

PLANNING AND DEVELOPMENT SERVICES STAFF REPORT

For Planning Commission Meeting of May 1, 2012

SUBJECT: Proposed Amendments to Chapter 55 (Zoning) regarding Medical Marijuana Facilities

PROPOSED CITY PLANNING COMMISSION MOTION

The Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve the proposed amendments to Chapter 55 (Zoning) Section 5:50.1(4)(k) regarding requirements for medical marijuana dispensary and cultivation facilities.

STAFF RECOMMENDATION

Staff recommends that the proposed amendments to Chapter 55 (Zoning) be **denied**. Removal of the requirement to comply with the Michigan Medical Marihuana Act (MMMA) for dispensaries and cultivation facilities serves no practical purpose, and it is inconsistent with the overall intent of the City's ordinance. Further, the provision allows for the City to distinguish between allowed facilities and undesired drug operations.

BACKGROUND

On August 5, 2010 the Ann Arbor City Council placed a moratorium on the initiation or expansion of medical marijuana dispensaries. The moratorium resolution directed City staff and the Planning Commission to recommend zoning ordinance amendments to restrict the dispensing of medical marijuana to appropriate zoning districts, and to regulate medical marijuana dispensing in residential districts.

The Planning Commission drafted a new section, 5:50.1 Regulations Concerning Medical Use of Marijuana, that defined and created regulations for medical marijuana dispensaries, medical marijuana cultivation facilities and medical marijuana home occupations. The Commission recommended approval of the amendments on October 5, 2011 (see attached staff report). City Council subsequently made revisions to the draft zoning ordinance and created a licensing ordinance. City Council approved both ordinances on June 20, 2011.

One of the requirements of the medical marijuana licensing ordinance was the establishment of the Medical Marijuana Licensing Board. Council appointed five members to the Board in September 2012. The Board met several times over the course of six months, and provided recommendations on licenses and ordinance changes in a report to City Council dated January 31, 2012 (attached).

In its report, the Medical Marijuana Licensing Board recommended the following amendment to Chapter 55, Section 5:50.1(4) Regulations Concerning Medical Use of Marijuana:

“The Licensing Board recommends deleting subsection (k), which reads:

k) Medical marijuana dispensaries and medical marijuana cultivation facilities shall be operated in compliance with the MMMA [Michigan Medical Marihuana Act].

Rationale

The Licensing Board learned that this sub-section created difficulties for the staff. Because no staff member could guarantee that any medical marijuana dispensary or cultivation facility operated in compliance with the MMMA, the staff could not effectively review applications or issue a Zoning Compliance Permit – which was a requirement for submitting a complete application.

Sufficient guarantees in both the Zoning and the Licensing Ordinances exist regarding conduct of dispensaries and cultivation facilities. These guarantees reinforce the restrictions that exist in the MMMA.”

The Medical Marijuana Licensing Board believes that removal of this section would make it unnecessary for staff to request additional information regarding how dispensaries are operating. Staff began requesting this information from dispensaries after a Michigan court decision, in which the Court of Appeals ordered a dispensary to close. This decision was published after the City passed its ordinance. In this Court of Appeals case, the court determined that the sale of marijuana by the dispensary and possession of it by other than the patient or the patient’s caregiver was not consistent with the MMMA and therefore illegal.

On April 2, 2012 City Council passed a resolution directing the Planning Commission and Planning & Development Services staff to review the zoning ordinance revision recommended by the Medical Marijuana Licensing Board and provide a recommendation to City Council by June 2012. Planning Commission review and recommendation is required for all amendments to the Zoning Ordinance. The draft amendment is attached.

STAFF REPORT

The proposed amendment has been recommended by the Medical Marijuana Licensing Board to provide Planning & Development staff with more flexibility in moving forward zoning compliance permits for medical marijuana facilities, but staff does not believe that it will have this effect. The intent, as stated in the zoning ordinance, is to provide “appropriate locations and reasonable restrictions for the cultivation and transfer of medical marijuana allowed by the Michigan Medical Marihuana Act. . .” Since there is a narrow definition of what is legally acceptable under the MMMA, any other related use would be illegal under state law. Without this provision in the City’s ordinance, there would be no way for staff to distinguish between a use legally allowed under the MMMA and a clearly illegal one. For instance, if the provision is removed, an applicant claiming to be a medical marijuana dispensary could comply with zoning, but actually be an illegal drug operation.

Finally, keeping this provision in the list of requirements for the establishments for a medical marijuana dispensary or cultivation facility serves to clarify for potential applicants that the City will not approve a facility that is inconsistent with state law.

Amendments to Chapter 55 regarding Medical Marijuana Facilities
Page 3

Prepared by Wendy Rampson

Attachments: 10/05/11 Planning Staff Report
01/31/12 Medical Marijuana Licensing Board Report
Draft Amendment to Chapter 55, Regulations Concerning the Medical Use of
Marijuana

c: City Attorney

PLANNING AND DEVELOPMENT SERVICES STAFF REPORT

For Planning Commission Meeting of October 5, 2010

**SUBJECT: Amendments to Chapter 55 (Zoning) to Add a New Section 5:50.1:
Regulations Concerning Medical Marijuana**

PROPOSED CITY PLANNING COMMISSION MOTION

The Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve the amendment to Chapter 55 (Zoning), to add a new Section 5:50.1: Regulations Concerning Medical Marijuana.

PROPOSED CITY PLANNING COMMISSION MOTION

The Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council institute a medical marijuana business license to address issues important to the health, safety, and welfare of residents but outside of the scope of the zoning ordinance, such as security, building safety, and other code compliance.

STAFF RECOMMENDATION

Staff recommends that the proposed amendments to Chapter 55 (Zoning) of the City Code be **approved**. Since the State of Michigan has decreed that under certain circumstances, growing and using medical marijuana is a legitimate and beneficial activity, it is appropriate therefore for the City of Ann Arbor to identify those zoning districts in which associated land uses should be located and to create regulations to preserve the public health, safety and welfare.

Further, staff recommends that the City Planning Commission recommend to City Council the development of a medical marijuana license to address issues that fall outside the scope of the zoning ordinance, such as building security and code compliance for electrical use, fire suppression, and ingress/egress.

STAFF REPORT

The proposed amendments were postponed at the September 21, 2010 Planning Commission meeting to allow consideration of comments received at the public hearing. For background, see the September 21, 2010 staff report (attached).

CHANGES TO THE SEPTEMBER 17, 2010 DRAFT ORDINANCE

Since the September 21 meeting, several substantive changes have been made to the draft ordinance, now dated October 1, 2010:

- 5:50.1 (1) An intent statement has been added.
- (2) Definitions
 - The definition of drug paraphernalia has been removed, as it was considered unnecessary.
 - The definition of a medical marijuana cultivation facility has been changed from three or more caregivers growing plants to anyone growing more than 72 plants. This reflects changes to the home occupation language, which has been capped at 72 plants per single-family dwelling.
 - The definition of dispensary has been changed to include all caregiver transfers of medical marijuana that are not home occupations.
- (3) Locations of dispensaries and cultivation facilities
 - The 200 foot buffer requirement from residential properties has been removed. The retail nature of dispensaries (see next bullet) and the requirement that cultivation be performed indoors means an additional residential buffer around commercial and industrial districts is not warranted. The draft ordinance still excludes these dispensaries and cultivation in O Office districts, which are more integrated into neighborhoods and are designed to buffer residential areas from more intense uses.
 - C1 zoning districts have been added to the list of permitted districts for dispensaries. Staff's initial concern about allowing dispensaries in C1 Local Business District stems from that district's intent statement, which says it is "...designed solely to serve the needs of the surrounding residential neighborhood..." and "Businesses which might tend to be a nuisance to the immediately surrounding residential development are excluded, even though the goods or services offered might be in the convenience category or classification." However, the permitted principal uses for the C1 district include many that typically serve more than the needs of a neighborhood, such as furniture, auto parts, drugs, alcoholic beverages, and sporting goods stores. After visiting four dispensaries, the clearly retail nature of the business was apparent (patients walk in, consult with a business operator, pick up their medical marijuana, pay at a counter, and leave) and was not deemed incompatible with other land uses allowed in C1 districts.
 - The 500 foot spacing requirement for dispensaries and cultivation facilities is considered unnecessary if the proper zoning language is in place, and has been removed.

- (4) Dispensary and cultivation facility regulations
 - The requirement that operators of a dispensary or cultivation facility be caregivers has been removed. The intent was not clear, and it seems unlikely that this would not be the case anyway under state law.
 - The restriction on sales of drug paraphernalia has been removed; state law allows such transfers to medical marijuana patients from caregivers, and it was deemed unnecessary.

- (5) Medical marijuana home occupations
 - The language has been changed from two caregivers per single-family home to a maximum of 72 plants. This allows any number of caregivers to grow plants, but with a combined maximum of 72. The space needs for this number of plants has been estimated at three square feet per plant, or, staff is told, more realistically at four square feet. This translates to 216-288 square feet minimum for growing, plus space for materials, equipment, plant drying and processing, and additional space for flowering plants (which are larger and have different lighting requirements). One reputable proponent of medical marijuana has told staff that 1000 square feet minimum would be necessary for all of the activities associated with 72 plants. Since home occupations in the City of Ann Arbor are limited to 25% of the gross floor area of a dwelling (which does not include unfinished space like basements and attics in the calculation), it seems unlikely that anyone could legally grow more than 72 plants, and possibly not nearly that many, in a typical single-family residence. Since the intended use of a single-family dwelling is as a dwelling, not as a business, the 25% floor area cap is reasonable and appropriate to minimize the impacts of the home occupation on the surrounding neighborhood.
 - Trip generation has been returned to the 10 trips allowed for all home occupations, and the restriction on picking up medical marijuana at the home occupation has been removed to address patient's desires to keep their addresses confidential (which would be compromised if caregivers had to deliver).

- (6) Medical marijuana in dwelling units other than single family
 - This section has been clarified to say that patients in any zoning district may grow their own 12 plants in their dwelling unit, with the same restrictions on odor, etc., as dispensaries, cultivation facilities, and home occupations.

ADDITIONAL ORDINANCE INFORMATION

- The 72 plant maximum for home occupations (explained above) results in cultivation facilities being defined as anyone growing more than 72 plants. Similarly, a dispensary is defined as any number of caregivers that are not operating as a home occupation.

- To minimize potential problems that could be caused by inadequate parking on nonconforming Commercial sites, all dispensaries and cultivation facilities in “C” districts must meet minimum parking requirements without exception. This requirement is more demanding than the current off-street parking requirements, which state that if a commercial building does not meet the minimum parking requirement, it may still be occupied if the new use will not generate more parking needs than the previous use.
- The list of zoning districts in which dispensaries are allowed is as or more inclusive than comparable other retail uses in the City of Ann Arbor. Similarly, cultivation facilities are allowed in a liberal number of zoning districts, including RE Research and ORL Office/Research/Limited Industrial, which are usually reserved for more research-oriented uses (though medical marijuana cultivation has few comparable land uses addressed by Code).
- Dispensaries and cultivation facilities are excluded from O Office districts. Office districts, per Section 5:10.12, are intended to be used “...as a transitional use buffer between residential uses and uses which would be incompatible in direct contact with residential districts.” Further, permitted principal uses specify offices where “...goods, wares or merchandise are not commercially created, displayed, stored, exchanged or sold...” Given the retail and agricultural nature of dispensaries and cultivation facilities, and the large number of more appropriate zoning districts in which these uses would be allowed, staff feels strongly that office districts are not appropriate locations for medical marijuana uses.
- The requirement that medical marijuana dispensaries and cultivation facilities be located outside of 1000-foot drug-free school zones reinforces public policies already in place in the City of Ann Arbor.
- Smoking, inhalation, and consumption of medical marijuana is prohibited at dispensaries and cultivation facilities to minimize conflicts with neighbors over such things as marijuana smoke odors and persons leaving the facility that could be a hazard to others (driving under the influence of marijuana is prohibited in Michigan).
- Written permission of the property owner is required to avoid non-disclosure of the type of establishment the renter wants to open, which has happened with currently operating dispensaries. Landowners may accept or reject dispensaries and cultivation facilities as tenants, but should know up front before the lease is signed that the proposed use is one that is deemed legal by the state, but not by the federal government.
- Zoning compliance permits are required annually for dispensaries, cultivation facilities, and home occupations. This is to insure compliance with zoning ordinances, and involves filling out an application and submitting a fee (currently \$50). There is no inspection of the premises associated with a zoning compliance permit.
- Drive-ins increase vehicle idling and emissions and are unnecessary to the operation of a dispensary.
- Outdoor growing and dispensing of medical marijuana is undesirable as a land use because of the controls required to secure it. The MMMA requires that marijuana plants

be kept in a closed, locked facility. City Code limits the height of fences in some districts, and prevents deterrents to climbing them like razor wire (which was recently seen on top of a chain-link fence surrounding a caregiver's plants here in the city as he attempted to secure his plants). Building fortress-like walls around outdoor growing and dispensing areas or any other businesses or activities is undesirable from a land use perspective and discouraged by staff.

- The language on noise, odor, and other restrictions for dispensaries, cultivation facilities, and home occupations is taken directly from the language for home occupations and also addressed in RE and M zoning districts. Since odor in particular (from the dried marijuana, not from smoking it) has been identified as a problem in two existing dispensaries, and since marijuana plants are notorious for their smell while growing, the language was included here so that it could be extended to the other districts proposed for medical marijuana uses.
- With the exception of items (a) restricting home occupations to 72 plants, (b) annual zoning compliance permit, and (i) compliance with MMMA, the home occupation language is taken directly from that found under the R1 permitted accessory uses.

Prepared by Jill Thacher

Reviewed by Wendy Rampson

c: City Attorney

Attachments: September 21, 2010 Staff Report

October 1, 2010 Draft Amendments to Chapter 55

MEDICAL MARIJUANA LICENSING BOARD

Ann Arbor, Michigan

Report and recommendations
January 31, 2012

Background

On August 5th, 2010, the City Council voted in favor of a moratorium on medical marijuana dispensaries. The 90-day moratorium was expected to allow sufficient time for the staff and the Planning Commission to recommend a change to the City Code regarding zoning. The moratorium was extended repeatedly.

The staff produced a preliminary zoning ordinance before September 17th, 2010, and a licensing ordinance before December 6th, 2010. Neither ordinance was discussed during a Council meeting in detail until January 3, 2011.

The Council approved amended versions of the zoning and licensing ordinances on June 20, 2011, with an effective date of August 22, 2011. One of the requirements in that ordinance was that a Medical Marijuana Licensing Board be established.

At the Council meetings on September 6th and 20th, the Council appointed members for the Medical Marijuana Licensing Board.

MEDICAL MARIJUANA LICENSING BOARD

SABRA BRIERE

JIM KENYON

PATTI O'RORKE

GENE RAGLAND

JOHN ROSEVEAR

Section 1, 7:502(7). The City Council will establish a Medical Marijuana Licensing Board to consist of one member of Council, one physician, and three other Ann Arbor residents, these are Mayoral appointments. The Board shall annually send to City Council a proposed resolution recommending either approval or rejection of each complete license application. A recommended resolution may set conditions for approval. The determination of City Council as to such each application shall be final. The Board will annually review and recommend the licensing criteria, the number of licenses authorized, the license fee structure taking into consideration recommendations from staff, and recommend approval of license applications. While a medical marijuana dispensary shall not be eligible for a license if any person required under this chapter to be named on the application has been convicted of a felony involving controlled substances, evidence that a person required under this chapter to be named on the application has been convicted of any other type of felony, under the law of Michigan, the United States, or another state, may be used by the Board in its determination of whether or not to recommend the issuance of a license to the applicant. Among other things, the Board shall consider whether the substance of the offense would tend to indicate a likelihood that the person would be unable to serve the public in a fair, honest and open manner or to dispense or cultivate marijuana in compliance with the MMMA, whether there is evidence that the person has been rehabilitated, and the age of the conviction.

Section 2. The medical marijuana licensing board shall review the operation of the provisions of this section and recommend changes, if any, to City Council that the board deems appropriate on or before January 31, 2012, or such other date as Council may set by resolution.

Summary

Proposed licensing fee

The Board will annually review and recommend ... the license fee structure taking into consideration recommendations from staff...

Recommended licensing fees:

\$1,100 for a license; \$350 for a license renewal.

These fees are separate from licensing application fees (already established at \$600.00). Licenses are non-transferrable and renewable annually.

Proposed limit on licenses issued

The Board will annually review and recommend ... the number of licenses authorized ...

For the first year's licensing process, the Licensing Board reviewed 10 applications – 9 applications qualified for pre-moratorium status (the dispensary was established prior to the moratorium) and 1 (one) for post-moratorium status (the licensing board determined that the dispensary was established after the moratorium).

