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| ST. CHARLES SINCE 1834 | **AGENDA ITEM EXECUTIVE SUMMARY** | Agenda Item number: 4b |
| | Title: | Discussion and direction regarding Special Use Findings of Fact in Title 17 of the City Code (Zoning Ordinance) |
| | Presenter: | Rita Tungare |

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| Meeting: Planning & Development Committee | Date: October 14, 2019 | |
| Proposed Cost: N/A | Budgeted Amount: N/A | Not Budgeted: ☐ |

**Executive Summary** (*if not budgeted please explain*)**:**

During the Plan Commission review of the General Amendment application regarding recreational cannabis dispensaries, a discrepancy was identified with the Findings of Fact for Special Use listed in the City's Zoning Ordinance.

If the City amends the Zoning Ordinance to permit recreational cannabis dispensaries as a Special Use, future applications for Special Use will need to meet all 6 Findings of Fact for Special Use contained in the Zoning Ordinance. One of the findings is the Special Use conforms to local, State, and Federal law. Because sale of cannabis is currently illegal under Federal law, the City could not make that finding in the affirmative.

Under State Statute, the City is not obligated to consider conformance with Federal law as part of the findings of fact for Special Use. This stipulation was added by the City to the Special Use findings when they were amended in 2006; however it is unclear as to why this addition was made. It may be advisable to remove this finding from the City Code, as the City cannot ensure compliance with all Federal law as part of any Special Use review.

Staff has reviewed codes of other area municipalities and found that our code appears to be unique in referencing Federal law within the Special Use Findings of Fact. Furthermore, it does not appear to be common to require all Findings of Fact be found in the affirmative.

Staff has initiated the process of conferring with the City Attorney on this matter; however exhaustive research has not been conducted. Further direction is needed to research this further, and if warranted, initiate a General Amendment application to revise the Special Use findings.

**Attachments** (*please list*)**:**
City Code section regarding Special Uses

**Recommendation/Suggested Action** (*briefly explain*)**:**

Provide direction to Staff regarding whether to research this issue further, and if necessary, file General Amendment application to revise the Findings for Special Use. This application will require public hearing before Plan Commission and City Council approval.

**17.04.330 – Special uses and amendments to special uses**

A. Purpose
Special Uses listed within the various zoning districts include those uses that may be acceptable if established in an appropriate manner and location within a zoning district, but may not be acceptable if established in a different manner or location. Special Uses may include, but are not limited to, public and quasi-public uses affected with the public interest, and uses that may have a unique, special or unusual impact upon the use or enjoyment of neighboring property.

B. Authority
Special Uses and Amendments to Special Uses shall be authorized or denied by the City Council in accordance with the statutes of Illinois and this Title. No application for a Special Use or amendment to Special Use shall be acted upon by the City Council until after a public hearing has been held by the Plan Commission, after due notice has been made, as provided herein and by the applicable statutes, and after the findings and recommendations of the Plan Commission have been reported to the City Council.

C. Procedure
1. Public Hearing
The Plan Commission shall hold a public hearing in accordance with Section 17.04.150, at which evidence in support of the proposed Special Use or Amendment to Special Use must be presented by, or on behalf of, the petitioner, and any evidence presented by interested parties shall be heard.
2. Findings of Fact and Recommendations
On the basis of the evidence presented at the public hearing, the Plan Commission shall record its reasons for recommending approval or denial of the petition (findings of fact) in accordance with the following standards:
   a. Public Convenience: The Special Use will serve the public convenience at the proposed location;
   b. Sufficient Infrastructure: That adequate utilities, access roads, drainage and/or necessary facilities have been, or are being, provided;
   c. Effect on Nearby Property: That the Special Use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish or impair property values within the neighborhood;
   d. Effect on Development of Surrounding Property: That the establishment of the Special Use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
   e. Effect on General Welfare: That the establishment, maintenance or operation of the Special Use will not be detrimental to or endanger the public health, safety, comfort or general welfare.
   f. Conformance with Codes: That the proposed Special Use conforms to all existing Federal, State and local legislation and regulation and meets or exceeds all applicable provisions of this Title, except as may be varied pursuant to a Special Use for Planned Unit Development.
   (Ord. 2008-Z-32 § 15.)

