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TO: Eileen Donoghue, City Manager *EMD*

FROM: R. Eric Slagle, Director of Development Services

DATE: July 7, 2020

RE: Motion by C. Chau - Req. City Mgr. Communicate With Mass. Cannabis Commission, Or Other Agencies, And Update The Council On The Timetable And Process For Establishing Standards, Regulations, And Enforcement Guidelines For Use And Transportation Of Recreational Marijuana.

This memorandum addresses the request from Councilor Chau regarding regulations about the transportation of marijuana by consumers in their private vehicles.

Currently in Massachusetts, there are similar restrictions to the transport of marijuana as there are to alcohol. The 'open container' law for marijuana, M.G.L. c.94G §13(d), states that one may not have an unsealed container within the passenger area of a motor vehicle while the motor vehicle is in operation. Of course, operating a motor vehicle while under the influence of marijuana (among other things) has been illegal in Massachusetts for many years, and that law has not changed. There are not currently any objective, measurable standards established in the Commonwealth for what constitutes impairment for marijuana, so there is not a 'legal limit' as there is for alcohol. Determining impairment is a judgment call by an officer who has made a traffic stop.

The Lowell Police Department is also taking steps to prepare to determine if a driver is under the influence of marijuana by researching the possibility of having a Drug Recognition Expert on staff. In Massachusetts to become a Drug Recognition Expert is an extremely long process. The first step in the process, is an officer must attend and pass the Standardized Field Sobriety Testing course before moving on to the three phase Drug Evaluation and Classification Program.

Step 1 - Requires a 16 hour Drug Recognition Expert (DRE) Pre School. The course provides an overview of DRE evaluations procedures, the seven drug categories, examining eyes and proficiency in conducting the Standardized Field Sobriety Tests.

Step 2 - The 56-hour DRE School. The school includes an overview of the drug evaluation procedures, in-depth instruction into the drug categories, drug combinations, and examination of vital signs, case preparation, courtroom testimony, and Curriculum Vitae (CV) preparation. To complete the course, the officer is required to pass a written examination prior to moving into the final phase.

Step 3- Each student/candidate DRE must participate and complete twelve drug evaluations under supervision from a trained DRE instructor. Out of the 12 evaluations, the officer is required to identify persons under the influence of at least three of the seven drug categories and obtain a minimum of 75% toxicological corroboration. The officer is then required to pass a final knowledge examination and be recognized and approved by two DRE instructors before receiving certification as a certified Drug Recognition Expert.

Once receiving certification, DRE's are required to recertify every two years. Prior to recertification DRE's must have conducted four examinations and attend an 8 hour training course each year. However, at this time, due to the Coronavirus all scheduled trainings in Massachusetts for the DRE Program have been canceled and have not yet been rescheduled. A challenge to the process is the lack of standardized acceptance of DRE's in Massachusetts. Currently, a DRE is required to go through a voir dire with the judge presiding over the case. The judge then can decide to accept the officer as an expert or decide not to recognize the science and/or training of the DRE. The LPD will continue to follow-up on this process.

To provide some context for the revenue that the City receives from the marijuana industry's presence in the City, we have included the revenue figures through the first quarter of 2020. As a reminder, the City's host community agreements include a provision that the City receives 3% of the sales

- HOST Revenue (003145111-418002) = \$471,552.39
- Marijuana Excise – 75% for General Fund (00214528-413000) = \$226,211.38
- Marijuana Excise – 25% for Municipal Facility Fund (83960005-413000) = \$75,400

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