The ordinance established first-year license numbers at a maximum of 20. The Licensing Board recommends retaining that ceiling.

Proposed ordinance changes

The medical marijuana licensing board shall review the operation of the provisions of this section and recommend changes, if any, to City Council that the board deems appropriate on or before January 31, 2012, or such other date as Council may set by resolution.

The Licensing Board recommends the following amendments to the ordinances (red-lined versions of the ordinances may be found in Appendix 1):

To the Zoning Ordinance

Section 5:50.1.(4) Regulations Concerning Medical Use of Marijuana

The Licensing Board recommends deleting subsection (k), which reads:

- k) Medical marijuana dispensaries and medical marijuana cultivation facilities shall be operated in compliance with the MMMA.

Rationale

The Licensing Board learned that this sub-section created difficulties for the staff. Because no staff member could guarantee that any medical marijuana dispensary or cultivation facility operated in compliance with the MMMA, the staff could not effectively review applications or issue a Zoning Compliance Permit – which was a requirement for submitting a complete application.

Sufficient guarantees in both the Zoning and the Licensing Ordinances exist regarding conduct of dispensaries and cultivation facilities. These guarantees reinforce the restrictions that exist in the MMMA.

To the Licensing Ordinance

Section 7:502 License Required, Number of Licenses Available, Eligibility

(4) The first year's licenses shall be capped at a number 10% higher than the number of complete applications for licenses submitted to the City in the first 60 days, after the effective date of this chapter, but not more than 20 medical marijuana dispensary licenses shall be issued in the first year and shall be capped at that number. Any license terminated during the license year returns to the City for possible reissuance.

(7) The City Council will establish a Medical Marijuana Licensing Board to consist of one member of Council, one physician, and three other Ann Arbor residents, these are Mayoral appointments. The Board shall annually send to City Council a proposed resolution recommending either approval or rejection of each complete license application. A recommended resolution may set conditions for approval. The conditions may include a waiver by City Council of any provision or provisions of the licensing ordinance, and/or the imposition of a new provision or new provisions, if the public interest so requires. ...

Rationale

The Licensing Board recommended some *conditional* licenses, dependent upon the applicant(s) ability to correct deficiencies in the application. By doing so, the Board recognized that, during some future application process, the Council might decide to impose conditions or waive provisions that are in the current ordinance.

Section 7:504 Application Requirements for New Annual License or Renewal of Existing License; License Requirements for New License and for Renewed License

2 (g) Proof of applicant's ownership ~~or legal possession of the premises~~ or right to legal possession of the premises at a date not later than the date of the issuance of the proposed license to the applicant.

Rationale

After the first year of the ordinance, no dispensaries will be considered based on their pre-moratorium status. Any new dispensaries are unlikely to apply for a license after they have signed a lease prior to the application. The Licensing Board recommends this amendment so that an applicant can fulfill the requirements of the application without the major financial risk implied by a multi-year lease.

3 (b) An application for renewal of an existing license shall be submitted no sooner than 90 days and no later than 60 days ~~10 weeks (70 days)~~ before the existing license expires.

3 (d) An application to amend an existing license to change the location of the medical marijuana dispensary shall be submitted no sooner than 90 days and no later than 60 days ~~no later than 10 weeks (70 days)~~ before the existing license expires. An application to amend an existing license to change any other information on the most recent application on file with the City may be submitted at any time.

Rationale

These amendments will make all deadlines comply with **Section 7:502 (8)**. A license issued under this chapter shall expire one year after the date of issuance. To renew an existing license, the licensee shall submit an application in the same manner as is required to apply for a new license no sooner than ninety (90) days before the expiration date and no later than sixty (60) days before the expiration date.

7:504 (4) License Requirements. Following ~~official confirmation by staff that the applicant has submitted a complete application~~ City Council approval of the issuance of a license, a new license shall not be issued to a medical marijuana dispensary until the applicant for the license complies with all of the following requirements...

7:505. Issuance of License.

If the applicant has successfully demonstrated compliance with all requirements for issuance of a license within 10 weeks (70 calendar days) after the date of ~~City staff's official confirmation that the application for a license was complete~~ City Council's approval of the issuance of a license, the city administrator or designee shall grant renewal ~~or~~ of an existing or issue a new license for a medical marijuana dispensary to the applicant if a license is available. An applicant who fails to demonstrate compliance with all requirements within the required time period or who is found to have submitted an application that contains any false or incomplete information is not eligible for issuance of a license.

Rationale

The date at which the staff confirms that an application is complete may significantly differ from the date at which the City Council approves the issuance of a license. The act that triggers demonstrated compliance is the City Council's approval of the issuance of a license.

7:506. Conduct of Business at a Medical Marijuana Dispensary.

(7) Pursuant to a complaint, An authorized person shall consent to the entry into a medical marijuana dispensary by the Building Official and zoning inspectors for the purpose of inspection to determine compliance with this chapter pursuant to a notice posted in a conspicuous place on the premises two (2) or more days before the date of the inspection or sent and by first class mail to the address of the premises four (4) or more calendar business days before the date of the inspection.

Rationale

The Licensing Board recommends two changes to this section. The first change is a clarifying statement that no zoning inspectors or Building Official will seek to inspect a dispensary without cause. The second change provides more clarity regarding prior notice by requiring both posted and mailed notices. And because members of the Licensing Board were concerned that notice might be delayed in the mail, they specified business days.

Dispensaries recommended for licensing

The Board shall annually send to City Council a proposed resolution recommending either approval or rejection of each complete license application. A recommended resolution may set conditions for approval.

Ten (10) applications for a medical marijuana dispensary license were received. Nine (9) of the applicants were able to demonstrate to the satisfaction of the Board that the dispensary was open prior to August 5, 2010, thus qualifying for pre-moratorium status. One dispensary license was available for post-moratorium status. Businesses recommended to be awarded a license under Ann Arbor's local ordinance were:

For approval without conditions:

MedMarx at Arborside, 1818 Packard St.

OM of Medicine, 112 S. Main St.

People's Choice, 2245 W. Liberty St.

Ann Arbor Wellness Collective, 321 E. Liberty St.

Ann Arbor Health Collective, 2350 E. Stadium Blvd.

PR Center, 3820 Varsity Dr. (includes cultivation facility; located in M1 district where both are allowed by zoning)

Green Planet, 700 Tappan St.

For approval with conditions:

Greenbee Collective, 401 S. Maple St. (inadequate parking per zoning; will need to move or obtain sufficient parking – has 8, needs 14)

Treecity Health Collective, 1712 S. State St. (will need to submit all missing portions of the application and move to a zoning district that allows Medical Marijuana Dispensaries)

For approval for a post-moratorium license:

Medical Grass Station, 325 W. Liberty St.

Appendix I

Ordinances



ORDINANCE NO. ORD-10-37

First Reading : October 18, 2010
Public Hearing : November 15, 2010

Approved:
Published:
Effective:

ZONING
(REGULATIONS CONCERNING THE MEDICAL USE OF MARIJUANA)

AN ORDINANCE TO ADD A NEW SECTION 5:50.1 TO CHAPTER 55 (ZONING) OF TITLE V OF THE CODE OF THE CITY OF ANN ARBOR REGARDING THE REGULATION OF THE MEDICAL USE OF MARIJUANA

The City of Ann Arbor ordains:

Section 1. That Section 5:50.1 of Chapter 55 of Title V of the Code of the City of Ann Arbor is added as follows:

5:50.1. Regulations Concerning Medical Use of Marijuana

- (1) Intent.
 - (a) It is the intent of this section to provide appropriate locations and reasonable restrictions for the cultivation and transfer of marijuana allowed by the Michigan Medical Marihuana Act, MCL 333.26421 *et seq.* This is a unique land use with ramifications not addressed by more traditional zoning district and home occupation regulations. Although some specific uses of marijuana are allowed by the Michigan Medical Marijuana Act, marijuana continues to be classified as a Schedule 1 controlled substance under federal law making it unlawful under federal law to use, manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense marijuana.
 - (b) It is the intent of this section to protect the health, safety, and general welfare of persons and property by limiting land uses related to marijuana to districts that are compatible with such uses. Additional regulations in this section are intended to provide reasonable restrictions within districts so that these uses do not compromise the health, safety, and general welfare of persons in the district, or other uses allowed in each district.
- (2) Definitions. The following words and phrases shall have the following definitions when used in this section.
 - a) Words and Phrases Contained in the Michigan Medical Marihuana Act (“MMMA”), MCL 333.26421 *et seq.* This subsection contains some words and phrases that are defined in the MMMA. As used in this section, they have the same meaning as provided in the MMMA, except that if at any time the definition of a word or phrase set forth below conflicts with the definition

Medical Marijuana Licensing Board

September 21, 2011

Notes

Denny Hayes and two representatives of People's Choice dispensary were present. Mr. Hayes spoke about some items in the application that required information about the owner of real property that were problematic, including the application for a zoning compliance permit.

The pertinent part of the Open Meetings Act was distributed, as well as the 1991 resolution of Council that all committees, commissions and boards would function in compliance with the OMA. The board agreed that the meetings would not follow Robert's Rules unless things became contentious.

The Board discussed the timing of granting licenses as outlined in the ordinances. Ms Larcom indicated that city staff will not be providing certification or issuing zoning compliance permits or building permits. They will send applications to the board that are submitted by October 24.

Application Form

The Board read the application packet and questioned whether the application for a medical marijuana zoning permit differed from that of any other business seeking a change of use. The Board requested that staff provide clarification before the next meeting.

Status of applications

Staff indicated that applications can be submitted to the City, but staff will not accept licensing fees due to concerns of the legality of accepting proceeds of potentially unlawful activity involving marijuana.

Implementing the ordinances

Ms Larcom indicated that the City Attorney's office had sent 'cease and desist' letters to three dispensaries known to be open and not in compliance with the new zoning ordinance.

Unanswered questions

Members of the board indicated that they would go through the two ordinances in detail, now that this preliminary meeting had raised questions.

in the MMMA, then the definition in the MMMA shall apply. These words and phrases are as follows:

- i “Department” means the state department of community health.
- ii “Marihuana” means that term as defined in section 7106 of the public health code, 1978 PA 368, MCL 333.7106.
- iii “Medical use” means the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient’s debilitating medical condition or symptoms associated with the debilitating medical condition.
- iv “Primary caregiver” means a person who is at least 21 years old and who has agreed to assist with a patient’s medical use of marihuana and who has never been convicted of a felony involving illegal drugs.
- v “Qualifying patient” means a person who has been diagnosed by a physician as having a debilitating medical condition.

b) Other Words and Phrases. The words and phrases in this subsection, as used in this section, shall have the following meanings:

- i “Marijuana” means “marihuana” as used in the MMMA.
- ii “Medical marijuana cultivation facility” means a building or part of a building where marijuana plants are being grown in compliance with the MMMA, other than a medical marijuana home occupation or a dwelling unit in which marijuana is being cultivated for a qualifying patient who resides in the dwelling unit as permitted under subsection (7).
- iii “Medical marijuana dispensary” means a building or part of a building where one or more primary caregivers operate with the intent to transfer marijuana between primary caregivers and/or qualifying patients, other than a medical marijuana home occupation or a dwelling unit in which the transfer of marijuana occurs between a primary caregiver and qualifying patient who resides in the dwelling unit as permitted under subsection (7).
- iv “Medical marijuana home occupation” means an accessory use of a nonresidential nature that is conducted by a registered primary caregiver who resides in the dwelling and (A) is performed within a single-family dwelling or within an accessory building to that single-family dwelling; (B) is for the purpose of assisting one or more registered qualifying patients with the medical use of marijuana who do not reside in the dwelling and (C) complies with the MMMA.
- v “Michigan Medical Marihuana Act” and “MMMA” mean the Michigan Medical Marihuana Act, MCL 333.26421 *et seq.*

(3) Locations of medical marijuana dispensaries and medical marijuana cultivation facilities. A medical marijuana dispensary or medical marijuana cultivation facility may be located in the City only in accordance with the following restrictions:

- a) Medical marijuana dispensaries shall only be located in a district classified pursuant to this chapter as D, C, or M, or in PUD districts where retail is permitted in the supplemental regulations.

- b) Medical marijuana cultivation facilities shall only be located in a district classified pursuant to this chapter as C, M, RE, or ORL.
 - c) In C districts, buildings used for medical marijuana dispensaries or medical marijuana cultivation facilities shall meet the minimum parking requirements of Chapter 59 for retail uses, with no exceptions for existing nonconforming parking.
 - d) No medical marijuana dispensary or medical marijuana cultivation facility shall be located within 1000 feet of a parcel on which a public or private elementary or secondary school is located.
- (4) Medical marijuana dispensary and medical marijuana cultivation facility regulations.
- a) No person shall reside in or permit any person to reside in a medical marijuana dispensary or medical marijuana cultivation facility, except as allowed in the M1 and M2 zoning districts.
 - b) No one under the age of 18 shall be allowed to enter a medical marijuana dispensary or medical marijuana cultivation facility unless accompanied by a parent or guardian.
 - c) No smoking, inhalation, or consumption of marijuana shall take place on the premises.
 - d) In M1 and M2 districts, retail sales of products customarily incidental to the principal use shall be allowed provided that the total amount of internal floor area of the structure devoted to sales and display of such products does not exceed 10 percent of the floor area of the total establishment.
 - e) Drive-in medical marijuana dispensaries shall be prohibited.
 - f) All activities of a medical marijuana dispensary or medical marijuana cultivation facility shall be conducted indoors.
 - g) No equipment or process shall be used in any medical marijuana dispensary or medical marijuana cultivation facility which creates noise, dust, vibration, glare, fumes, odors or electrical interference detectable to the normal senses beyond the property boundary.
 - h) A zoning compliance permit shall be required consistent with Section 5:92.
 - i) No more than 72 marijuana plants shall be grown on the premises of any medical marijuana cultivation facility.
 - j) Medical marijuana dispensaries and medical marijuana cultivation facilities shall comply with all other regulations of the zoning district in which the medical marijuana dispensary or medical marijuana cultivation facility is located, except when they are in conflict, in which case this section shall prevail.

- k) ~~Medical marijuana dispensaries and medical marijuana cultivation facilities shall be operated in compliance with the MMMA.~~

(5) Cultivation or other medical use of marijuana as a medical marijuana home occupation in single-family dwellings.

- a) In a single family dwelling in any zoning district, no more than 72 marijuana plants shall be grown on the premises, regardless of the number of registered primary caregivers and/or registered qualifying patients residing in the dwelling. The principal use of the single-family dwelling shall be a residential occupancy and shall be in actual use as such.
- b) A zoning compliance permit shall be required, consistent with Section 5.92.
- c) All other performance standards for home occupations as provided in Section 5:10.2(4)(c) shall be required.

(6) Medical marijuana home occupations are not permitted in multiple-family dwellings and other non-single family dwellings.

(7) Cultivation or other medical use of marijuana in dwelling units when the use is not a medical marijuana home occupation.

- a) In a dwelling unit in any zoning district, where medical use of marijuana is not a medical marijuana home occupation, no more than 12 plants for each registered qualifying patient who resides in the dwelling unit shall be grown.
- b) The principal use of the dwelling unit shall be residential occupancy and shall be in actual use as such.
- c) No equipment or process shall be used in cultivation which creates noise, dust, vibration, glare, fumes, odors or electrical interference detectable to the normal senses beyond the property boundary.
- d) All aspects of the medical use of marijuana shall comply at all times with the provisions of the MMMA.

Section 2. That this Ordinance shall take effect on the sixtieth day following legal publication.

ORDINANCE NO. ORD-11-04

First Reading : March 21, 2011
Public Hearing : April 19, 2011

Approved:
Published:
Effective:

BUSINESSES AND TRADES
(MEDICAL MARIJUANA LICENSES)

AN ORDINANCE TO ADD A NEW CHAPTER 95 TO TITLE VII (BUSINESSES AND TRADES) OF THE CODE OF THE CITY OF ANN ARBOR.

The City of Ann Arbor Ordains:

Section 1. That a new Chapter 95 be added to Title VII of the Code of the City of Ann Arbor to read as follows:

**CHAPTER 95. MEDICAL MARIJUANA LICENSES FOR
MEDICAL MARIJUANA DISPENSARIES**

7:500. Legislative Intent.

The City intends to license and regulate medical marijuana dispensaries to the extent they are permitted under the Michigan Medical Marihuana Act. The City does not intend that licensing and regulation under this chapter be construed as a finding that such businesses are legal under state or federal law. Although some specific uses of marijuana are allowed by the Michigan Medical Marihuana Act, marijuana continues to be classified as a Schedule 1 controlled substance under federal law making it unlawful under federal law to use, manufacture, distribute, or dispense marijuana, or to possess it with intent to manufacture, distribute, or dispense. By requiring a license and compliance with requirements as provided in this chapter, the City intends to protect to the extent possible the public health, safety and welfare of the residents of and visitors to the City, including but not limited to registered qualifying patients, from harm that may result from the activities of persons who unilaterally or on the advice of their own attorney determine that they may legally operate a medical marijuana dispensary.

