Janssen, Solid Waste

Nancy Flowers, Solid Waste

Andrew Saunders, Central Services

Gavin Hassemer, Central Services

Jeanne Connell, Central Services

Kent Kilpatrick, Leisure Services

Alex Bond, Leisure Services

Doug Hansford, Building Permit & Inspections

Sarah George, Recorder

Visitor:

John Donnelly, Circuit Public Defender

Commissioner Edwards called the meeting to order at 1:01 p.m.

A. **Approval of Minutes:**

The February 3, 2022 minutes were approved with no objection.

Commission Identified Items of Interest:

B. **Examine marijuana penalty options that could be embedded in local ordinance as an alternative to state charges. (Mayor Girtz assigned to LRC on February 1, 2022)**

Assistant Manager Niki Jones introduced the topic by reviewing the Mayor's charge. He also explained staff had prepared a comparative analysis of nine municipalities within the state of Georgia, and he reviewed the findings. Deputy Chief Harrison Daniel also shared data from ACCPD. From 2018-2021, ACCPD made a total of 291 arrests for misdemeanor marijuana (less than 1 oz.). Deputy Chief Daniel noted that 23% of the cases were misdemeanor marijuana arrests as the sole charge, and the 291 misdemeanor marijuana arrests represent around 2% of total arrests between 2018 and 2021. He shared that there was a significant drop in the number of misdemeanor marijuana arrests between 2019 and 2020, which coincides with the introduction of the State of Georgia's 2019 Georgia Hemp Farming Act (hemp law).

Commissioner Edwards requested clarification on why the number of arrests dropped off so precipitously following the introduction of the hemp law. Deputy Chief Daniel explained that ACCPD did not have any meaningful way to test the level of THC in substances in order to distinguish them from legalized hemp to prosecute them, so ACCPD decided as a practice, which was also mirrored across the state, to pivot on making arrests on misdemeanor marijuana. He did note that they continue to charge for felony cases or issue a warrant after they were able

to distinguish it. Commissioner Houle requested confirmation that the data shown was just data from ACCPD and did not include data from other departments operating in the same jurisdiction. Deputy Chief Daniel confirmed that the data was only ACCPD data.

Niki Jones introduced Solicitor General C.R. Chisholm. Solicitor Chisholm shared that his office has received six cases where the only charge was misdemeanor marijuana between 2020 and 2021. One of these cases was an arrest, three cases were citations, one case was a UGAPD arrest, and one case was a Georgia State Patrol (GSP) arrest for misdemeanor marijuana; however, all six of these cases were dismissed by the Solicitor's Office. He explained that these cases at this point are not prosecutable, because we cannot distinguish between whether the substance is hemp or marijuana; to do so, we would have to have some type of testing of the THC. He shared a list of pros and cons for a marijuana ordinance, assuming a marijuana ordinance is prosecutable. Pros included the following:

- No arrest for violating the ordinance;
- No potential jail time;
- Minimal fine or community service; and
- Time and cost savings for law enforcement, prosecutors, court, and probation.

Solicitor Chisholm also shared that when the cases are dismissed, they are dismissed with restriction. Commissioner Houle requested clarification as to whether or not there were still cases coming through the Solicitor's Office based on arrest even though the cases cannot be prosecuted. Solicitor Chisholm explained that there has only been one arrest from ACCPD, one arrest from Georgia State Patrol, and one arrest from UGAPD; he noted that people are not being arrested, because the officers are aware that we cannot prosecute this charge right now. He explained that he is not sure why those three particular officers made those arrests and charges at that time, but, by and large, officers are aware that they cannot make that charge. If a charge is made, the Solicitor's Office has to dismiss it.

