

## LEGISLATIVE REVIEW COMMITTEE

Thursday, June 9, 2022  
City Hall Conference Room 301B

### Committee Members Present:

Commissioner Russell Edwards, Chair  
Commissioner Jesse Houle  
Commissioner Carol Myers  
Commissioner Allison Wright

### Committee Members Absent:

Commissioner Ovita Thornton

### Staff:

Niki Jones, Assistant Manager  
Lisa Pappas, Assistant Attorney  
Gavin Hassemer, Central Services  
Mike Wharton, Sustainability Office

Aron Hall, Sustainability Office  
Alex Bond, Leisure Services  
Sarah George, Recorder

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Commissioner Edwards called the meeting to order at 1:02 p.m.

#### A. **Approval of Minutes:**

The May 12, 2022 minutes were approved with no objection.

#### B. **Approval of Agenda:**

The agenda was approved with no objection.

#### C. **Public Input:**

The following public input was received:

- Erin Jimenez – supported local marijuana ordinance as alternative to state charges;
- Raiden Washington – supported local marijuana ordinance as alternative to state charges;
- Jeremy Sharp – supported local marijuana ordinance as alternative to state charges;
- Alan Hart - supported local marijuana ordinance as alternative to state charges; and
- Hunter Knight – supported local marijuana ordinance as alternative to state charges.

### **Commission Identified Items of Interest:**

#### D. **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 and summarized discussion from the past meeting. He explained that the Committee requested staff prepare a draft ordinance for consideration. Assistant Attorney Lisa Pappas shared a draft ordinance with the Committee based on the consideration and guidelines that were requested to be included. She expressed concern with Section 1, item d, as she believes it is preempted by state law. She also shared that a judge is the only position that can sentence someone, and this section discusses what amounts to a re-sentencing. She explained that there are also Georgia Crime Information Center (GCIC) guidelines that we have to abide by, and the Clerk's Office cannot change someone's GCIC without a court order.

Commissioner Houle explained that, based on discussions with the Attorney's Office and Municipal Court Judge Hope, it makes sense to them to remove Section 1, item d from the ordinance. They also explained that the city that this section is modelled after has different enabling legislation for their Municipal Court, which allows them to do it but not Athens-Clarke County. Assistant Attorney Lisa Pappas confirmed that was correct.

Commissioner Houle made a motion to remove Section 1, item d from the draft ordinance. Commissioner Wright seconded. The motion passed unanimously.

Commissioner Houle explained that there has been a lot of discussion in the Committee regarding the current relaxed prosecutorial posture regarding misdemeanor possession of marijuana and a desire for that to continue. They inquired about whether or not the current language within the ordinance was sufficient to capture that intent. Assistant Manager Jones explained that the Police Department's approach is more of a practice, and he would not recommend codifying into the ordinance that the Police Department not take action; however, he would defer to the Police Department staff. Commissioner Myers shared that she believes it would be difficult to have a section in the recitals that explicitly states to not enforce the ordinance, given that possession of marijuana is not being legalized and the intent is to make it unlawful in a very weak way.

Commissioner Myers suggested including a section in the recitals, as shared by a commenter during the public comment period from the City of Clarkston, which acknowledges harm and that the enforcement of misdemeanor marijuana possession has fallen disproportionately on certain subsets of the population.

Commissioner Myers made a motion to add two whereas clauses modelled by the City of Clarkston. The motion failed due to lack of a second.

Commissioner Wright made a motion to strike the word "young" from the recitals. Commissioner Houle seconded. The motion passed unanimously.

Commissioner Wright shared that she had come across an announcement from the Police Department when the Georgia Hemp Farming Act had passed that explained they were not going to enforce misdemeanor possession of marijuana, because they could not test it. The announcement also said that they would keep the evidence until testing is feasible. She advised that, while she would like to move forward with the draft ordinance, she would also like to learn from the Police Department if this is still a practice and if there is a storage area for evidence from suspected misdemeanor possession of marijuana cases. Assistant Attorney Pappas explained that she is not certain on whether or not they are storing it as evidence; however, her assumption is that, because if officers were at the time operating under state law, if they see a substance that, based on their training and experience, is possibly marijuana, the officer would have probable cause to seize it; they would likely have to seize it, because they do not know whether it is lawful or unlawful.

Commissioner Wright inquired about whether or not the substance would be confiscated under the draft ordinance. Assistant Attorney Pappas explained that it would still be unlawful; an officer that enforces this ordinance would have to seize the substance, and the evidence will have to be held, so that if the individual receiving the citation wishes to have a trial in Municipal Court, the prosecutor can produce it for court. Commissioner Wright inquired as to whether or not it would be possible to include language that requires confiscated material to be disposed of within a specific time limit. Assistant Attorney Pappas explained that you could not include that language, because there is state law regarding evidence retention.

Commissioner Houle inquired about whether or not the definition provided in section b would include what is broadly referred to as concentrates and cartridges. Assistant Attorney Pappas explained that, under Georgia law, there is a difference in marijuana THC and low THC oil. THC oil that is not low THC oil would constitute a felony, and this would not be considered within the ordinance, because Municipal Court does not have jurisdiction over felonies. Commissioner Houle requested clarification on whether or not there would be any harm to include “cartridges and concentrates” in the section b. Assistant Attorney Pappas advised against including that phrase, as she believes it is preempted, and it would then include a felony in a misdemeanor ordinance. Commissioner Houle explained that there are some concentrates and cartridges that would not have felony-level THC concentrations; they inquired if language could be included to capture those concentrates and cartridges. Assistant Attorney Pappas explained that low THC oil is still different from marijuana as defined under the Georgia Code.