7:501. Definitions.

Definitions. The following words and phrases shall have the following definitions when used in this section.

- a) Words and Phrases Contained in the Michigan Medical Marihuana Act (“MMMA”), MCL 333.26421 *et seq.* This subsection contains some words and phrases that are defined in the MMMA. As used in this section, they have the same meaning as provided in the MMMA, except that if at any time the definition of a word or phrase set forth below conflicts with the definition in the MMMA, then the definition in the MMMA shall apply. These words and phrases are as follows:
 - i “Department” means the state department of community health.
 - ii “Marihuana” means that term as defined in section 7106 of the public health code, 1978 PA 368, MCL 333.7106.

- iii “Medical use” means the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient’s debilitating medical condition or symptoms associated with the debilitating medical condition.
 - iv “Primary caregiver” means a person who is at least 21 years old and who has agreed to assist with a patient’s medical use of marihuana and who has never been convicted of a felony involving illegal drugs.
 - v “Qualifying patient” means a person who has been diagnosed by a physician as having a debilitating medical condition.
 - vi “Registry identification card” means a document issued by the department that identifies a person as a registered qualifying patient or registered primary caregiver.”
- b) Other Words and Phrases. The words and phrases in this subsection, as used in this section, shall have the following meanings:
- i “Marijuana” means “marihuana” as used in the MMMA.
 - ii “Medical marijuana cultivation facility” means a building or part of a building where marijuana plants are being grown in compliance with the MMMA, other than a medical marijuana home occupation or a dwelling unit in which marijuana is being cultivated for a qualifying patient who resides in the dwelling unit as permitted under subsection (7).
 - iii “Medical marijuana dispensary” means a building or part of a building where one or more primary caregivers operate with the intent to transfer marijuana between primary caregivers and/or qualifying patients, other than a medical marijuana home occupation or a dwelling unit in which the transfer of marijuana occurs between a primary caregiver and qualifying patient who resides in the dwelling unit as permitted under subsection (7).
 - iv “Medical marijuana home occupation” means an accessory use of a nonresidential nature that is conducted by a registered primary caregiver who resides in the dwelling and (A) is performed within a single-family dwelling or within an accessory building to that single-family dwelling; (B) is for the purpose of assisting one or more registered qualifying patients with the medical use of marijuana who do not reside in the dwelling and (C) complies with the MMMA.
 - v “Michigan Medical Marihuana Act” and “MMMA” mean the Michigan Medical Marihuana Act, MCL 333.26421 *et seq.*
 - vi “Authorized person” means:
 - (a) an owner of a medical marijuana dispensary;
 - (b) the directors, officers, members, partners, and individuals of a medical marijuana dispensary that is a corporation, limited liability company, partnership, or sole proprietorship;
 - (c) any person who is in charge of and on the premises of the medical marijuana dispensary during business hours.

7:502. License Required, Number of Licenses Available, Eligibility.

(1) No person shall operate a medical marijuana dispensary at a location for which an annual license as provided for in this chapter has not been issued.

(2) A medical marijuana dispensary shall not be eligible for a license if any person required under this chapter to be named on the application has ever been convicted of a felony involving controlled substances as defined under the Michigan public health code, MCL 333.1101, et seq, the federal law, or the law of any other state.

(3) The license requirement in this chapter applies to all medical marijuana dispensaries that exist on the effective date of this chapter or are established after the effective date of this chapter.

(4) The first year's licenses shall be capped at a number 10% higher than the number of complete applications for licenses submitted to the City in the first 60 days, after the effective date of this chapter, but not more than 20 medical marijuana dispensary licenses shall be issued in the first year and shall be capped at that number. Any license terminated during the license year returns to the City for possible reissuance.

(5) The license requirement set forth in this chapter shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other state or local law.

(6) The issuance of any license pursuant to this chapter does not create an exception, defense or immunity to any person in regard to any potential criminal liability the person may have for the production, distribution or possession of marijuana.

(7) The City Council will establish a Medical Marijuana Licensing Board to consist of one member of Council, one physician, and three other Ann Arbor residents, these are Mayoral appointments. The Board shall annually send to City Council a proposed resolution recommending either approval or rejection of each complete license application. A recommended resolution may set conditions for approval. The conditions may include a waiver by City Council of any provision or provisions of the licensing ordinance, and/or the imposition of a new provision or new provisions, if the public interest so requires. The determination of City Council as to such each application shall be final. The Board will annually review and recommend the licensing criteria, the number of licenses authorized, the license fee structure taking into consideration recommendations from staff, and recommend approval of license applications. While a medical marijuana dispensary shall not be eligible for a license if any person required under this chapter to be named on the application has been convicted of a felony involving controlled substances, evidence that a person required under this chapter to be named on the application has been convicted of any other type of felony, under the law of Michigan, the United States, or another state, may be used by the Board in its determination of whether or not to recommend the issuance of a license to the applicant. Among other things, the Board shall consider whether the substance of the offense would tend to indicate a likelihood that the person would be unable to serve the public in a fair, honest and open manner or to dispense or cultivate marijuana in compliance with the MMMA, whether there is evidence that the person has been rehabilitated, and the age of the conviction.

(8) A license issued under this chapter shall expire one year after the date of issuance. To renew an existing license, the licensee shall submit an application in the same manner as is required to apply for a new license no sooner than ninety (90) days before the expiration date and no later than sixty (60) days before the expiration date.

(9) Medical marijuana home occupations do not require licenses but may register with the City by providing the address of the home occupation and showing the registry number on the registry identification card that the department issued to the registered primary caregiver who is delivering the marijuana.

7:503. General Provisions.

(1) Except as otherwise provided for the amendment of existing licenses, no license issued under this chapter may be transferred or assigned, and no license is valid for any location other than the location specified in the license.

(2) A medical marijuana dispensary license issued by the City under this chapter, including the name and contact information for an authorized person and business manager(s), if any, shall be conspicuously posted in the medical marijuana dispensary where it is easily open to public view.

(3) Acceptance of a license from the City under this chapter constitutes consent by the licensee, owners, managers and employees to permit the city administrator or designee to conduct inspections of the licensed medical marijuana dispensary to ensure compliance with this chapter.

7:504. Application Requirements for New Annual License or Renewal of Existing License; License Requirements for New License and for Renewed License

(1) Application Submission. A medical marijuana dispensary that commenced operation prior to passage of the moratorium by City Council on August 5, 2010, shall have until sixty (60) days after the effective date of this chapter to submit an application for a new annual license. If the medical marijuana dispensary commenced operation prior to passage of the moratorium in a zoning district where its operation is not permitted under the zoning ordinance, the application shall be for a location in a zoning district where operation of a medical marijuana dispensary is permitted under the zoning ordinance. No other applications will be accepted by the City until seventy-five (75) days after the effective date of this chapter. The medical marijuana dispensary may continue to operate pending final action on the application unless the Building Official determines that it must be closed for safety reasons. Within 60 days after an application is denied, the medical marijuana dispensary shall discontinue all operation unless the Building Official determines it must be closed sooner for safety reasons.

(2) Application Requirements for New Licensee. An application for a new annual license for a medical marijuana dispensary shall be submitted to the City Clerk on a form provided by the City for preliminary review by City staff to confirm that the applicant has submitted a complete application, which shall fulfill all of the requirements indicated on the form, including but not limited to:

- (a) If the medical marijuana dispensary commenced operation prior to passage of the moratorium by City Council on August 5, 2010, then proof of the date on which the medical marijuana dispensary commenced operation shall be provided.
- (b) The name and address of the medical marijuana dispensary and any other contact information requested on the application form.

- (c) The name and address of all owners of the real property where the medical marijuana dispensary is located.
 - (d) Name, street address, and other contact information of all owners of the medical marijuana dispensary and, if the owner is a corporation, limited liability company, partnership, or sole proprietor with an assumed name, of all directors, officers, members, partners, and individuals, all of whom are considered collectively to be the applicant for the license.
 - (e) Name and address of all business managers.
 - (f) A statement with respect to each person named on the application whether the person has:
 - (i) Ever been convicted of a felony involving controlled substances as defined under the Michigan public health code, MCL 333.1101, et seq, the federal law, or the law of any other state and, if so, the date of the conviction and the law under which the person was convicted;
 - (ii) Ever been convicted of any other type of felony under the law of Michigan, the United States, or another state, and, if so, the date of the conviction and the law under which the person was convicted.
 - (g) Proof of applicant's ownership ~~or legal possession of the premises~~ or right to legal possession of the premises at a date not later than the date of the issuance of the proposed license to the applicant.
 - (h) A zoning compliance permit that shows the proposed medical marijuana dispensary is located in a zoning district that would permit its operation.
 - (i) A temporary certificate of occupancy that shows the structure for the proposed medical marijuana dispensary meets the requirements of the applicable use group under the Michigan Building Code.
 - (j) Payment of a non-refundable application fee, which shall be determined by resolution of the City Council. Fees for zoning compliance permits and certificates of occupancy shall be separate from the application fee, but shall be the same amount and shall be paid pursuant to the same procedures as applied to applications for zoning compliance permits and certificates of occupancy for other uses.
- (3) Renewal or Amendment of Existing Licenses.
- (a) The same procedures for application for and issuance of a new license shall apply to renewal or the amendment of existing licenses.
 - (b) An application for renewal of an existing license shall be submitted no sooner than 90 days and no later than 60 days ~~10 weeks (70 days)~~ before the existing license expires.
 - (c) An amended application shall be submitted when there is a change in any information the applicant was required to provide in the most recent application on file with the City.

- (d) An application to amend an existing license to change the location of the medical marijuana dispensary shall be submitted no later than 90 days ~~no later than 10 weeks (70 days)~~ before the existing license expires. An application to amend an existing license to change any other information on the most recent application on file with the City may be submitted at any time.
- (e) Applications for renewal or amendment of existing licenses shall be reviewed and granted or denied before applications for new licenses are considered.

(4) License Requirements. Following ~~official confirmation by staff that the applicant has submitted a complete application~~ City Council approval of the issuance of a license, a new license shall not be issued to a medical marijuana dispensary until the applicant for the license complies with all of the following requirements:

- (a) The applicant has a valid and current certificate of occupancy.
- (b) The applicant has installed a sign in a location visible to all persons who enter the premise, which contains the following statement in letters that shall be no less than one inch high:

THE MICHIGAN MEDICAL MARIHUANA ACT ACKNOWLEDGES THAT “ALTHOUGH FEDERAL LAW CURRENTLY PROHIBITS ANY USE OF MARIHUANA EXCEPT UNDER VERY LIMITED CIRCUMSTANCES, STATES ARE NOT REQUIRED TO ENFORCE FEDERAL LAW OR PROSECUTE PEOPLE FOR ENGAGING IN ACTIVITIES PROHIBITED BY FEDERAL LAW. THE LAWS OF ALASKA, CALIFORNIA, COLORADO, HAWAII, MAINE, MONTANA, NEVADA, NEW MEXICO, OREGON, VERMONT, RHODE ISLAND, AND WASHINGTON DO NOT PENALIZE THE MEDICAL USE AND CULTIVATION OF MARIHUANA. MICHIGAN JOINS IN THIS EFFORT FOR THE HEALTH AND WEALTH OF ITS CITIZENS.” SEE, MCL 333.26422(c). IF YOU HAVE ANY QUESTIONS OR CONCERNS PLEASE CONSULT WITH YOUR ATTORNEY.

- (c) The applicant has installed the following security measures on the premises:
 - (i) security cameras to monitor all areas of the licensed premises where persons may gain or attempt to gain access to marijuana or cash. Recordings from security cameras shall be maintained for a minimum of seventy-two hours. The Administrator may adopt regulations implementing this requirement, including but not limited to regulations on the design, location, maintenance, and access to the cameras and recordings. Those regulations shall take effect 30 days after being filed with the City Clerk unless modified or disapproved by the City Council.
 - (ii) A safe for overnight storage of any processed marijuana and cash on the premises, with the safe being incorporated into the building structure or securely attached thereto.
 - (iii) A monitored alarm system.

- (d) The applicant provides the City with a certificate signed by a qualified agent of an insurance company evidencing the existence of valid and effective policies of the following types of insurance, as well as a copy of an endorsement placed on each policy requiring ten days' notice by mail to the City before the insurer may cancel the policy for any reason:
 - (i) Workers' compensation insurance in accordance with Michigan statutory limits and Employers Liability Insurance with a minimum limit of \$100,000 each accident for any employee.
 - (ii) Public liability and personal injury insurance with minimum limits of \$500,000.00 for each occurrence as respect to bodily injury liability or property damage liability, or both combined.

Documentation must explicitly state the following: (a) the policy number; (b) name of insurance company; (c) name and address of the agent or authorized representative; (d) name and address of the insured; (e) location of coverage; (f) policy expiration dates; and (g) specific coverage amounts. An original certificate of insurance may be provided as an initial indication of the required insurance. Applicant shall be required to continue without interruption during the term of the license the above named insurance coverages. If any of the above coverages expire by their terms during the term of a license, the Applicant shall deliver proof of renewal and/or new policies to the city clerk at least ten days prior to the expiration date.

Insurance companies, named insureds and policy forms shall be subject to the approval of the City Attorney, within five business days. Insurance policies shall not contain endorsements or policy conditions which reduce coverage required under the terms of the license.

- (e) The applicant has paid the non-renewable license fee, as determined by resolution of the City Council. Inspection fees shall be separate from the license fee, but shall be the same amount and shall be paid pursuant to the same procedures that apply to inspections for other uses.

(5) Time period within which applicant must comply with license requirements. The applicant shall demonstrate compliance with all requirements for issuance of a license by scheduling a final inspection to obtain a full certificate of occupancy, which shall occur within 8 weeks (56 calendar days) after the date of City staff's official confirmation that the application for a license was complete. All staff pertinent to determining whether the applicant has complied with all license requirements will be present at the final inspection. If it is determined that not all license requirements are satisfied, then the applicant shall schedule another inspection, to occur within 14 calendar days, at which time all license requirements shall be complete. If all requirements are not complete, then the license shall be denied.

7:505. Issuance of License.

If the applicant has successfully demonstrated compliance with all requirements for issuance of a license within 10 weeks (70 calendar days) after the date of ~~City staff's official confirmation that the application for a license was complete~~ City Council's approval of a license, the city administrator or designee shall grant renewal

~~or~~ of an existing or issue a new license for a medical marijuana dispensary to the applicant if a license is available. An applicant who fails to demonstrate compliance with all requirements within the required time period or who is found to have submitted an application that contains any false or incomplete information is not eligible for issuance of a license.

7:506. Conduct of Business at a Medical Marijuana Dispensary.

- (1) All marijuana in any form kept at the location of the medical marijuana dispensary be kept within an enclosed, secured building and shall not be visible from any location outside of the building.
- (2) Medical marijuana dispensaries shall be closed for business, and no sale or other distribution of marijuana in any form shall occur upon the premises or be delivered from the premises, between the hours of 9:00 p.m. and 7:00 a.m.
- (3) No more marijuana than is permitted under the MMMA shall be kept on the premises of a medical marijuana dispensary.
- (4) All marijuana delivered to a registered qualifying patient shall be packaged and labeled as provided in this chapter. The label shall include:
 - (a) a unique alphanumeric identifier for the person to whom it is being delivered;
 - (b) a unique alphanumeric identifier for the registered primary caregiver who is delivering;
 - (c) a unique alphanumeric identifier for the medical marijuana cultivation source of the marijuana;
 - (d) that the package contains marijuana;
 - (e) the date of delivery, weight, and type of marijuana;
 - (f) a certification that all marijuana in any form contained in the package was cultivated, manufactured, and packaged in the state of Michigan;
 - (g) the warning that:

THIS PRODUCT IS MANUFACTURED WITHOUT ANY REGULATORY OVERSIGHT FOR HEALTH, SAFETY OR EFFICACY. THERE MAY BE HEALTH RISKS ASSOCIATED WITH THE INGESTION OR USE OF THIS PRODUCT. USING THIS PRODUCT MAY CAUSE DROWSINESS. DO NOT DRIVE OR OPERATE HEAVY MACHINERY WHILE USING THIS PRODUCT. KEEP THIS PRODUCT OUT OF REACH OF CHILDREN. THIS PRODUCT MAY NOT BE USED IN ANY WAY THAT DOES NOT COMPLY WITH THE MICHIGAN MEDICAL MARIHUANA ACT OR BY ANY PERSON WHO DOES NOT POSSESS A VALID REGISTRY IDENTIFICATION CARD.