Solicitor Chisholm reviewed some cons for a marijuana ordinance and shared that the need for the ordinance has diminished, given the purpose of the ordinance was trying to minimize the impact the misdemeanor marijuana charge had on citizens. At this point, we are not prosecuting the charge, and he shared that he does not anticipate this going away in the near future. Public Defender John Donnelly asked if ACCPD was anticipating purchasing equipment to test substances. Solicitor Chisholm shared that they were not to his knowledge. Deputy Chief Daniel explained that the Georgia Bureau of Investigation has taken steps to create a test to be able to distinguish hemp from marijuana; while from a technical standpoint they can test for it, they are reserving that testing for felony cases only and will not test it as a practical matter for misdemeanor cases. He also noted that ACCPD has not explored acquiring any testing technology to distinguish it. Cons included the following:

- Creating an ordinance during a time when misdemeanor marijuana cases are not prosecutable could send a mixed message to law enforcement;
- Pleading guilty and paying a fine to an ordinance will still result in a criminal conviction that is a public record in the Clerk's Office;
- A conviction under a marijuana ordinance still requires the Clerk's Office to report the conviction to GCIC;
- Minimal cost savings due to already low number of cases;
- Minimal time savings to law enforcement, because state statute already provides for a "cite and release" option;
- Minimal time savings to prosecutors and the court because of low case numbers, and cases don't go to trial;
- Enforcing a preempted ordinance; and

- A municipal ordinance is not enforceable by UGAPD or GSP. Could result in disparate outcomes.

Commissioner Wright requested further elaboration on the point that a municipal ordinance is not enforceable by UGAPD or GSP and inquired about what ACCGov could do that they could join in on regarding enforcement. Solicitor Chisholm explained that the GSP and UGAPD are only operating on state statutes, and they do not have any control or jurisdiction over municipal ordinances. Commissioner Houle requested clarification on whether or not, even if an arresting officer is citing the state statute, the local ordinance could be cited when it comes to court. Solicitor Chisholm explained that has happened in the past when all parties agreed and could happen in the future; however, he noted that even if it is a local ordinance violation, they would still dismiss the case due to the current hemp law. Commissioner Houle explained that they are encouraged to hear how things are currently going, but, if they can legislatively advance something that ensures it continues to go in a similar way even if those other things change, they see that as valuable. They also shared that if these other law enforcement agencies, like GSP or UGAPD, continue making arrests or issuing charges, having a local ordinance on the books would enable the attorneys on the defense and prosecution to bear that in mind when negotiating how to move forward. Solicitor Chisholm confirmed that it can happen, but he also noted that, even if there is a municipal ordinance, the conviction is still reported to GCIC under the state statute.

Solicitor Chisholm explained that he believes a marijuana ordinance would have limited, if any, utility. He explained that the Mayor and Commission could absolutely pass an ordinance, and it is ultimately their decision; however, if they did pass an ordinance, a con to that would be that it would send mixed messages to law enforcement. Currently, law enforcement have been told that misdemeanor marijuana is not a prosecutable charge. If a local ordinance is passed, some may interpret that to mean it can now be prosecuted through the local ordinance. He explained that this could be resolved through training to police officers. Solicitor Chisholm also noted that, if training is not supplied to all officers, there could be a situation where they issue a ticket to an individual, mistakenly believing that they could, and the person pays for the ticket at the ticket window; this would result in the person having a conviction for a misdemeanor marijuana charge. The Solicitor's Office would do their best to try to catch all of these instances before they happened, because they would still want it dismissed to prevent people from paying fines for things that cannot be proven.

Commissioner Edwards requested clarification from Solicitor Chisholm on whether or not it is his position that, if we adopt something like a parallel ordinance that creates a ticket-able charge for marijuana possession, it might actually increase enforcement and charges. Solicitor Chisholm explained that he did not know if it will cause an increase in numbers, but he could understand where an officer might believe it would be ok to charge the local ordinance; he suggested that it would requiring information and training be provided to police officers to explain that the charge is still not prosecutable, but the ordinance was put on the books in case one day it becomes prosecutable. Commissioner Thornton explained that, while we like being proactive, she is concerned that creating an ordinance that may do the opposite of what is intended may confuse people. She shared that originally the discussion around marijuana was regarding people getting arrested and not being able to bail out; however, it seems that has changed substantially. She shared that she does not believe they should be going down the lane of creating an ordinance at this point, and they can revisit it should it become an issue in the future.

