

Holyoke City Council approves permits for 3 marijuana companies despite ordinance typo



By DUSTY CHRISTENSEN

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HOLYOKE — After significant debate, the City Council on Tuesday approved special permits for three cannabis companies whose applications faced uncertainty due to a typographical error in Holyoke’s marijuana ordinance.

The special permits were for three marijuana companies: ACMJ Inc., which is

seeking to open a cultivation and processing business in the Baustein Building at 532 Main St.; Cannalive LLC, which is also looking to open a marijuana manufacturing operation in the Baustein Building; and H&H Holdings Inc., which wants to operate a cultivation and product manufacturing facility at its property at 40-48 Main St.

Those approvals had been held up because of a scrivener’s error in an ordinance that the City Council voted on last spring. While councilors had intended to shrink the required buffer between marijuana cultivators and manufacturers and places where children congregate, the typo effectively banned such establishments by requiring a 200-foot buffer between those businesses and every other land use possible in the city.

When the City Council tried to fix the typo late last year, a group of five councilors blocked that effort amid complaints from John Aubin, the owner of the Open Square mill buildings, and some other business owners over the odors they said marijuana cultivators and manufacturers emit. Those councilors, in turn, drew accusations of political opportunism from some of those seeking special permits and other city councilors.

Legal perspective

City lawyers had cautioned that the city could be liable to lawsuits from H&H and ACMJ if the City Council denied them special permits based on the typo.

“As a matter of Massachusetts zoning law, I have found no decision made by any court which supports a denial of a special permit due to a scrivener’s error in a

municipal zoning ordinance,” Assistant City Solicitor Kathleen Degnan [wrote](#) in a legal opinion on Dec. 17.

Ultimately, the City Council approved all three permits on Tuesday by a 10 to 2 vote. Ward 5 Councilor Linda Vacon and At-large Councilor Kevin Jourdain voted against the special permits, arguing that they would not comply with the ordinance language as it currently stands. Ward 6 Councilor Juan Anderson-Burgos was absent from the meeting.

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In a phone interview Wednesday, Blake Mensing, an owner of H&H, said the approval was “certainly a win.” He said he was a little surprised to see the typo issue sent to committee, but that it is clear that there is political will among city councilors to fix it.

As for those suggesting the permits be denied, Mensing said that in the law, you can’t ignore the context of how a law came to be. And in this case, he said, it was abundantly clear that the ordinance councilors thought they were voting on last year was not what ultimately ended up in the rule book. He said he took issue with the “pageantry” of those who blocked fixing the typo, and those who argued the special permit should be denied based on that typo.

“Political posturing interests me not at all,” Mensing said. “When you make a mistake, don’t use that as an opportunity to change other things.”

The City Council did approve an additional condition to the special permits, suggested by Ward 3 Councilor David Bartley. The amendment stated that the applicants should be in compliance with state and city health laws, including those related to nuisance odors.

The typo still remains on the books, though. On Tuesday, the City Council sent several orders to the Ordinance Committee that would fix the problem with buffers, as well as other errors in the site plan review section of the ordinance.

The Ordinance Committee is slated to meet again on Jan. 25, 2022. Vacon, who chairs the committee, has vowed to take up efforts to resolve the errors in the ordinance.