- (f) The name of an authorized representative of the medical marijuana dispensary whom a registered qualifying patient can contact with any questions regarding the product, and the address, e-mail address, and telephone number of the medical marijuana dispensary.
- (g) The name, address, e-mail address, and telephone number of at least one governmental or non-profit organization that may be contacted by a registered qualifying patient who has concerns about substance abuse of drugs, including marijuana.

(5) All of the required labeling information, including coded registered qualifying patient information shall be maintained by a medical marijuana dispensary for not less than 30 days after dispensing, and available to any registered qualifying patient complaining of the quality of the marijuana dispensed.

(6) A medical marijuana dispensary shall report all criminal activities to the Ann Arbor Police Department immediately upon discovery.

(7) Pursuant to a complaint, An authorized person shall consent to the entry into a medical marijuana dispensary by the Building Official and zoning inspectors for the purpose of inspection to determine compliance with this chapter pursuant to a notice posted in a conspicuous place on the premises two (2) or more days before the date of the inspection ~~or sent~~ and by first class mail to the address of the premises four (4) or more ~~calendar~~ business days before the date of the inspection.

(8) All security measures required in this chapter shall be maintained in good working order. The premises shall be monitored and secured twenty-four hours per day.

(9) All marijuana in any form provided to registered qualifying patients at or by a medical marijuana dispensary shall have been cultivated, manufactured, and packaged in the state of Michigan.

(10) A medical marijuana dispensary shall keep records of the cultivation source from whom it received marijuana in any form for not less than 60 days after dispensing, and shall make the records available to the City upon request to promote health, safety and welfare or to otherwise verify compliance with this chapter.

7:507. Prohibited Acts.

It shall be unlawful for any person to:

- (a) Violate any provision of this chapter or any condition of an approval granted pursuant to this chapter.
- (b) Produce, distribute or possess more marijuana than allowed by any applicable state or local law.
- (c) Produce, distribute or possess marijuana in violation of this chapter or any other applicable state or local law.
- (d) Make any changes or allow any changes to be made in the operation of the medical marijuana dispensary as represented in the license application, without first notifying the City by amending its application.

- (e) Make any changes or allow any changes to be made to the structure in which the business is operating without applying for and being issued appropriate permits and obtaining final inspection approval.

7:508. License Revocation.

A license issued under this chapter may be suspended or revoked for any of the following violations:

- (1) Any person required to be named on the application of the license is convicted of or found responsible for violating any provision of this chapter;
- (2) The application contains any misrepresentation or omission of any material fact, or false or misleading information, or the applicant has provided the City with any other false or misleading information related to the medical marijuana dispensary;
- (3) Any person required to be named on the application is convicted of a crime which, if it had occurred prior to submittal of the application, could have been cause for denial of the license application;
- (4) Marijuana is dispensed on the business premises in violation of this chapter or any other applicable state or local law, rule or regulation;
- (5) The medical marijuana dispensary is operated or is operating in violation of the specifications of the license application, any conditions of approval by the City or any other applicable state or local law, rule or regulation.
- (6) The City, or the County or the department or any other governmental entity with jurisdiction, has closed the business temporarily or permanently or issued any sanction for failure to comply with health and safety provisions of this chapter or otherwise applicable to the business or any other applicable state or local law.
- (7) The medical marijuana dispensary is determined by the City to have become a public nuisance.

7:509. Revocation Not Exclusive Penalty.

Nothing in this chapter shall be deemed to prohibit the city administrator or designee from imposing other penalties authorized by this code or other ordinance of the city, including filing a public nuisance action or any other legal action in a court of competent jurisdiction.

Section 2. The medical marijuana licensing board shall review the operation of the provisions of this section and recommend changes, if any, to City Council that the board deems appropriate on or before January 31, 2012, or such other date as Council may set by resolution.

Section 3. That this Ordinance shall take effect on the sixtieth day following legal publication.

Appendix II

Meeting Notes



Medical Marijuana Licensing Board

October 26, 2011, 4 – 6 pm

Notes

Present in the room:

Rachel Latvala, caregiver/patient

Dennis Hayes, attorney

Matt Abel, attorney

Christian Davis, dispensary owner (OM of
Medicine)

Chuck Ream, dispensary owner (MedMar)

Dori Edwards, dispensary owner (Treecity)

Rhory Gould (prospective dispensary owner)

Sydney Berger, Michigan Daily

Ben Lamberti, Caregiver

Wendy Rampson, Planning

Kristen Larcom, assistant City Attorney

Stephen Postema, City Attorney

Gene Ragland

Patti O'Rourke

John Rosevear

Jim Kenyon

Introductions and Public Comment:

Denny Hayes stated that he and the City Attorney differed on how to interpret recent court cases; the Licensing Board and the staff would have to make some decisions, and no decisions would be perfect.

Chuck Ream thanked the board for its work.

The Board heard from the City Attorney regarding his current understanding of the law. The City Attorney voiced support for legislation that would allow a local option for dispensaries.

Procedures

The board agreed to meet on November 9 in order to continue the discussion of policies and procedures.

Status of applications

Staff indicated that applications have been received and Staff are evaluating which pieces, if any, are missing from the applications. The staff will forward all applications with notes about which items are incomplete or unavailable, to the licensing board for the November 30th meeting.

Schedule of meetings

The next meetings were scheduled for Wednesday, November 9th at 4 pm. and November 30th, at 4 pm.

Medical Marijuana Licensing Board

November 9, 2011, 4 – 5:30 pm

Notes

Present in the room:

Students from government classes:

Kylan Bennett

Mackinzie Cole

Kaitlyn Price

Andrew Ragheb

Caroline Gallagher

Raymond Ellis

Eileen Belden

Tierney Isaac

Vaughan Epperson

Adam Collins

Jane Radecki

Ben Mente

Dennis Dahlmann

Troy Naylor

Kimberly Aldworth

Jessica Hendrix

Liz Kennedy

Nivetha Samy

Hannah Lee

Diontre Taylor

Ericka Judd

Jalen Burroughs

Maya Russeau

Ahliya Kim

Camero Berga

Keith Lambert – OM of Medicine

Gersh Avery – Cannabis Cancer Project

Rhory Gould - Arborside

Dennis Hayes - Attorney

Kristen Larcom – Assistant City Attorney

Gene Ragland

Patti O'Rourke

John Rosevear

Jim Kenyon

Introductions and Public Comment:

Members of two different government classes attended through the first hour of the meeting. Also present were three representatives of dispensaries and Dennis Hayes, Attorney.

Dennis Hayes spoke about the value of independent boards, and the need to move forward with the process in order to follow the ordinances.

Discussion of procedures:

Members of the licensing board asked Kristen Larcom, the only staff member present, more questions about whether the applications would be presented to the board and whether the board would be able to forward those applications on to Council, given the recent staff decisions that prevent applications from being complete.

Procedures for the Board:

Staff will provide cover sheet information on each application – including those who were denied by staff due to zoning. Staff will include information about whether a zoning compliance permit and other permits would have been issued had the City been issuing such permits.

Staff will not send complete applications to the Board, but will bring all application materials to the meeting. Board members will be able to ask for more information. This protects applicant privacy. The

planning staff will be present at the meeting in order to provide guidance and recommendations. The Board will evaluate applications, based in part on the materials in the application and in part on staff recommendations. The Board, at its discretion, may forward applications to the Council.

Revisions to the Zoning and Licensing Ordinances

Members of the Board remain concerned about conflicts and confusions in the ordinances. The board will make recommendations to the Council regarding the ordinances at a subsequent meeting. Recommendations must be forwarded to the City Council by the end of January.

Next meeting:

Bring ordinance copies. Staff will prepare a checklist for the Board

Medical Marijuana Licensing Board

November 30, 2011, 4 – 6:00 pm

Notes

Present in the room:

Mark Passerini – OM of Medicine

Chuck Ream – Arborside

Dennis Hayes – Attorney

Kristen Larcom – Assistant City Attorney

Jill Thacher – City Planner

Wendy Rampson – Planning Manager

Gene Ragland

Patti O’Rorke

John Rosevear

Jim Kenyon

Sabra Briere

Introductions and Public Comment:

Dennis Hayes spoke about the value of independent boards, and the need to move forward with the process in order to follow the ordinances.

Discussion of procedures:

Members of the licensing board were briefed about what materials were available for review. Staff provided cover sheet information on each application – but did not include those who were denied by staff due to zoning. Staff had all application materials available, which included applications for zoning permits and temporary certificates of occupancy that staff had neither approved nor denied. In staff’s presentation of each application to the Board, staff indicated whether or not the applicant’s dispensary was located in a permissible zone despite having taken no formal action on the zoning permits.

Evaluation of license applications:

Seven (7) applications were presented for review. They were:

Ann Arbor Wellness (321 E. Liberty)

Green Bee (401 S. Maple)

Arborside Consumer Protection (1818 Packard)

OM of Medicine (112 S. Main)

Patient's Resource Center (3820 Varsity Drive)

People's Choice (2251 W. Liberty)

Grasstation (325 W. Liberty)

Three (3) additional applications had been rejected by the staff for zoning compliance issues, which staff denied (Green Planet [700 Tappan St.], TreeCity [1712 S. State St.], and Ann Arbor Health Collective [2330 E. Stadium])

Following Staff’s suggestion, the Board reviewed the seven applications one-at-a-time, starting with

Arborside, which staff felt was complete. The Board informally agreed that it would recommend the application for a license based on finding the applicant had provided proof of pre-moratorium operation and had provided all other materials that it could. The Board did not take a final vote on the Arborside application at that time. The Board then heard staff's presentations on each of the remaining applications, which included staff's view as to the completeness of the application, but determined only whether the Board considered the application to qualify as a pre-moratorium application. The Board found the following applicants submitted compelling proof that they were pre-moratorium dispensaries:

Ann Arbor Wellness (321 E. Liberty)

Green Bee (401 S. Maple)

OM of Medicine (112 S. Main)

People's Choice (2251 W. Liberty)

The Board postponed further discussion on these applications

The Board found Grasstation and Patient's Resource Center (PR Center) (3820 Varsity Drive) had not provided compelling proof of pre-moratorium operation.

Revisions to the Zoning and Licensing Ordinances

Members of the Board agreed to discuss conflicts and confusions in the ordinances.

Recommendations for fees, ordinance changes and licenses must be forwarded to the City Council by the end of January.

Medical Marijuana Licensing Board

*December 14, 2011, 4 - 6:00 pm
Notes*

Present in the room:

Dennis Hayes – Attorney

Mike McLeod

Melanie McLeod

Garth Bolgos

Keith Lambert

Mark Micalley

Kristen Larcom – Assistant City Attorney

Jill Thacher – City Planner

Wendy Rampson – Planning Manager

Gene Ragland

Patti O’Rorke

John Rosevear

Jim Kenyon

Sabra Briere

Introductions and Public Comment:

Garth Bolgos spoke about his application for a pre-moratorium license. Denny Hayes emphasized the Board’s role in recommending changes to the ordinances and in the licensing process.

Discussion of procedures:

Staff brought completed application packets for each Board member’s review. Board members were required to return the packets at the end of the meeting.

Evaluation of license applications:

Board members reviewed license applications, first to determine whether the dispensary application reflected a pre- or a post-moratorium establishment of the dispensary, and second to discuss whether all the necessary application materials were in hand.

Next meeting:

Bring ordinances. Discussion of the ordinance amendments will be a significant part of the meeting. All applications should be complete prior to January 18th.

Medical Marijuana Licensing Board

January 18, 2012, 4 – 6:00 pm
Notes

Present in the room:

Dennis Hayes – Attorney
Mike McLeod, Green Planet
Melanie McLeod, Green Planet
Garth Bolgos, Medical Grass Station
Leslie Bolgos, Medical Grass Station
Chuck Ream, Medmar at Arborside
Amanda Joslin
Mark Passerini, OM of Medicine

Kristen Larcom – Assistant City Attorney
Jill Thacher – City Planner
Wendy Rampson – Planning Manager

Gene Ragland
Patti O’Rorke
John Rosevear
Jim Kenyon
Sabra Briere

Introductions and public comment:

Mike McLeod from Green Planet asked the Board to review his application for completeness. The Board confirmed that they had not seen the application because the staff determined that it was in the wrong zone. Staff members were asked to bring all completed applications that won their ZBA appeals to the meeting on January 31. The Board also requested that staff would work with any applicant to ensure that the application was complete prior to that January 31st meeting.

Evaluation of license applications

The Board further reviewed the pre-moratorium dispensaries’ applications for completeness. Patient’s Resource Center was added based on staff information that it had been located in the City and Board found it had provided compelling proof of pre-moratorium operation. Ann Arbor Health Collective also added and found pre-moratorium due to move from Stadium location (not allowed by zoning) to location with proper zoning on Packard. Completeness was informally noted on the record and incomplete applications were postponed to last meeting on 1/31/12 for applicant to provide missing materials.

Complete applications include:

OM of Medicine
Medmar
People’s Choice
Ann Arbor Wellness Collective
Ann Arbor Health Collective
The PR Center.

ZBA appeals of denial of zoning compliance permits by Green Planet and TreeCity still pending and Greenbee Collective needs to resolve the number of parking spaces in order to fit the zoning; the Medical Grass Station will be considered as a post-moratorium dispensary.

Revisions to the Zoning and Licensing Ordinances

Members of the Board discussed proposed amendments to the zoning and licensing ordinances. Sabra Briere agreed to draft the amendments, based on Board’s discussions. During discussion, Patti O’Rorke identified a particular portion of the licensing ordinance – that building inspectors be allowed into the

building after providing notice. Staff stated that they would research similar requirements in ordinances, and provide that information to the board.

Medical Marijuana Licensing Board

January 31, 2012, 4 – 6:00 pm
Notes

Present in the room:

Dave Askins, Ann Arbor Chronicle

Dennis Hayes, Attorney

Amanda Joslin, Ann Arbor Health Collective

Chuck Ream, Arborside

Dori Edwards, Treecity Health Collective

Garth Bolgos, The Medical Grass Station

Mark Passerini, the OM of Medicine

Melanie McLeod, Green Planet

Michael McLeod, Green Planet

Kristen Larcom – Assistant City Attorney

Jill Thacher – City Planner

Gene Ragland

Patti O'Rorke

John Rosevear

Jim Kenyon

Sabra Briere

Introductions and public comment:

Mike McLeod from Green Planet spoke about the successful appeal to the Zoning Board of Appeals. Dori Edwards informed the Board that Treecity would be moving, and affirmed her desire that the Board would consider the license application on the expectation that Treecity would be in the correct zoning district before the Council reviewed the Board's recommendations.

Evaluation of license applications

Assistant City Attorney reminded Board that all recommendations to Council to issue license were with understanding that staff did not issue zoning compliance permits or temporary c/o's for any dispensary due to concerns of legality and that City Attorney would advise Council further.

Sabra Briere had asked that the application from Treecity, as well as all other pending applications, be available for the meeting. Licensing Board members agreed to consider Treecity's application as well as the one from Green Planet. Licensing Board members discussed both applications as well as the applications from Greenbee Collective and the Medical Grass Station. Jim Kenyon moved, with Patti O'Rorke's second, that the Board make the following recommendations for Medical Marijuana Dispensary licenses on the ten applications the City had received:

For approval without conditions based on finding application complete:

Medmar

OM of Medicine

People's Choice

Ann Arbor Wellness Collective

Ann Arbor Health Collective

PR Center

Green Planet

For approval with conditions based on finding application complete if conditions specified are met by time they go to Council:

Greenbee Collective (inadequate parking per zoning; will need to move or obtain sufficient parking – has 8, needs 14)

Treecity (will need to submit all missing portions of the application and move to a zoning district that

allows Medical Marijuana Dispensaries)

For a post-moratorium license:

Medical Grass Station

Revisions to the Zoning and Licensing Ordinances

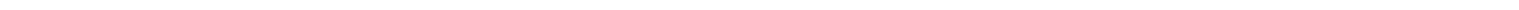
Members of the Board discussed proposed amendments to the zoning and licensing ordinances. Sabra Briere drafted these amendments, based on previous meeting discussions. Board members discussed each potential amendment and agreed as to content on which amendments would be forwarded to the City Council for consideration.

Recommended licensing fee

After some discussion, the Board recommended that licensing fees be set at \$1,100 for the initial fee, and \$350 for each subsequent (renewed) license.

Appendix III

Press coverage



Officials discuss city's pot licensing

By [Sydney Berger](#), For the Daily
Published October 27, 2011

Though the Ann Arbor's Medical Marijuana Licensing Board has received at least 10 medical marijuana dispensary applications since August, it has yet to grant any licenses. In its second meeting, the board met in the conference room of Ann Arbor City Hall yesterday to discuss the implications and amendments to the [licensing and zoning medical marijuana ordinances](#) that were passed in June.

