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MINUTES OF THE  
**PLANNING AND ZONING COMMISSION MEETING**

1 GOVERNMENT CTR ♦ BALLWIN MO 63011

**AUGUST 5, 2019**

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Chairman Weaver called the meeting to order at 7:01 p.m. Members in attendance were:

**PRESENT**

Chairman Mark Weaver  
Secretary Lisa Zimmerman  
Commissioner Grant Alexander  
Commissioner Tracy Bolte  
Commissioner Gary Carr  
Commissioner Olivia Pieknik  
Commissioner Chad Silker  
Commissioner Victoria Winfrey  
Alderman Kevin Roach  
Mayor Tim Pogue

Assistant City Administrator Andy Hixson  
City Attorney Robert E. Jones

**ABSENT**

**Approval of Minutes**

A motion was made by Mayor Pogue to amend the minutes of the June 3, 2019 meeting to include that Chairman Weaver arrived at 7:15. Secretary Zimmerman seconded the motion, which received unanimous approval from the Commission members present. Mayor Pogue moved to accept the minutes as amended. Commissioner Pieknik seconded the motion, which received unanimous approval from the Commission members present.

**Z 19-03 – Zoning Ordinance Change**

**Adult Oriented Businesses**

City Attorney Jones gave an overview of the ordinance change. Commissioner Carr asked how the 300 ft distance was determined. Assistant City Administrator Hixson said it was chosen to be consistent with the zoning ordinance for medical marijuana dispensaries. He said this was not in response to any new applications, and in fact, there have not been any application for this type of business since we began tracking it in 2008.

Secretary Zimmerman said she has researched the issue and while it is free speech related, the Zoning Commission has the right to set distances from schools and/or residential areas. She feels that as a family-oriented community, it would behoove the Commission to set significant boundaries within the legal limits. Three hundred feet is an insufficient separation as it could be literally across the street. Secretary Zimmerman feels that there should be a minimum of 500 feet of separation from churches and schools.

Commissioner Carr referred to Section 2, Item 1 in the proposed ordinance, and asked if a dress code could be enforced for these types of businesses. City Attorney Jones said there are minimal dress codes, but it cannot be 100% regulated.



Mayor Pogue asked City Attorney Jones to explain the reason we can't disallow these types of businesses. City Attorney Jones said that it is related to the First Amendment. Mayor Pogue said when comparing items sold to other stores, the interpretation can become a gray area, and that City Attorney Jones has done a good job defining particular items in the ordinance that would have a negative impact on the community.

Chairman Weaver said he agrees with Secretary Zimmerman that the distance from schools and residences should probably be more than 300 ft, but he approves of the prohibition of alcohol sales. Commissioner Pieknik asked if the Commission can increase the distance to 500 ft. Chairman Weaver said the Commission can make that recommendation to the Board of Aldermen.

Chairman Weaver opened the public hearing and asked if anyone wished to speak in in regards to Petition Z 19-03.

**Mr. & Mrs. Lee Thompson, 517 Kehrs Mill Rd**, said they have lived in Ballwin all their married life and raised their children here. They don't want these types of businesses in the city. Chairman Weaver explained that no businesses have requested to come into the City; this is preemptive on the City's part. Mrs. Thompson asked for a definition of "adult oriented business" and City Attorney Jones responded. Secretary Zimmerman said the City is setting guidelines that will make coming to Ballwin less desirable for these types of businesses. Mayor Pogue explained that this discussion started with the Board of Aldermen.

Chairman Weaver asked if anyone else wished to speak about the petition. No one came forward and Chairman Weaver closed the public hearing.

Commissioner Alexander asked if the petition should be tabled until the next meeting to see what a 500 ft distance map would look like.

Secretary Zimmerman recommended reevaluating the ordinance regarding the distance from schools and residential areas, before it is sent to the Board of Aldermen. She doesn't feel that 1000 ft is unreasonable. City Attorney Jones said he does not recommend setting a distance of 1000 ft.

Secretary Zimmerman said there are instances where the Supreme Court upheld the 1000 ft separation from schools and residences. She feels there is ample evidence that there is more leeway than 500 ft. Mayor Pogue said in those cases, the area may have a commercial district that is 5,000 ft wide, whereas the City of Ballwin's commercial district is only 500 ft wide. All of our commercial areas are within 500 feet of residential districts, which takes out the whole corridor. Mayor Pogue said the City has to be careful on how much it prohibits a business.

Mayor Pogue asked City Attorney Jones for clarification of what merchandise can and cannot be visible to the public from the exterior of the business. City Attorney Jones said there is currently no restriction on visibility from the outside; the City would need to consider if this is what is wanted.

Secretary Zimmerman said that she interprets the ordinance to say that anything that precludes a minor from entering the store should not be visible from the street. Mayor Pogue asked if the language of the medical marijuana ordinance, which states that no merchandise should be visible from the street, should be included in this ordinance pertaining to adult oriented businesses.



Commissioner Bolte said that the way the ordinance reads, if less than 1/3 of the floor space is dedicated to the listed items, it would not fall under the designation of "Adult Retail Store." He said it makes sense to put regulations in place that disallow certain displays for these types of businesses. Commissioner Alexander asked about the aesthetics of the exterior – can the City limit colors, signs, etc? City Attorney Jones said that the Commission makes those recommendations to the Board of Aldermen.

Secretary Zimmerman made a motion to table Petition Z 19-03 until a map showing various distances is provided, and language is included regarding display of merchandise visible from the street. Commissioner Alexander seconded the motion, which received unanimous approval from the Commission members present.

### Election of Officers

Mayor Pogue nominated Lisa Zimmerman as Secretary. Ms. Zimmerman accepted the nomination. Commissioner Silker seconded the nomination, which received unanimous approval from the Commission members present.

### Other Business

Assistant City Administrator Hixson stated that no meeting will be held in September, but there will be an October meeting.

Since Petition Z 19-03 was tabled, Chairman Weaver reopened the public hearing.

### Adjournment

Commissioner Pieknik made a motion to adjourn the meeting. Mayor Pogue seconded the motion, which received unanimous approval from the Commission members present. The meeting was adjourned at 8:00 p.m.

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Mark Weaver, Chairman  
Planning & Zoning Commission