Commissioner Houle shared that they were struck with the reference to private probation services. They inquired about whether or not we had an understanding of how the Unified Government or Western Judicial Circuit use private probation services. Assistant Manager Jones shared that we do not privatize probation services in Athens-Clarke County.

Commissioner Houle also followed up on Commissioner Wright’s inquiry regarding storing of evidence and inquired as to whether or not it would make sense to include in the recitals language that instructs staff to dispose of evidence. Assistant Attorney advised that this would be preempted by state law.

Commissioner Houle explained that the Chief Public Defender offered some language that they support to state “violation of this ordinance would not constitute probable cause”. They shared that this is akin in nature to the state seatbelt law. They shared that the idea behind this is that, if the goal of the local ordinance is that we do not believe that marijuana should be a criminal offense, officers should not be able to see or smell suspected marijuana, especially as it is indistinguishable from hemp, and then use that as probable cause to search the individual or their vehicle. Assistant Attorney Pappas advised that this is again a preemption issue; the Fourth Amendment is what protects someone from unreasonable search and seizure. There is case law regarding what constitutes probable cause. She also advised that there might be unintended consequences, as this might incentivize an officer to arrest for the state violation rather than citing under the ordinance violation, because state law still says that the smell of marijuana in someone’s vehicle would constitute probable cause.

Commissioner Houle shared that they believe there are three things to follow up on that may or may not be included in a commission defined option, including:

- Clarkston “whereas” clauses;
- Probable cause clause; and
- And the potential minor revision of the definition.

Commissioner Houle made a motion to recommend the draft ordinance with the understanding that a commission defined option is likely to come forward with minor revisions that will be reviewed by staff. Commissioner Myers seconded. The motion passed unanimously.

E. **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)**

Commissioner Edwards shared that he was happy that the Mayor and Commission had voted to include in the budget a higher amount to hasten the transition for employees moving away from

gas-powered machines. Assistant Manager Niki Jones introduced the topic and explained that the Committee had requested staff reach out to Mr. Daniel Mabe with the American Green Zone Alliance to learn about some of the recommendations that he might have for staff. Since the last meeting, staff received a proposal from Mr. Mabe. He shared that staff has discussed the proposal, and he asked for them to provide pros and cons. Staff is first and foremost excited about this helping to move forward the Clean Energy initiative, and we have already begun the work on this. Overall, staff felt that procuring a consultant to advise them on exactly what we need to do would be beneficial. They did not, however, see benefit in the training certification portion of the proposal, since we already have a position in the Sustainability Office that would do some of this work.

Commissioner Edwards inquired about how staff felt about the trial and testing of equipment. Assistant Manager Jones explained that they saw that as a benefit; however, with ever-changing technology, we may be changing tools frequently. He also noted that entering into an agreement with the American Greenzone Alliance would send a positive, public message to help the community understand what we are doing and our commitment to this work; alternatively, however, he shared that ACCGov also has strategic plans that help to communicate this as well. Additionally, he advised that the biggest thing that staff noted was that they are doing a lot of this already.

Commissioner Edwards inquired as to whether or not there was anything included in the proposal that they felt would be helpful. Interim Central Services Director Gavin Hassemer explained that, when breaking down the cost estimate and removing the certification component, staff did not necessarily see the benefit in the amount of hours that would be provided for the expense. He also noted that, when the Sustainability Officer offered the fact that he will have a staff member that will be capable of doing the same thing on our timeline without the travel expense, staff concluded it would be more beneficial to use in-house Sustainability Office staff. Staff anticipates that, moving forward with the pilot, they will likely try to vary equipment purchases from a brand and model standpoint between departments or years to ensure they are more prepared to identify a brand to use in totality in future years.

Commissioner Myers shared that she likes the proposal, but she appreciates the comments and that the Sustainability Office might be able to use a similar approach to education of employees and residents. Commissioner Edwards explained that he is very happy with the education components of the work of the Committee and the presentation from staff, particularly on the health impacts. He shared that he believes we have made a great first step regarding internal usage. The charge from the Mayor does include review of the noise ordinance; he explained that, as time has gone by, it feels a little narrow in scope, as it specifies one type of machine. There is multiple equipment and machinery that create loud disturbances in neighborhoods, and he advised that he does not believe it is the best legislative step to just target one of these tools. He expressed interest in reaching out to the Mayor to modify the charge to broaden it.

Commissioner Houle made a motion to recommend no further action on staff activity and to request the Mayor revise the assignment to investigate the noise ordinance pertaining to machines, vehicles, and other amplified noises. Commissioner Myers seconded. The motion passed unanimously.

#### F. **Schedule/Agenda Changes**

The next LRC meeting is scheduled for August 4, 2022 at 1:00 p.m.

Commissioner Wright made a motion to adjourn the meeting. Commissioner Houle seconded. The motion passed unanimously. The meeting adjourned at 2:05 p.m.