City Attorney Stephen Postema said at the meeting that the board is still discussing the legality of the dispensaries' actions. The city doesn't want to halt the application process, but would like a thorough discussion before making any decisions, he said.

"There are aspects of the dispensary model that certainly make sense," Postema said. "Again, it is a big square peg trying to fit in the small round hole of this statute. I want to disabuse anybody of the notion that the staff here is working hard to prevent things."

The dispensaries that opened before the city's temporary moratorium — that went into effect in August 2010 and preceded the ordinance — are encouraged to apply before others, though they are not guaranteed licenses, Postema added.

The board members also discussed their concerns with the zoning districts laid out in the ordinance. Despite the city's compliance with state regulations on medical marijuana, the state leaves zoning up to local governments. He added that there will continue to be higher level discussions surrounding the city's ordinances and the state's Michigan Medical Marihuana Act, which made medical marijuana legal for registered patients in 2008.

Postema said he is committed to enforcing legislation, but added that he is "distressed" with some of the inefficiencies he has seen in the state law.

"The city is in a difficult position because when you think about it, the act of licensing and using the government to license something raises some problematic issues for us," he said. "I know it is a disappointment, and I am not here to apologize for the law. The law is imperfect, and the law can be changed and I would encourage the law to be changed."

City Council member Sabra Briere (D-Ward 1) — a supporter of the ordinance — said in an interview after the meeting that the changes in policy over the past few months have caused confusion among board members regarding state and city medical marijuana regulations.

"The most interesting thing to me was the endorsement of a local option for dispensaries — a change in the state law to create that local option," Briere said. "Because if that local option were to pass at the state level ... we in Ann Arbor, and governments in Lansing and Ypsilanti, and any of the communities around the state that have passed local licensing or zoning ordinances, are going to be able to figure out what the heck they're doing." She added the confusion stems from the fact that the city usually looks to federal and state legislation when writing new laws.

"The problem is that every metaphor relies on higher government legislation and the higher government has no word on dispensaries," Briere said. "In the zoning ordinance, unless it's specifically allowed, the distribution of medical marijuana is prohibited."

Jim Kenyon, a medical marijuana patient appointed to the city's Medical Marijuana Advisory Board, said during the meeting he

appreciated that Postema attended the meeting to hear the concerns of medical marijuana advocates.

"We need to find a way that gets through this with the least carnage, and that's most expedient and lets us live our gentle bohemian state lives in Ann Arbor," Kenyon said.

Correction appended: A previous version of this article misidentified who spoke about higher government legislation. It was Sabra Briere. The article also incorrectly stated there are inefficiencies with the city's statues.

The difficulty with dispensaries

THE MICHIGAN DAILY

By Adam Rubenfire On November 29th, 2011

Chuck Ream was not happy when the Michigan State Police's Livingston and Washtenaw Narcotics Enforcement Team raided his Arborside medical marijuana dispensary on Aug. 25.

"They've come into our dispensary ... and taken — stolen — all of our medicine, all of our records," said Ream, who was president of the dispensary, located on 1818 Packard Street. The raid came one day after a state appellate court in Isabella County ruled that dispensaries are not authorized to sell marijuana under the Michigan Medical Marihuana Act, which voters passed in 2008. Lt. Jerry Cooley, a spokesman for LАWNET, denied that the raids were connected to the appellate court's ruling, saying that the raids were related to "previous investigations" of dispensaries in Ann Arbor. Some dispensaries in the city shut down for a brief period after the court's ruling. Since the raid on Arborside, new owners have taken over the dispensary, which was previously called MedMar.

"The last owner was wiped out by a theft. A raid by masked gunmen wiped him out," Ream said. "He is a family man, with a wife and kids, and he has been really hurt by these outrageous attacks."

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State Attorney General Bill Schuette supported the Isabella County prosecutors, and he released a statement following the ruling that said his

office would assist other municipalities in shutting down dispensaries in their area. Ream criticized Schuette for his actions regarding the Michigan Medical Marihuana Act, calling his role in enforcing and implementing the act an "atrocitу."

"His goal is to defeat the voters," Ream said. "He has no respect for the voters, no respect for medical cannabis, and even though the voters voted 63 percent for it, it makes no difference to him."

Several interview requests for this article were not returned by Schuette's office.

Ream said that Schuette wants the state's medical marijuana act to be "invalidated as unconstitutional."

"If you don't have dispensaries, you can't have the range of products to take care of the needs of (medical marijuana) patients that are out there," Ream said. "Schuette is supposed to enforce and implement the law, and in this case, he is trying to destroy (it)."

Ann Arbor City Council member Sabra Briere (D-Ward 1) recently attended a seminar led by Schuette that was intended to educate law enforcement agencies and local government officials on how to implement and enforce the Michigan Medical Marihuana Act. However, she said the seminar didn't serve its purpose.

"The presentation I went to didn't deal with implementation at all," Briere said. "(It) didn't provide information to me that would help with

understanding the impact of the medical marijuana act on local governments.”

She said the session focused on how to deal with citizens who were not abiding by the terms of the medical marijuana act.

When asked whether she thought Schuette had the best interests of Michigan citizens in mind, Briere said that was a question for the attorney general himself.

“I think he thinks he does,” Briere said. “People can only act on what they believe to be right.”

Briere noted that Schuette is advising municipal prosecutors and law enforcement agencies with a legal opinion that may be inconclusive.

“At this point, prosecutors and the attorney general are all interpreting the court’s decisions in the most broad, rather than most narrow, way possible,” Briere said.

She said she thinks it’s an issue that officials interpret the court ruling to deem the sale of medical marijuana illegal. According to section 4 (e) of the Michigan Medical Marijuana Act, registered caregivers “may receive compensation for costs associated with assisting a registered qualifying patient in the medical use of marijuana.”

This section of the law gave prospective dispensary owners enough leeway to open their businesses after the act was passed. However, the act goes on to say that a transaction does not constitute the sale of the substance. The apparent conflict was the center of the Isabella County ruling, which ultimately upheld the latter section of the law.

Briere agreed with Ream that Schuette’s interpretation of the ruling is at conflict with the results of the November 2008 ballot initiative that passed referendum that passed to become state law.

“I feel that it is in some people’s best interest to interpret everything very narrowly, and that best interest is not necessarily the best interest of the large majority of Michigan residents who said ‘allow medical marijuana,’ ” Briere said.

Stephen Postema, the city attorney for Ann Arbor, has offered to assist in pushing for a local control law at the state level.

At an Oct. 26 meeting of Ann Arbor’s Medical Marijuana Licensing Board, Postema said the ambiguities in state law make it difficult for the city to issue licensing ordinances with legal authority.

“The city is in a difficult position, because when you think about it, the act of licensing and using the government to license something raises some problematic issues for us,” he said. “I know it is a disappointment, and I am not here to apologize for the law.

“The law is imperfect, and the law can be changed and I would encourage the law to be changed.”

In June, the Ann Arbor City Council [passed two ordinances](#) focusing on medical marijuana zoning and cultivation regulations to be implemented citywide. The passage came after the two ordinances were repeatedly postponed over a period of seven months.

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A*nn Arbor resident Ben Ogren, a medical marijuana cardholder, said he grows his own marijuana and finds dispensaries “expensive.”*

Ogren uses medical marijuana to alleviate symptoms he experiences from sinus infections. Ogren said dispensaries have an important role in aiding patients who may need guidance in deciding what products are appropriate for their specific condition.

He said they also are an attractive model for municipalities because they have been suggested to alleviate crime by removing some drug dealers from city streets. Dispensaries offer a safe, clean, secluded area where patients who don’t grow their own cannabis can get the help they need and be assured they are buying products that are safe and of appropriate potency, he explained.

“Plain and simple, they’re bringing money into their town,” Ogren said. “People are driving from all over the state to come to dispensaries that are here.”

Ogren said marijuana users have always used the drug to deal with problems such as anxiety or stress, even though the idea of legalizing medical marijuana is relatively new.

“The doctors are just kind of ushering it in as, like, being socially acceptable, I guess,” Ogren said.

Though members of Ann Arbor's Medical Marijuana Licensing Board will continue to meet, the future of the city's dispensaries is

unclear. Ream said state lawmakers are working to draft a local control law that will help cities implement the state law, but no legislation has been voted on as of yet. Further action by the attorney general could complicate the already convoluted legal conflict.

the ann arbor chronicle

it's like being there
Ann Arbor, Michigan

Medical Marijuana Board Straw Poll: Yes Ann Arbor licensing board reviews 7 of 10 applications, votes on 1

By Dave Askins

December 2, 2011 at 3 pm

On Wednesday, Nov. 30, 2011, the medical marijuana licensing board in Ann Arbor, Mich., took something like a straw poll on a recommendation that the city award its first dispensary license – to MedMarx at Arborside Compassion, located at 1818 Packard St.

The form of the poll strongly resembled a vote by the board to recommend the dispensary for a license, leading some observers to conclude that the recommendation had been made. But a subsequent email from board member Sabra Briere indicated the board had voted that it “*would have* recommended MedMarx for a license, if they were making recommendations at that meeting.” Once the board takes a formal vote on the recommendations that it wants to make to the city council, the city council will still need to vote as well, in order for the license to be awarded.



Ann Arbor medical marijuana licensing board members (left to right): John Rosevear, Gene Ragland and James Kenyon. They're perusing a letter from MedMarx at Arborside Compassion to the city of Ann Arbor, stating the dispensary's position on its compliance with the Michigan Medical Marijuana Act. (Photos by the writer.)

Ann Arbor's medical marijuana licensing board was established as part of an ordinance regulating licenses for medical marijuana dispensaries, enacted by the city council on June 20, 2011.

The licensing ordinance was enacted at the same time as a zoning ordinance, which regulates where such businesses can be located in the city. The two pieces of legislation were enacted after more than a year of consideration and deliberations by members of the city council.

On Wednesday, the board considered seven out of a total of 10 license applications that had been submitted to the city. The remaining three are for businesses located in areas not zoned for medical marijuana businesses. However, at least two of those intend to ask for a review of the city's decision to deny a zoning compliance permit (required as part of the license application) by the city's zoning board of appeals (ZBA).

Besides the one application on which the board voted, four of the other six applications were determined to have met the requirement demonstrating that they were in operation before the council enacted a moratorium. That moratorium was established on Aug. 5, 2010 and prohibited establishment of any additional medical marijuana businesses in the city.

The board's work on Nov. 30 came as attitudes on medical marijuana nationally, at the state level and locally are in flux. Nov. 30 was the same day that governors from the states of Washington and Rhode Island signed a petition appealing to the federal Drug Enforcement Administration to reclassify marijuana as a drug having medical uses.

And the licensing board meeting came at the conclusion of a series of day-long seminars in different Michigan cities given on Nov. 16, 17, 29, and 30 by staff of Michigan State Attorney General Bill Schuette on how to enforce the Michigan Medical Marijuana Act. The seminars included the case law that has evolved – including the McQueen case, in which a Michigan court of appeals found that at least one business model for operating a dispensary is not consistent with the MMMA.

According to a report from The Saginaw News, Schuette's "Clearing the Air" seminars were closed to the press. The materials provided at the seminars include a range of legal tools the attorney general believes can be used to prevent medical marijuana dispensaries from doing business. One of those tools is to apply laws on public nuisances to such businesses.

The city of Ann Arbor has sent cease-and-desist letters to medical marijuana dispensaries in the city threatening to take action against them as public nuisances. Cease-and-desist letters were received by a business as recently as Nov. 8.

During public commentary at the licensing board meeting, local attorney Dennis Hayes noted a disconnect between (1) letters sent by Ann Arbor city attorney Stephen Postema to businesses threatening to shut them down, and (2) a licensing board that is implementing the new city ordinance on allocating licenses to medical marijuana

businesses. Hayes described the situation as the "right hand doing something very different from the left hand." Hayes encouraged the licensing board to move its "right foot to drag the left foot along."

The board's next scheduled meeting is Dec. 14 at 4 p.m.

Brief Background

The Michigan Medical Marijuana Act was enacted by statewide voter referendum in 2008.

The Ann Arbor city council enacted zoning and licensing requirements for medical marijuana businesses on June 20, 2011. That came after more than a year's consideration of the issue by city councilmembers. That consideration included a moratorium on the future use of property inside the city for cultivation facilities or dispensaries, which was imposed on Aug. 5, 2010, for a period of 120 days. The moratorium was extended several times in the course of the council's work.

On Aug. 23, 2011, two months after the enactment of Ann Arbor's local legislation, a Michigan court of appeals ruled on the McQueen case in a way that has been interpreted by many authorities to mean that medical marijuana dispensaries are not legal. [.pdf of the McQueen case ruling]

Undeterred by the court ruling, at its Sept. 6, 2011 meeting, the Ann Arbor city council confirmed appointments to the city's medical marijuana licensing board.

But the McQueen case still had an impact in Ann Arbor. Wendy Rampson – head of the city's planning staff – told city planning commissioners at their Sept. 8, 2011 meeting that applicants for licenses were welcome to submit information to the city in connection with license applications, but that staff had ceased their review activity pending further direction.

Already on July 1, the city had sent a letter to known dispensaries demanding that they provide proof of operation before the Aug. 5, 2010 moratorium. [.pdf of July 1 letter] The issue is important because the licensing ordinance distinguishes between businesses in operation

before the moratorium (and allowed to continue operations during the moratorium) and those not in operation before the moratorium. The ordinance gives priority to those dispensaries that had pre-moratorium operations. The number of licenses to be issued by the city is also contingent on the number of applications submitted to the city by pre-moratorium businesses.

An affidavit was not considered adequate proof of pre-moratorium operations, and the city sent follow-up letters asking for “specific proof” of operation before the moratorium. [.pdf of follow-up to July 1 letter]

By Sept. 30, the city staff’s position had evolved to include a requirement that license applicants would need to provide a statement explaining how their business conformed with the Michigan Medical Marijuana Act, including the McQueen case, as part of an application for a zoning compliance permit. A zoning compliance permit is a requirement for a license. [.pdf of Sept. 30 letter]

By Oct. 18, the city had made explicit on its webpage on medical marijuana that an application for a medical marijuana dispensary license needed only to include an *application* for a zoning compliance permit and an *application* for a re-occupation permit, not the permits themselves.

Dating from mid-August 2011, an apparent point of tension between the city staff and the licensing board concerned whose purview it was to determine the completeness of an application with respect to specific pieces of information. Based on the Nov. 30 meeting of the licensing board, weighing the evidence of pre-moratorium operations became an issue determined by the board, not city staff. But applications from dispensaries in areas of the city not zoned for medical marijuana dispensaries were not put before the board for its review.

Much of the board’s Nov. 30 discussion was framed by the specific points of application requirements as listed out in the ordinance:

7:504. Application requirements for new annual license or renewal of existing license; license

requirements for new license and for renewed license.

2. Application Requirements for New Licensee. An application for a new annual license for a medical marijuana dispensary shall be submitted to the City Clerk on a form provided by the City for preliminary review by City staff to confirm that the applicant has submitted a complete application, which shall fulfill all of the requirements indicated on the form, including but not limited to:
 - (a) If the medical marijuana dispensary commenced operation prior to passage of the moratorium by City Council on August 5, 2010, then proof of the date on which the medical marijuana dispensary commenced operation shall be provided.
 - (b) The name and address of the medical marijuana dispensary and any other contact information requested on the application form.
 - (c) The name and address of all owners of the real property where the medical marijuana dispensary is located.
 - (d) Name, street address, and other contact information of all owners of the medical marijuana dispensary and, if the owner is a corporation, limited liability company, partnership, or sole proprietor with an assumed name, of all directors, officers, members, partners, and individuals, all of whom are considered collectively to be the applicant for the license.
 - (e) Name and address of all business managers.
 - (f) A statement with respect to each person named on the application whether the person has:
 - (i) Ever been convicted of a felony involving controlled substances as defined under the Michigan Public Health Code, MCL 333.1101, et seq., the federal law, or the law of any other state and, if so, the date

of the conviction and the law under which the person was convicted;

- (ii) Ever been convicted of any other type of felony under the law of Michigan, the United States, or another state, and, if so, the date of the conviction and the law under which the person was convicted.
- (g) Proof of applicant's ownership or legal possession of the premises.
- (h) A zoning compliance permit that shows the proposed medical marijuana dispensary is located in a zoning district that would permit its operation.
- (i) A temporary certificate of occupancy that shows the structure for the proposed medical marijuana dispensary meets the requirements of the applicable use group under the Michigan Building Code.
- (j) Payment of a non-refundable application fee, which shall be determined by resolution of the City Council. Fees for zoning compliance permits and certificates of occupancy shall be separate from the application fee, but shall be the same amount and shall be paid pursuant to the same procedures as applied to applications for zoning compliance permits and certificates of occupancy for other uses.