John Donnelly shared that he is not aware of any additional bureaucracy that would be created as a result of an ordinance, and he also noted that he does not know that it would send a mixed message to law enforcement. From his perspective, he shared that, if ACCGov passed an

ordinance, it would be an indication that ACCGov does not want to criminalize user amounts of marijuana if it becomes legally prosecutable. It would likely be a minimal amount of training to police officers to communicate that it is still not a prosecutable offense and is only on the books in case it is needed in the future. He explained that the Solicitor's Office can still work to dismiss the charges if citations are issued by police. Solicitor Chisholm explained that they would, and, hopefully, it would be done prior to the individual paying it. Commissioner Edwards explained that, once the ticket is paid, the individual is admitting guilt, and the charge will go on their criminal history.

Commissioner Houle explained that they are not worried about our ability to train our people; ACCPD does a good job of training its people. They could also get the word out through the courts and to the clerks, so there is information there for when someone is about to pay a citation to make them aware of other options available to them. They noted that, if they move forward with this, there is a way that they can also make sure that the directive is given to the Manager to make sure all applicable staff are aware of the intention behind this. They also shared that the improvement that is seen in the data over the past couple of years is thanks to some gaps in state law and existing equipment that may not always exist. They believe this is an opportunity for the Mayor and Commission to address that, and the greater confusion is with the public, who see a long list of cities in Georgia that have decriminalized, and ACC has not.

Commissioner Edwards inquired about how introducing a parallel ordinance could impact the records of individuals previously convicted of this charge, if at all, and if any sort of records restriction or modification be implicated by a change in the law like this. Solicitor Chisholm explained that individuals can get up to two restrictions for misdemeanor convictions; if the individual chooses a conviction under this ordinance to be one that is restricted, it would be one of the two that the individual could have restricted. John Donnelly shared that he does not believe this would have any effect on the existing ability to restrict records.

Commissioner Myers inquired as to whether or not other jurisdictions were running into the same issue that was noted by Solicitor Chisholm. She also noted that John Donnelly shared that some citations are court only, meaning the person cannot simply pay it off at the ticket window and must appear in court, at which time it could be dismissed. Solicitor Chisholm explained that he reached out to the prosecutor in the City of Clarkston, City of Atlanta, and City of Savannah three years ago; however, he has not spoken with them since the hemp law was introduced. He is not sure how they are handling those cases.

Niki Jones shared some questions to consider regarding next steps as the Committee moves forward on this topic. Commissioner Edwards explained that he would like to know how the enforcement and prosecution of the parallel ordinance enforcement in other jurisdictions has been affected post state hemp law prior to taking any further action on this item. Commissioner Wright agreed that there is more to study on this topic. She shared that she does not want to put people through the court system, even knowing that it will be dismissed, since the person receiving the citation may not be as confident or aware that it will be dismissed. She requested more information on how these parallel ordinances are executed in the jurisdictions previously outlined in the comparative analysis, and she would also like to know more about the overlap with GSP and other law enforcement agencies. Commissioner Houle explained that they would like to see an ordinance similar to those that were researched, and they particularly like that Chatham County's ordinance includes language around drug-related objects that might also be included. They also expressed interest in receiving more information and a rationale on why it needs to apply to just under an ounce of marijuana, as well as what the implications would be if applied to a larger amount.

Solicitor Chisholm explained that the quantity of marijuana is due to state statute and the state definition of a misdemeanor amount of marijuana. He also shared that he brought up the ticket window concern, because, three years ago, the intent behind the ordinance was to have the least onerous process possible for the individual involved. If it is moved to court only citations, this would not be the case. He noted he is not advocating one way or the other, but he wanted to share it as a point to consider. He also explained that juveniles will also be charged with this, and the Committee will need to think about how they want to address it.