   No Special Use or amendment to Special Use shall be recommended by the Plan Commission unless it finds that the proposed Special Use or amendment to Special Use will conform with each of these standards. The Plan Commission shall submit its written findings together with its recommendations to the City Council after the conclusion of the Public Hearing, and also may recommend such conditions as it may deem necessary to ensure conformance with these standards.
3. Action by the City Council
   a. The City Council shall not act upon a proposed Special Use or an amendment to a Special Use until it has received a written report and recommendation from the Plan Commission on the proposed Special Use or the amendment to the Special Use. The City Council shall not approve a Special Use or amendment to Special Use unless it finds that the proposed Special Use or amendment to Special Use will conform to each of the standards in the preceding Paragraph 2.
   b. An application for a proposed Special Use or an amendment to a Special Use shall be acted upon finally by the City Council within ninety (90) days of the receipt by the City Council of the recommendations from the Plan Commission unless it is mutually agreed upon by the City Council and the petitioner that more time is required.

D. Conditions
The City Council may require conditions that it reasonably deems necessary to protect the public interest and to meet the standards set forth in this Title. Conditions may pertain to the establishment, location, construction, maintenance and operation of the Special Use or amendment to a Special Use. When a

Special Use or amendment to Special Use is granted with conditions, the City Council may require the applicant to provide evidence and/or financial guarantees to ensurethat the conditions will be complied with. Failure to comply with the conditions imposed shall constitute a violation of this Title.
(Ord. 1981-Z-6 § 1 (part).)

E. No Presumption of Approval
The listing of a use as a Special Use within a zoning district does not constitute an assurance or presumption that such Special Use will be approved. Rather, each proposed Special Use shall be evaluated on an individual basis in relation to the standards of this Section and conformance with the other applicable provisions of this Title.

F. Limitations on Special Uses
1. A Special Use shall lapse twelve (12) months after the date it is granted, unless the Special Use or authorized construction for that Special Use (pursuant to a building permit) is commenced within that twelve (12) month period. However, the City Council may extend this period, upon written request from the applicant showing good cause. The provisions of this paragraph shall not apply to any Special Use for a Planned Unit Development.
2. Special Use approval is granted to a specific property and authorizes the conduct of the Special Use only on the property represented on the application and is not transferable to other properties.
3. The approval of a Special Use authorizes the use on the property in the manner proposed, but does not in itself authorize the establishment of such use without first obtaining all other required approvals, including building permits, sign permits and occupancy permits.
4. Any modification or intensification of a Special Use that alters the essential character or operation of the use in a way not approved at the time the Special Use was granted, as evidenced by the ordinance granting the Special Use, other record or by the provisions of this Title, shall require new Special Use approval in accordance with this Section.
5. If a Special Use ceases operation for a continuous period of twenty-four (24) months, the Special Use shall be deemed abandoned and the Special Use approval shall lapse. The Director of Community Development shall determine if a Special Use has ceased operation and shall notify in writing the record owner of the property. The notice shall be provided twenty-four (24) months prior to the date upon which the Special Use will be deemed abandoned. However, prior to the end of the twenty-four (24) month period the Director, at his/her discretion and for good cause, may extend, for up to twelve (12) months at a time, the period for abandonment.

   If the Special Use is not reestablished within the aforementioned time period or extension thereof, the Special Use approval shall lapse, and a new Special Use approval shall be required to establish the use in accordance with this Section. This provision shall also apply to any existing use deemed a lawful Special Use in accordance with Section 17.02.040. The provisions of this paragraph shall not apply to any Special Use for a Planned Unit Development, which is subject to time limitations contained in Section 17.04.420.

(2008-Z-23 : § 16)