Public Commentary

The Nov. 30 meeting began with an opportunity for public participation.

Local attorney **Dennis Hayes** indicated that a number of dispensaries have applications on file with the city's zoning board of appeals (ZBA) because they've been turned down by the planning department for a zoning compliance permit. Part of the procedures for filing an appeal with the ZBA is a meeting with city staff, he said.



Left to right: Dennis Hayes (standing), Mark Passerini, and Chuck Ream.

So far, Hayes contended, the city has been reluctant to set up meetings.

Later during the licensing board meeting, in response to a question from board member Gene Ragland, city planning manager Wendy Rampson said that of the three excluded applications, two were located in office (O) zoning districts, one was in a planned unit development (PUD) zoning district – in a building where retail was not allowed, according to the PUD. She said that of the seven applications being reviewed by the board, all meet the zoning requirements. One doesn't have adequate parking. The standard is one off-street parking space per 310 square feet, Rampson said, noting that parking requirements are not a function of zoning, but of a property's use. If the business is in the Ann Arbor Downtown Development Authority district, it's exempt from parking requirements, she said.

During his public commentary, Hayes said all the people whose businesses are in areas not zoned for medical marijuana dispensaries believe they have claims to a non-conforming use. The procedure to appeal the city's decision not to grant a zoning compliance permit is through the ZBA. Hayes said he feared substantial additional delays, because the ZBA meets only once a month.

Hayes asked the licensing board to move its “right foot to drag the left foot along.” People currently serving patients are in “ZBA limbo” for the time being, he said. If the ZBA were to accept the non-conforming use, then those dispensaries would be “back in the licensing line.”

Hayes noted that there have been a number of letters sent to cease and desist from doing business – on the assumption that those businesses are in violation of the McQueen decision, even to businesses that are appropriately zoned. A lot of effort on the city’s part has been put into preventing people from applying for licensing, Hayes said. He characterized it as the right hand doing something very different from the left hand.

Rhory Gould reported that the city staff member responsible for issuing certificates of occupancy (COO) said he’s not allowed to issue a certificate to any dispensary. Yet Gould observed that having a COO is a requirement for applying for a license. Licensing board member Patricia O’Rorke assured him: “We get it.” [The city’s position is that an application for the COO, not the COO itself, is what’s required for the dispensary license application.]

Preliminary Board Discussion

Sabra Briere is the city councilmember representative to the five-member licensing board. She acknowledged the difficulty of the task for evaluating the applications by saying, “I’d like to drag us into what we’re going to try to accomplish today.” There are problems in trying to move forward smoothly, she allowed, but said, “We’re going to move forward.”

Briere noted that there were seven applications present in the room, but board members had before them just a staff summary of each application. [Three city staff attended the meeting: City planning manager Wendy Rampson, city planner Jill Thacher, and assistant city attorney Kristen Larcom.] That was an effort to honor the confidentiality of information included in the applications, Briere said. She noted that board members could ask questions and get clarification from staff.

Asked if city staff could tell the board if staff would have recommended approval of an application, Rampson answered no. To create the staff report, she said, staff went through the applications and indicated whether the applications met the requirements for completeness. Thacher put together the staff summary – but here’s no recommendation on approval, Rampson said.



Assistant city attorney Kristen Larcom and medical marijuana licensing board member John Rosevear share a light moment before the Nov. 30 meeting started.

Thacher clarified that there were a total of 10 applications – seven are summarized and evaluated with respect to zoning. The other three were turned down, because the zoning compliance certification was turned down. Thacher said she’d talked to representatives for two of the three rejected applications, and they’d indicated they were going to appeal through the ZBA.

Briere drew out the fact that the cost to appeal is \$500. Board member John Rosevear asked what the basis is for the \$500 fee. Briere noted that this is the standard ZBA filing fee. Rampson explained that the fee covers the city’s costs in processing the appeal, which includes a mailing to nearby property owners notifying them of the appeal.

Licensing board member James Kenyon clarified with Thacher that just because the staff report indicates the requested information has been provided in an application doesn’t mean it’s passed

muster, just that there's enough information to decide.

Briere asked why staff didn't evaluate whether an application passed muster on a particular point, if everything was complete? Thacher told Briere that Thacher's understanding was that planning staff members were not doing that evaluation on their own and that staff would not express their opinion. Briere ventured that it was a matter of fact, not opinion. Thacher indicated it was not as straightforward as that. For example, on the issue of determining whether a dispensary was in operation before the Aug. 5, 2010 moratorium, Thacher said, a variety of different kinds of proof were presented by applicants that they were in business before Aug. 5.

MedMarx at Arborside Compassion

The board considered MedMarx at Arborside Compassion first, because licensing board member James Kenyon asked if there might be one application that would give the board a "smooth first look." Thacher indicated that two applications were more complete than others. First up was MedMarx at Arborside Compassion – known as Arborside, and located at 1818 Packard just south of Stadium Boulevard. The site is zoned commercial (C1) and the business is not proposed to be a cultivation facility, Thacher noted. Cultivation facilities are not a part of the licensing program – that's a zoning issue, provided only as background, Thacher said.

MedMarx at Arborside Compassion: Pre-Moratorium Status

The board first considered the ordinance requirement under Section 7:504(2)(a): proof of operation before the council established the moratorium on Aug. 5, 2010.

Thacher said it's the one item that applicants in general had submitted the most information on, and that of those applications, Arborside was one of the most voluminous, she said.



City planner Jill Thacher shows licensing board members what some of the supporting application materials looked like.

Licensing board member Patricia O'Rourke asked if each piece of evidence submitted was to be considered adequate on its own. Thacher indicated that, no, they're all "pieces of puzzle." Asked if there were guidelines, Thacher said there were not. She told licensing board members that they would see that some pieces of documentation offered as evidence of being in business before the moratorium date were supportive, but others were not.

Kenyon ventured that the board was not faced with a situation as straightforward as the criteria for the I-9 Employment Eligibility Form. [That form includes three lists of specific kinds of supporting documents (A, B, and C) and a complete form must include a document from list A, or else two documents – one from list B and one from list C.]

Thacher agreed with Kenyon's assessment, saying the board would see a range of different documents, from the minimal – affidavits – to more robust information. Thacher indicated she'd asked for additional clarification from four dispensaries over the last two weeks about information they'd submitted.

Arborside had submitted an affidavit from its president and director, Thacher said. She drew the distinction between an affidavit – a signed sworn statement that's notarized – and a written

statement. Also included were statements from four Arborside employees indicating pre-moratorium dates of employment. Some payroll records had also been submitted.

Sabra Briere focused on the affidavits. Is that not considered sufficient by itself? Thacher told Briere the city had asked for more proof than that. Thacher said the city had asked for an affidavit and had sent out a sample affidavit for people to use.

Thacher then reviewed a timeline of city communications to dispensaries, dating from the approval of the medical marijuana licensing ordinance on June 20, 2011. The first step, she said, was to try to figure out who was in operation before the Aug. 5, 2010 moratorium. The city sent letters to those it knew were in operation, and asked for evidence they were in operation before Aug. 5. That's because there are two application processes – one for pre-moratorium businesses, and one for post-moratorium businesses. Later, on Sept. 30, an additional letter was sent saying that in light of the McQueen case, the city requested a statement from dispensaries explaining how the dispensary complied with the Michigan Medical Marijuana Act. Letters were sent to seven dispensaries, but the city received a response only from one, she said.

The statements from employees of Arborside on Packard, Thacher said, were on letterhead and stated that they were employees before the moratorium.



Assistant city attorney Kristen Larcom and Chuck Ream talk after the licensing board meeting.

The payroll records, Thacher said, were hard to evaluate – yes, they looked like payroll records. O'Rourke asked what would constitute proof. Briere noted that after this first year, it won't even matter – the issue of pre- and post-moratorium is relevant only to the first year's licensing cycle.

Kenyon wondered what any other businesses would use to demonstrate they were in operation – quarterly tax filings? Briere observed that taxes could be filed without having a payroll. From the audience, Chuck Ream ventured that a lease would be evidence. Briere told Ream that a lease just shows access to a building – it doesn't show you're in business.

Continuing with information submitted by Arborside, Thacher ticked through other documentation meant to establish that Arborside was in operation before Aug. 5, 2010: a waiver from a contractor; a Chase checking account statement from July 13, 2010; an undated application for workers compensation insurance; an email from a commercial broker about a lease term; an April 22, 2010 lease agreement; a building inspection notice and building permit for work on the building; articles of incorporation dated June 18, 2010; and an IRS tax ID number.

Kenyon asked if there were more applicants than fit the slots for pre-moratorium businesses. Briere

said that if there were only seven applications, then no. Kenyon ventured that the issue of pre-moratorium operation was moot. Thacher told Kenyon she felt he wouldn't think it's moot, when the board considered some of the other applications.

Weighing the documentation Arborside had provided, Kenyon said it might not establish beyond a reasonable doubt in a court of law that it was in operation as a medical marijuana dispensary before the moratorium – the business could have been selling matchbox cars versus dispensing. But he concluded that “it sure looks like it was in business.” Thacher then indicated that Arborside had also submitted a handwritten ledger of dispensing.

Briere noted that Kenyon's question about the pre-versus post-moratorium status of businesses relates to the total number of licenses that would be granted by the city. The number of license applications from pre-moratorium businesses sets the number of total licenses available.

About Arborside, Kenyon asked: “So does this one look reasonable?” Thacher indicated yes, and it was somewhat easier to evaluate, because the city staff had known about this dispensary before the moratorium.

Briere indicated that she would accept the following as proof: the affidavits, the dispensing records, and at least one other piece of information. She said the board might discuss whether that third piece of information could be the payroll records. “Does that seem like a reasonable threshold?” she asked her board colleagues.

Gene Ragland wondered what the consequence is of signing a false affidavit. Assistant city attorney Kristen Larcom told Ragland: “Not much.” She allowed that the city could revoke the license. But the penalty for a false affidavit per se is not like making a false statement under oath in court. Larcom went on to state that it's hard to say what proves anything – the city had created an affidavit template as a suggestion, but was not necessarily saying that's enough. Larcom said that staff did not assume people are going to be dishonest, but staff

would like to see more evidence beyond the affidavit. It's up to the licensing board to decide whether the documentation is sufficient to make the recommendation for granting a license, Larcom said.

Kenyon ventured that if city staff knew about Arborside before the moratorium, that seemed reasonable. Briere noted that the goal was to find objective criteria.

O'Rorke wondered if the way they were discussing Arborside was an example of how the board would eventually discuss applications. Briere clarified: “We're doing it now.”

Kenyon agreed with the three-point assertion Briere had made about why she felt Arborside had adequately documented it was in operation before the moratorium.

MedMarx at Arborside Compassion: Other Application Requirements

Thacher continued with other points of the application: Section 7:504(2)(b) name and address of dispensary and contact information – yes; Section 7:504(2)(c) name address of property owners – yes.

For Section 7:504(2)(d) – the names of all owners of the business including all directors and officers of an LLC, Thacher said, “This tripped up quite a few people.”

Based on board and staff discussion, the ownership of Arborside had apparently changed. Kenyon wanted to know if the pre-moratorium status of a business could be transferred to the new owners of a business? He also wanted to know if the sale was an administrative sale – with the same principals – or if there were new parties involved.

Briere asked Rampson to put it in the context of a proposed development: If someone were applying for a zoning or building permit, would the transfer of ownership matter? Rampson ventured that a rough analogy might relate to the legal authority of someone to sign a development agreement being contingent on ownership or control of land. But Rampson brought the focus to the rationale for wanting names of all business owners. She noted

that the reason for the requirement is to find out if someone who is associated with the business has a felony conviction.

Continuing through the list of items that Arborside had submitted, Thacher arrived at Section 7:504(2)(f), the statements from everyone named on the application – business owners and managers – that they did not have a disqualifying felony conviction. Ragland wanted to know if a background check had been run on each person. Larcom told him the best they could do is send a request to the Michigan State Police, because LEIN (the Law Enforcement Information Network) couldn't be used.

Briere noted that licensing eligibility requirements are silent with respect to non-drug-related felonies like robbing a bank or committing a murder. Information on all felonies is required to be submitted as a part of the application, but it's a discretionary decision by the board and the council as a whole for those felonies not involving drugs.

Later during the meeting, John Rosevear initiated a discussion on the merits of the drug-related felony exclusion – did it matter if a conviction had taken place in the early 1970s?

Speaking to the set of applications as a whole, Thacher said that some were missing a person or two for the set of statements about felonies. One had a record that would be forwarded, but had not yet been provided.

The set of application materials required in the licensing ordinance calls for a zoning compliance permit: Section 7:504(2)(h). Ragland ventured that the city had added a requirement that compliance with the Michigan Medical Marijuana Act be demonstrated, including the McQueen decision.

Rampson observed that compliance with the MMMA was in the ordinance language, and after the McQueen case, the city sent out letters requesting that dispensaries explain how they were in compliance with the MMMA, including the McQueen case. Briere asked if the decision had been made at the staff level not to grant a zoning compliance permit? Thacher responded by indicating that Arborside had sent a letter on that

topic to the city and that it's in the city attorney's office. Thacher said that compliance with zoning is noted as staff comments. She noted that Arborside has a certificate of occupancy.

Briere then asked her board colleagues: "What would you like to know that you don't see here?" She herself said she found the application compelling, but said she'd like to see the letter that's in the city attorney's office explaining how the business complies with the MMMA.

The letter from Arborside to the city stating how its business conformed to the MMMA, including the McQueen decision, was examined in turn by members of the licensing board.

After the letter was passed around from board member to board member, Briere ventured that maybe it would be good to have a shredder next time. Multiple copies could be created and then shredded at the conclusion of the meeting. It'd be a waste of paper, she allowed, but would be more convenient. Rampson noted that no copies had been made of the applications themselves but that Thacher had drafted the staff reports so as not to use any names. Rampson suggested that if multiple copies were created, they need not be shredded – staff could collect and store them.

Kenyon indicated that he wanted to get through at least one application that day. Given Briere's comments about Section 7:504(2)(a), the application from Arborside looks complete, he said. Arborside would not go to this trouble to be dishonest, he said. Ticking through all the requirements in the application, Kenyon moved to recommend a license for Arborside. After getting a seconding motion from Rosevear, the board voted.

Outcome: The board voted unanimously that it would recommend that the city council award a medical marijuana dispensary license to MedMarx at Arborside Compassion. Once a year, the board is supposed to make its license recommendations and suggestions for ordinance changes – that will occur in January 2012.

OM of Medicine

The board began its deliberation on OM of Medicine with the issue of the pre-moratorium

status of the business – Section 7:504(2)(a) of the ordinance.

OM of Medicine: Pre-Moratorium Status

Briere said she would consider the affidavits of the business owner, property owner and the receipts of membership applications as evidence of pre-moratorium operation.

Ragland said he felt there were a lot of parts of the elephant in the materials and if you put them all together, there's an elephant. Briere responded by saying the board was trying to establish minimum standards for the requirement. Kenyon agreed with Briere's set of evidence, but added the bank statements. Asked for clarification of the bank statements, Thacher indicated that the statements were records of deposits and debit card withdrawals. Kenyon said that receipts from purchases would be compelling – you don't buy vaporizers if you're not going into business, he said. Briere said that "inventory" would be an item she felt the board should count.

OM of Medicine: Other Application Requirements

Considering other elements of the application in more detail, Briere said it looked like there are essentially three partners who consider themselves the business owners. Thacher noted that some additional information – indicated as still requested on the staff report – now has been provided. The entity is a nonprofit, which in turn is managed by the LLC. The required information has been provided for the nonprofit entity, but not the LLC, Thacher said. Briere ventured that what the city now needed is a list of LLC members.

Thacher responded by saying that the additional information had just been received that day. Turning to Larcom, Thacher said she didn't want to put Larcom on the spot, but she was not sure if the LLC members needed to be named in the application, given the arrangement between the nonprofit and the LLC. Larcom indicated that the city could not get all the owners' names associated with the LLC from the state – that needed to come from the applicant.

In the board's discussion of the application, it emerged that another missing piece in the

application was under requirement Section 7:504(2)(h) for a zoning compliance permit. The city now expects an explanation of the conformance of the business with the Michigan Medical Marijuana Act, including the McQueen case, as part of an application for a zoning compliance permit.



Licensing board member Patricia O'Rorke and Mark Passerini of OM of Medicine talk after the Nov. 30 meeting.