C. **Review of regulation of use of gas-powered leaf blowers, including as pertains to our noise ordinance. (Mayor Girtz assigned to LRC on November 4, 2020)**

Niki Jones introduced the topic and shared a summary of past discussions. Gavin Hassemer explained that Landscape Management and Facilities Management divisions of the Central Services department account for about 40 different leaf blowers, and they use them on a daily basis, on average about 1.66 hours per day. He shared that he believes it is important to also consider how transitioning leaf blowers from gas-powered to battery-operated would translate to some of our other equipment and whether or not separate brands or batteries would need to be purchased for those other types of equipment. He recommended a phased implementation that allowed staff to still utilize existing gas-powered equipment in cases of emergency, or, as spares when electric battery equipment is down. He also noted that replacing gas equipment may be required more frequently compared to electric equipment; however, new batteries will likely be an annual expense. He also shared some pros and cons with the Committee. Pros included safety, fuel savings, and reduced carbon emissions. Cons included cost, delivery time, durability, compatibility, and reliability, as well as the need for additional charging locations, facility electrical modifications, and multiple backup batteries.

Gavin Hassemer also provided some information on budget impacts. He explained that, if we were to consider a 100% change over to electric leaf blowers, his department projects an expense of up to \$100,477 in initial equipment purchase, as well as up to \$38,552 in annual operating maintenance expense. Niki Jones requested clarification on whether or not Central Services had already started to transition to electric. Gavin Hassemer explained that they have in a very small amount. They have purchased a handful of electric leaf blowers, but nothing compared to a formal pilot program.

Commissioner Edwards shared that one thing that stood out to him about the presentation was that it is very numbers heavy. He reiterated that he is most concerned about the health costs to our workers for using these machines, and he would like to stress the harms that are created by gas-powered leaf blowers, which have been researched.

Suki Janssen provided an overview on Solid Waste's pilot program for battery-powered leaf blowers. She shared that they have four battery-powered leaf blowers that they have been using for two months, and they are currently experiencing some challenges with battery life. She noted that part of that is that they are having to store the batteries in the parking deck, and batteries tend to perform better when stored in climate controlled areas, which the parking deck is not. They also have one backpack leaf blower that has broken down, but they are struggling to find someone to repair them. Commissioner Edwards explained that storing the batteries in a climate controlled environment is a must, and he expressed concern that they are not being stored in such an environment, given the batteries are the most expensive part of the leaf blowers. Suki Janssen shared that they do have an alternate option that they are exploring for storing the batteries.

Alex Bond shared an overview of the background of equipment, usage, and pilot implementation for leaf blowers in Leisure Services. He explained that they have purchased a STIHL 3000 electric backpack blower for their pilot program. He also shared budget impacts and what it would take to phase out gas-powered leaf blowers. As of now, Leisure Services does not have any approved funding to implement the transition, though he noted that the gas-powered equipment could possibly be sold as surplus and used to offset the cost.

Niki Jones shared the staff recommendation of a one-year pilot program with a phased, three-year approach to converting the fleet of gas-powered leaf blowers to electric leaf blowers. Commissioner Edwards explained that he would like assurances from all staff that the batteries are being properly stored, and he would like directions on how to properly store batteries to be part of the education strategy throughout the government. He also expressed interest in, at the next meeting, seeing more staff recognition of the health ramifications for our employees for the continued usage of gas-powered leaf blowers and assurances that those recognitions are being communicated throughout the government to ensure that sufficient PPE is required for the operators of these machines. Commissioner Houle explained that, when it comes to our own staff and facilities, they feel strongly in favor with transitioning to electric leaf blowers. They reiterated that the equipment is carcinogenic and harmful to the environment.

Niki Jones summarized that staff would be prepared to provide a plan for PPE, storage, and purchase. Commissioner Edwards added that he would also like a health education plan for employees, including communicating why the PPE is necessary to raise awareness on the harms of the machines.

D. **Schedule/Agenda Changes**

The next LRC meeting is scheduled for April 7, 2022 at 1:00 p.m.

The April 7, 2022 LRC meeting was subsequently rescheduled to April 14, 2022 at 1:00 p.m.

The meeting adjourned with no objection at 2:40 p.m.