In the audience, Mark **Passarini** Passerini of OM of Medicine indicated he wanted to address the board for clarification. He was told he was not required to do so, but volunteered to step forward. He told the board it appeared to him that in the board's view, his application was missing two things: (1) a membership list in the LLC; and (2) a letter describing the dispensary's conformance with the McQueen case.

He told the board that by Thursday morning the letter would have arrived in the mail to the city. As for the LLC, he said the LLC manages the nonprofit. In response to a question from Kenyon, Passerini stated that the nonprofit pays rent to the LLC. He felt that the names for the nonprofit owners was all that's necessary, but that he didn't have a problem providing the ownership information for the LLC as well.

Briere asked Larcom if receiving rent from the nonprofit counts as being involved in the dispensary operation. Passerini clarified further that the LLC doesn't own the real property. Larcom ventured that if the LLC has some other role than being the real property owner, then as long as Passerini didn't have a problem with it, she felt it was "better safe than sorry."

Rosevear sought to summarize: "What does he have to do?" Passerini assured the board: "We can get you what you need." Briere indicated that they needed the names of the LLC owners, plus a statement from each owner with respect to felony convictions. Larcom asked Passerini if that made sense to him – yes, he replied.

Outcome: The board did not vote on OM of Medicine's application.

General Consideration of Pre-Moratorium Status

For the remaining five of the seven applications, the board then settled on a strategy of looking just at the requirement in Section 7:504(2)(a) – pre-moratorium status.

Ann Arbor Wellness Collective had submitted affidavits and articles of incorporation for a nonprofit dated May 11, 2010. It also submitted evidence of web hosting set up before the moratorium. Following the three-item guideline that Briere had floated earlier in the meeting, Rampson asked: "Which are the three items?" Briere said she was happy with the two affidavits, but would like to see transactions or receipts. O'Rorke indicated she was content with the two affidavits and the web hosting. Briere felt that establishing the web hosting might be too close to the moratorium date.

Ragland felt the two affidavits were fine. O'Rorke suggested that Rampson "throw in" web hosting as well.

For the Medical Grass Station at 325 W. Liberty, there were apparently no affidavits filed as a part of the application. Briere indicated she did not believe there was a business at that location before the moratorium.

From the audience, Dennis Hayes ventured that the Grass Station's application had been stalled by the city's historic district commission – the business is located in the Old West Side historic district. Briere stressed that the question the board was looking at was whether the business was open before the moratorium. Back and forth among Hayes, staff and Briere indicated that the Grass Station was meant to be a successor to a business at Fourth and Washington. Rampson confirmed that there were no affidavits included in the application and there were different names on the two businesses. Briere said she felt the Grass Station's application could not be considered except as a post-moratorium applicant.

Kenyon wanted to know what the acceptable business transitions were. As an example, Kenyon gave Amazing Beans, which was previously roasting coffee beans in Ann Arbor. Mighty Good Coffee bought that business, Kenyon said. It was not the same business, he said. The consensus on the board was that the Grass Station application would need to be considered as a new business established after the moratorium.

For the Greenbee Collective, Kenyon felt that having patient records is good, but not having them is not bad. Briere indicated that she would accept patient records and affidavits.

For People's Choice, Rampson said the location for the application was new – it had started out originally on Main Street. Briere wanted to know if any of the ownership had changed. Rampson said that People's Choice had not yet provided all information about its directors. It had provided articles of incorporation dated July 12, 2010 and patient sign-in sheets signed on Aug. 3, 2010.

For PR Center LLC, affidavits had been submitted, along with a client code of conduct and patient sign-in sheets. Kenyon asked what the significance of the affidavit of a former property owner was. Briere noted that the business had also moved.

The consensus of the board was that PR Center and Grass Station's applications would be considered as applications from businesses that were not in operation before the moratorium.

Summary of Application Status on Nov. 30

Summarizing the board's discussion, Briere said that of the seven applications, five were eligible to move forward and one of the five had received the board's consensus for eventual recommendation for approval.



Licensing board members Patricia O'Rorke (left) and Sabra Briere (right) check their calendars to confirm the next meeting time. Briere is the city council representative to the medical marijuana licensing board.

For the other four, the city is in the process of getting a complete application for elements other than requirement in Section 7:504(2)(a), which the board had concluded the four applicants had satisfied – being in business before the moratorium.

Rampson would continue to work with applicants to get information, and Rampson confirmed that the board would receive revised staff reports for its next meeting.

Next Steps

The medical marijuana licensing board meets next on Dec. 14 at 4 p.m., when it will continue its review of the license applications. Board members discussed the fact that by the city's ordinance, it will need to report to the council in January 2012 with its recommendations for licenses and recommendations on any revisions to the licensing ordinance.

Based on the cease-and-desist letters sent by the city and the city's requirement that dispensaries explain – as part of their zoning compliance permit applications – how they comply with the Michigan Medical Marijuana Act, including the McQueen decision, the city's implicit legal position may be that it's not technically possible for a medical marijuana dispensary to conform with the state law.

That position would inform any legal advice that's provided to the city council before it votes on any recommendations it receives formally from the medical marijuana licensing board.

Present: Patricia O'Rorke, James Kenyon, John Rosevear, Gene Ragland, Sabra Briere. Also: city planning manager Wendy Rampson, city planner Jill Thacher and assistant city attorney Kristen Larcom.

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3 Comments

1.



By Dan

January 5, 2012 at 2:06 am | [permalink](#)

The Ann Arbor city could make a significant statement in support of legal marijuana use, and acceptance of it (as the voters indicated they wanted), by taxing its sale in a similar fashion as tobacco products.

The United States is at a turning point and an action to treat this other smokable substance in a similar manner would make great strides in removing the stigma that goes along with it, while generating revenue for the city!

2.



By Rod Johnson

January 5, 2012 at 4:45 pm | [permalink](#)

I was under the impression cities weren't allowed to impose sales taxes in Michigan. Not so?

3.



By Dave Askins

January 5, 2012 at 5:40 pm | [permalink](#)

Re: [2] and the ability of cities to impose sales tax

Rod, you're right. Cities are not able to levy local sales tax. It's one of the reasons "state shared revenue" exists. If cities do not have the right to levy local sales tax, then the idea is that the state should share the state revenues from the statewide tax.

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Ann Arbor, Michigan

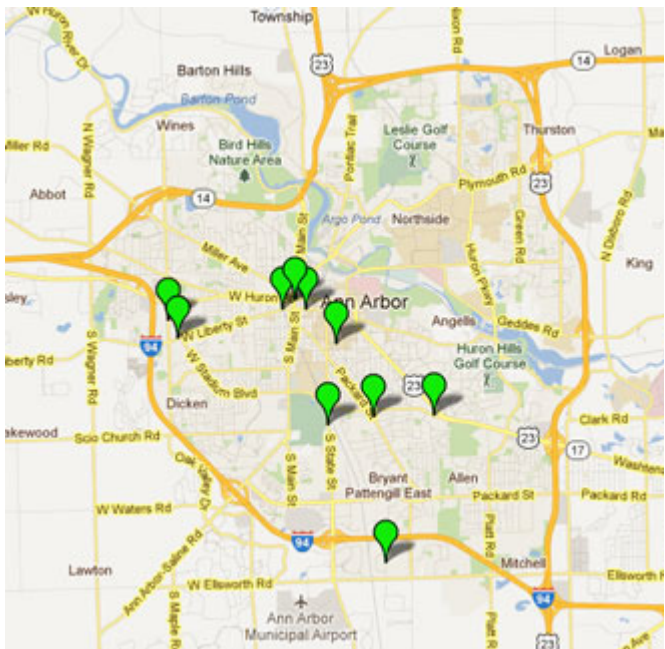
Medical Marijuana: Local Board Eyes 2012

Statewide scene evolves as Ann Arbor licensing board works

By Dave Askins

December 31, 2011 at 6 pm

On Dec. 14, 2011, Ann Arbor's medical marijuana licensing board met to continue deliberations on applications that the city has received for a limited number of medical marijuana dispensary licenses. At its Nov. 30 meeting, the board had taken an initial straw poll on one license application. Board members were favorably inclined to make a recommendation to the city council that a license be awarded to MedMarx at Arborside Compassion, located at 1818 Packard St.



The city of Ann Arbor has received 10 applications from businesses seeking to be licensed as medical marijuana dispensaries. Their locations are indicated with the green pushpins. In January, the licensing board will decide whether to make recommendations to the city council to award licenses.

At its Dec. 14 meeting, the board continued to review materials that had been submitted to

determine completeness of other applications, and heard an argument from a business owner that his application should be considered as a pre-moratorium business.

The moratorium had been imposed by the Ann Arbor city council on Aug. 5, 2010 for 120 days – it prohibited the future use of property inside the city for cultivation facilities or dispensaries, and was extended several times in the course of the council's consideration of the medical marijuana issue. That consideration culminated on June 20, 2011 in the enactment of zoning and licensing requirements for medical marijuana businesses.

Ann Arbor's local laws require that businesses operate in conformance with the Michigan Medical Marijuana Act, which was enacted by statewide voter referendum in 2008. The city has explicitly required of applicants for dispensary licenses that they explain how their business conforms with the law, including an Aug. 23, 2011 court of appeals ruling that has been interpreted by many authorities to mean that no medical marijuana dispensaries are legal. [pdf of the McQueen case ruling]. Based on remarks made at the Dec. 14 meeting, it appears that Ann Arbor's city attorney is open to the possibility that dispensary business models may exist that do conform to the McQueen case ruling.

Recommendations by the board on the award of licenses, along with recommendations for any revisions to the ordinance, are due to be submitted to the city council by the end of January 2012.

The licensing board's work comes even as some marijuana advocates have begun to recruit volunteers for an eventual petition drive that would seek an amendment to Michigan's constitution to repeal the state's general marijuana prohibition. If successful, such a constitutional amendment would appear to remove state-level legal hurdles to obtaining medical marijuana or operating a medical

marijuana dispensary. However, the legal ability of federal agents to enforce federal drug laws would be unaffected by a change to Michigan's constitution.

A sign-up sheet for people to indicate willingness to help with the petition campaign was passed around by audience members at the Dec. 14 licensing board meeting. To place the constitutional amendment on the Nov. 6, 2012 ballot, the beginning and end dates for the signature collection period (based on typical strategies used by petition initiatives and Michigan's election law) translate to Jan. 12 and July 9, respectively. To qualify, 322,609 valid signatures would need to be collected.

The Jan. 12 petition start date comes a day after Michigan's Supreme Court is scheduled to begin hearing arguments in two medical marijuana cases. One involves the growing of medical marijuana in an "enclosed, locked facility" (People v. King) and the other involves the timing of a physician's recommendation that is needed to support a defense against prosecution (People v. Kolanek).

Summary of the Status of 10 Applications

By the time of the Dec. 14 medical marijuana licensing review board's meeting, the city had received 10 applications. Three have foundered on zoning compliance issues, but two of those businesses have filed appeals with the city's zoning board of appeals (ZBA). Of the other seven, five have been determined by the board to have been in business before the Aug. 5, 2010 moratorium was imposed, but the other two were not.

- Green Planet, 700 Tappan St. *Status: ZBA appeal*
- Treecity Health Collective, 1712 S. State St. *Status: ZBA appeal*
- Ann Arbor Health Collective, 2350 E. Stadium Blvd. *Status: zoning issue, no appeal filed as of Dec. 31, 2011*
- OM of Medicine, 112 S. Main St. *Status: pending licensing board decision on recommendation*

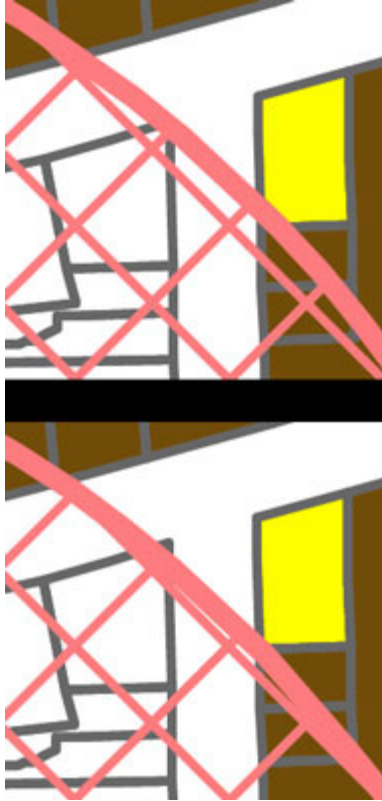
- People's Choice, 2245 W. Liberty St. *Status: pending licensing board decision on recommendation*
- Greenbee Collective, 401 S. Maple St. *Status: pending licensing board decision on recommendation (parking space requirements are problematic)*
- Ann Arbor Wellness Collective, 321 E. Liberty St. *Status: pending licensing board decision on recommendation*
- MedMarx at Arborside, 1818 Packard St. *Status: pending licensing board decision on recommendation*
- Medical Grass Station, 325 W. Liberty St. *Status: pending licensing board decision on recommendation as post-moratorium business*
- PR Center, 3820 Varsity Dr. *Status: pending licensing board decision on recommendation as post-moratorium business*

The board discussed various pieces of additional information that had been submitted since their Nov. 30 meeting. That information included items ranging from contact information to statements about any felony convictions that people associated with a business might have. Not all the information has yet been submitted, but city planner Jill Thacher concluded that there were essentially five applications for which she'd been able to put together full staff reports.

The two dispensaries generating the most discussion were Greenbee Collective and the Medical Grass Station. For Greenbee, the issue related to adequacy of parking. For the Medical Grass Station, the issue related to its status as a pre- or post-moratorium business.

Parking Requirements

Greenbee Collective, located at 401 S. Maple, drew a question from city councilmember Sabra Briere (Ward 1) about parking space requirements. City planner Jill Thacher indicated that Greenbee wanted to work with two of the adjoining parcel owners to get the additional six spaces the business



would need. Wendy Rampson, head of planning for the city, noted that what's required to make that solution work would be to get a permanent easement – it would need to come from either Kroger or Top of the Lamp.

From the audience, local attorney Dennis Hayes ventured that Greenbee was only one of two units in the building.

However, Rampson explained that parking requirements are a function of the entire building. Greenbee has 8 and needs 14, said Thacher. Briere noted that the requirement is for one off-street parking space for every 310 square feet of retail space.

Briere questioned whether the existing building currently has enough parking to comply with zoning. Thacher explained that parking is based on use, not zoning. Dispensaries are treated as retail space. Briere ventured that Greenbee's application is not "ready for prime time." Asked if Greenbee had an option to ask for a variance, Rampson and Thacher expressed skepticism: any such variance would be granted in perpetuity and no exceptions are supposed to be granted for existing non-conforming parking. Rampson indicated that Kroger does have excess parking, but board members expressed doubt that Kroger would grant a permanent easement. Rampson clarified that the relevant parking requirements are found in Chapter 59 of the city code.

Pre- or Post-Moratorium Applications

The status of a business in operation before the city council imposed a moratorium on Aug. 5, 2010, is important – because the application process timing is different for the two kinds of businesses (pre- and post-moratorium).

The board spent much of its Nov. 30 meeting discussing the merits of the documentation provided by different businesses to indicate that they were in operation before the moratorium. At the Dec. 14 meeting, that discussion focused mostly on the Medical Grass Station.

Pre- or Post-Moratorium: Medical Grass Station

The name of the Medical Grass Station, owned by Garth Bolgos, is a play on the former use of the building – a gas station at the corner of Second and Liberty streets. The city's concern about the location as a possible marijuana dispensary was reflected during the city council's deliberations in the spring and summer of 2011. At one point, the idea was floated to bump the size of the buffer around schools from 1,000 feet to 1,010 feet. The tweak would have ruled out the Grass Station's location, because the corner of its parcel would have been nipped by the buffer around Bach Elementary School.

Images are extracted from the city of Ann Arbor's maps showing the buffer zones around schools, which are depicted as salmon-colored cross-hatching. The top image shows a 1,010-foot buffer. The bottom image shows the 1,000 buffer. The yellow-highlighting, added by The Chronicle, shows the parcel where a former gas station was located – and the current site of the Medical Grass Station. The salmon-colored cross-hatching is the buffer zone, originating at Bach Elementary School on Jefferson.

At the licensing board's Nov. 30 meeting, board members had concluded that the Medical Grass Station had not been in operation before the council imposed its Aug. 5, 2010 moratorium. But Bolgos, the property's owner, addressed the licensing board during public commentary on Dec. 14, saying he wanted to rectify misconceptions about when the Grass Station went into business. He contended that he was in business at the location before the moratorium was imposed, and described the documentation to that effect, which he'd provided to the city.

It included a tax bill for the property and a letter from a patient who'd received marijuana from Bolgos at the location as early as January 2009, as well as a letter Bolgos had written to the mayor. Bolgos also pointed to an article that had appeared in the Ann Arbor Observer, which described his plans to open a medical marijuana dispensary business there. The article, "Medical Marijuana Center," was written by John Rosevear, who is also a member of Ann Arbor's medical marijuana licensing board.

Bolgos described to the board how he'd struck a deal to sell the old gas station, but it had fallen through. [The arrangement was contingent on the developer of the neighboring Liberty Lofts getting approval from Ann Arbor's historic district commission (HDC) to demolish two houses next to the gas station. The outcome of the HDC's decision was to grant permission to demolish the gas station but not the two houses, so the deal was not completed.

During the board members' deliberations on the Grass Station, they reviewed how they'd concluded at their Nov. 30 meeting that the Grass Station needed to be considered as a post-moratorium business. Board member Patricia O'Rorke noted that both the PR Center and the Grass Station had been determined to be post-moratorium applications.

Board member Sabra Briere noted that during public commentary, some uncertainty had been raised about the Grass Station. Board member Jim Kenyon indicated that the board's previous conclusion about the Grass Station had been based on a lapse in continuity. O'Rorke, too, noted that the board had decided it was a new business.

Briere then responded to the arguments that Bolgos had brought forth during public commentary. The documentation provided addressed the *desire* of Bolgos to open a dispensary, not the fact that he'd opened one, she said. From the audience, Bolgos said he had treated patients at the location since 2009 – it doesn't matter how big or small the business is, he said.



Garth Bolgos, owner of the Medical Grass Station at Second and Liberty.

Briere asked assistant city attorney Kristen Larcom if a park bench would become a dispensary if patient met their caregiver there to receive medical marijuana. Larcom stated that those were not the facts before the board – she asked if Briere's question related to the Grass Station.

Board member Gene Ragland asked Bolgos: Did you have an interruption in the business? Bolgos told him, no – they had to move from a different Fourth and Washington location. But he met most of his patients at the gas station, he said.

The kind of documentation Bolgos had submitted was again recited: a copy of his caregiver card; a copy of a letter to the mayor saying he wanted to open a dispensary; The Ann Arbor Observer article describing how he wanted to open a dispensary; a delinquent tax notice saying he owns the property; and a letter from a patient stating she received care there.

Briere stated that the board had heard at the Nov. 30 meeting that there was a gap in service provided by the business – that the Fourth and Washington location had ceased operation. Larcom indicated that the location had been raided by LАWNET and shut down. It was not operating and there were convictions that came out of that raid, said Larcom.

Briere concluded that the board had heard evidence that there'd been a desire to open a dispensary, not evidence that one had opened at that location. Briere assured Bolgos that if the board considered his business as a post-moratorium business, it was just as fair. Ragland clarified that pre-moratorium businesses are in the queue first, but post-moratorium businesses are "still in the queue."

Ordinance Revision Recommendations

Ragland's assurance notwithstanding, being in the application queue as a post-moratorium business is not as advantageous as being in the queue as a pre-moratorium businesses. That's because the number of licenses to be granted in the first year – which is the current review cycle – is tied to the number of applications received for pre-moratorium businesses.

Board members discussed the fact that they had the ability to make a recommendation to the city council on adjusting the number of licenses, as well as a number of other points.

Ordinance Revision Recommendations: Number of Licenses

The fact that a post-moratorium application likely stands a smaller chance of being recommended for a license is not explicitly stated in the city's ordinance. But that conclusion results from the interplay between two parts of the law. First, pre-moratorium businesses had 60 days to apply after the effective date, while post-moratorium businesses had to wait until at least 75 days after the ordinance's effective date, which was Aug. 22, 2011.

7:504(1)

Application Submission. A medical marijuana dispensary that commenced operation prior to passage of the moratorium by City Council on August 5, 2010, shall have until 60 days after the effective date of this chapter [Aug. 22, 2011] to submit an application for a new annual license. If the medical marijuana dispensary commenced operation prior to passage of the moratorium in a zoning district where its operation is not permitted under the zoning ordinance, the application shall be for a location in a zoning district where operation of

a medical marijuana dispensary is permitted under the zoning ordinance. No other applications will be accepted by the City until 75 days after the effective date of this chapter.

But the number of licenses available is capped, based on the number of applications received in the first 60 days – i.e., from pre-moratorium businesses.

7:502(4)

The first year's licenses shall be capped at a number 10% higher than the number of complete applications for licenses submitted to the City in the first 60 days after the effective date of this chapter, but not more than 20 medical marijuana dispensary licenses shall be issued in the first year. Any license terminated during the license year returns to the City for possible reissuance.

Assuming all the applications from pre-moratorium businesses result in a recommendation for a license, the number of post-moratorium applications that could receive license recommendations would be no more than 10% of the number of pre-moratorium applications. It appears the city has received seven applications from pre-moratorium businesses. So, at the Dec. 14 meeting of the board, Sabra Briere pointed out that if the board has accepted seven applications from pre-moratorium businesses, the additional 10% would allow the board to add up to one for a total of eight recommendations to be made to the council in January 2012.



Ann Arbor medical marijuana licensing board member Gene Ragland. In the background is board member John Rosevear.

What if there are five applicants for that one additional recommendation? asked Wendy Rampson, head of city planning. Briere indicated that the board would have to make a choice. There's no guarantee that you get a license, even if you've jumped through all the hoops.

Briere went on to note that the board could also recommend in January that the number of licenses be changed. Responding to questions from board members about why the number of licenses had been capped at 20, Briere told them there'd been a lot of dickering about the exact number when the council deliberated on the issue.

City planner Jill Thacher raised the question of new dispensaries that wanted to apply for a license. Briere indicated that anyone who wants to apply for this first year's application cycle should get their application submitted. Briere didn't feel the board wanted to see new applications in January. Thacher indicated that she'd been putting people off. She said there were two dispensaries she'd told to hold off. Briere indicated that Thacher should tell those dispensaries that they need to get all their materials in. Briere noted those dispensaries didn't need to address Section 7:504(2)(a) – proof of operation

before the council established the moratorium on Aug. 5, 2010.

Gene Ragland wondered why receiving applications would not trigger the board to convene, instead of meeting to make recommendations once a year. Patricia O'Rorke echoed the sentiment, asking why someone would need to wait a year. Briere indicated that the city council [on which she serves, representing Ward 1] did not want to be confronted with the issue more than once a year. John Rosevear said he felt that once a year was appropriate, given the complexity of the situation.

Ordinance Revision Recommendations: Timing Issues

In the course of working its way through the applications for dispensary licenses, the board has identified some aspects of Ann Arbor's ordinance that it's found problematic. Identified at the Dec. 14 meeting were two passages that express different timing requirements for reapplication:

7:502(8) A license issued under this chapter shall expire 1 year after the date of issuance. To renew an existing license, the licensee shall submit an application in the same manner as is required to apply for a new license no sooner than 90 days before the expiration date and [sic] no later than 60 days before the expiration date.

Elsewhere, the timing requirement is given as 70 days, not 90 days:

7:504(3b) An application for renewal of an existing license shall be submitted no sooner than 10 weeks (70 days) before the existing license expires.

Board member Jim Kenyon indicated he preferred the 90-day condition.

Ordinance Revision Recommendations: Licensing Fee

Briere noted that the board would also need to recommend the amount of the licensing fee. Board members discussed the fact that the fee would need to cover the costs of administering the license. Assistant city attorney Kristen Larcom explained that building inspections would be separate from the license fee and the license application fee – the fee for licenses per se is a separate issue, she

explained. While the *application fee* has to be limited to administrative costs, that's not the case for license fees, she explained.

The cost of Ypsilanti's medical marijuana dispensary license fee was briefly discussed. It's \$2,500 for the initial license and \$1,100 for renewal.

Larcom indicated she was not sure what the city's legal advice would be. Kenyon asked why there is a license fee at all. O'Rorke ventured that it's because you pay for the privilege. Briere noted that one key difference between the medical marijuana dispensary licenses and liquor licenses is that dispensary licenses are not transferable. Kenyon indicated he would vote for a nominal amount.

Ordinance Revision Recommendations: Entry of Premises

O'Rorke questioned why a building inspector needed to be allowed to enter the premises:

7:506(7)

An authorized person shall consent to the entry into a medical marijuana dispensary by the Building Official and Zoning Inspectors for the purpose of inspection to determine compliance with this chapter pursuant to a notice posted in a conspicuous place on the premises 2 or more days before the date of the inspection or sent by first class mail to the address of the premises 4 or more calendar days before the date of the inspection.

Larcom pointed out that the city must provide notice to the facility. O'Rorke countered that the law says that building inspectors can come in. Larcom clarified that the law did not enable the city to break in to the facility. The dispensary can refuse. If the city wants to insist on entering the premises, the city would need to go to court to determine if there's sufficient cause, Larcom explained.

Larcom felt it's better to keep the language in there. O'Rorke wanted to avoid having a statement in the ordinance that allows consent to entry to determine compliance with the ordinance. Larcom responded to O'Rorke by indicating that it's up to the board to make that recommendation. Briere noted that when the city council debated the ordinance, some councilmembers didn't like the

passage at all, and some wanted to make it even stronger.

Compliance with McQueen

On Aug. 23, 2011, two months after the enactment of Ann Arbor's local legislation, a Michigan court of appeals ruled on the McQueen case in a way that has been interpreted by many authorities to mean that medical marijuana dispensaries are not legal. [.pdf of the McQueen case ruling]

By Sept. 30, the Ann Arbor city staff's position had evolved to include a requirement that license applicants would need to provide a statement explaining how their business conformed with the Michigan Medical Marijuana Act, including the McQueen case, as part of an application for a zoning compliance permit. A zoning compliance permit is a requirement for a license. [.pdf of Sept. 30 letter]

The McQueen ruling found that one particular business model for dispensaries, that of Compassionate Apothecary, does not conform to the Michigan Medical Marijuana Act. And at the Dec. 14 meeting of the licensing board, Gene Ragland alluded to a representation made by the city attorney to the board about a particular vision of what would be a compliant business model, and the city attorney had described what he would consider legal. Sabra Briere agreed with Ragland's characterization, but said the board could not assume that the city attorney's view today would be the same.

Assistant city attorney Kristen Larcom noted that additional court opinions could be issued between now and the time the city attorney gives advice to the city council about whether to accept board recommendations to award licenses. In a subsequent phone interview, Wendy Rampson, head of planning for the city, indicated to The Chronicle that her understanding was that the city attorney's office was open to the possibility that a dispensary business model can exist that complies with the McQueen ruling. However, no written set of criteria defining such a business model has been provided.

The advice provided to the city council by the city attorney will likely depend on the nature of the business model that applicants describe in the statements they've provided at the city's request.

The statement provided by Cannabis Counsel, the attorney for MedMarx at Arborside, could be typical of the kind of argument that dispensaries will make. [.pdf of letter from Cannabis Counsel regarding Arborside's business model]

The Cannabis Counsel letter lays out why the court of appeals in the McQueen case found that the Compassionate Apothecary business model was not in compliance with the MMMA: The problem was that Compassionate Apothecary did nothing to "assist" patients in administering or using marijuana, beyond exchanging marijuana for money. In contrast to Compassionate Apothecary, argues Cannabis Counsel, Arborside does assist patients in the manner described by the court – by assisting the patient "in preparing the marijuana to be consumed in any of the various ways that marijuana is commonly consumed." Those ways include providing patients with "cleaned prepared de-stemmed cannabis including pre-rolled joints, edibles which have been inspected, tested, cleaned, grinded and rolled, or cooked in combination with foodstuff."

The Cannabis Counsel letter also explicates how compliance with other aspects of the MMMA are met, including maintaining a sufficient number of caregivers on site to possess all the marijuana present there. Another point of emphasis of the letter is that no "sale" of marijuana takes place, and that money is given to a caregiver to compensate for costs associated with assisting a patient in the medical use of marijuana, which does not constitute a sale of a controlled substance under the MMMA.

Next Steps

The licensing board discussed its next meeting times in the context of its Jan. 31, 2012 deadline to make recommendations to the city council on license applications and ordinance revisions. The outcome of that discussion was to establish that they'd plan to meet again on Jan. 18, 2012. The zoning board of appeals will hear appeals on zoning issues from two of the businesses on Jan. 25. And the medical

marijuana licensing board could possibly meet on Jan. 30 as well, if necessary.

Present: Patricia O'Rourke, James Kenyon, John Rosevear, Gene Ragland, Sabra Briere. Also: city planning manager Wendy Rampson, city planner Jill Thacher and assistant city attorney Kristen Larcom.

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Medical Marijuana Licenses Up to Council

Board recommends 10 licenses; city sues TreeCity dispensary

By Dave Askins

February 3, 2012 at 5 pm

At its Jan. 31, 2012 meeting, Ann Arbor's medical marijuana licensing board voted to recommend awarding 10 licenses for dispensaries – the same number that had submitted applications. Two of the license awards were recommended conditionally. Treecity Health Collective (1712 S. State St.) would need to move to a differently zoned district, and Greenbee Collective (401 S. Maple St.) would need to provide for adequate parking. The board also settled on some recommended changes to the city's medical marijuana licensing ordinance.



Ann Arbor medical marijuana licensing board at its Jan. 31, 2012 meeting. Left to right: Sabra Briere, Jim Kenyon, Patricia O'Rorke, John Rosevear and Gene Ragland. (Photos by the writer.)

Both issues – the award of the licenses and the changes to the ordinance – will be up to the city council to decide. The licensing board's recommendation and report had been due to the city council by Jan. 31, according to the council resolution passed in conjunction with last year's enactment of the licensing ordinance. But at the city council's Jan. 23, 2012 meeting, Ward 1

representative Sabra Briere gave her colleagues a heads up that the medical marijuana licensing board would be submitting its recommendations in early February instead.

The legislation enacted by the council on June 20, 2011 included provisions for licenses and zoning requirements. The zoning requirements played a role in the recommendation to award one of the 10 licenses conditionally. TreeCity is located in a district zoned for office use, which does not permit medical marijuana dispensaries.

On Jan. 25, 2012, the city's zoning board of appeals (ZBA) turned down TreeCity's appeal of the city's decision to deny TreeCity's application for a zoning compliance permit – a necessary component of a license application. At the same meeting, the ZBA granted the same kind of appeal to another dispensary – Green Planet (700 Tappan St.).

The tension between the board's work and the city attorney's office is reflected in the fact that even as the board recommended the conditional award of a license to TreeCity, the city attorney has served a lawsuit against the dispensary.

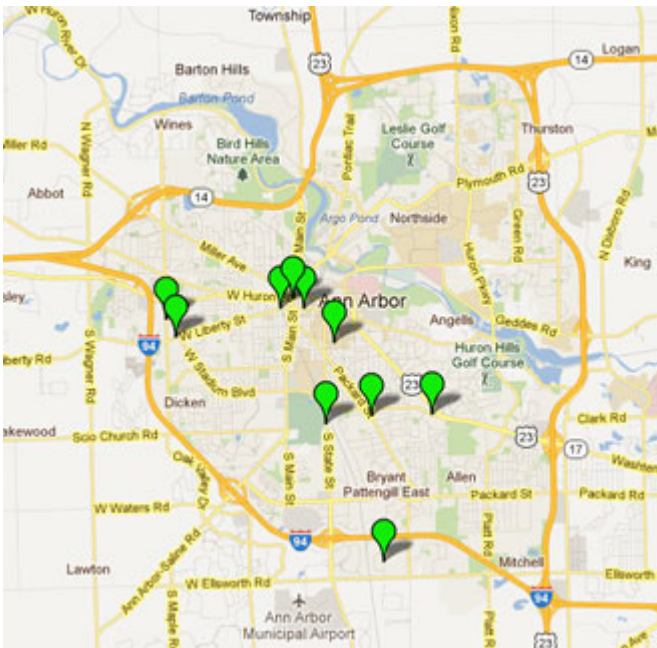
The tension was also reflected during the meeting itself, as assistant city attorney Kristen Larcom reminded the board that their purview, according to the city's ordinance, is [emphasis Larcom's] to “send to City Council a proposed resolution recommending either approval or rejection of each *complete* license application.”

In the city's view, TreeCity's application is not complete, because the city has denied a zoning compliance permit to the dispensary. However the board appeared to rely on the subsequent sentence of the ordinance: “A recommended resolution may set conditions for approval.”

Also at its Jan. 31 meeting, the licensing board recommended that the initial licensing fee be established at \$1,100 with the annual renewal fee set at \$350.

Licenses Recommended

Businesses recommended to be awarded a license under Ann Arbor's local ordinance were: (1) Green Planet, 700 Tappan St.; (2) Treecity Health Collective, 1712 S. State St.; (3) Ann Arbor Health Collective, 2350 E. Stadium Blvd.; (4) OM of Medicine, 112 S. Main St.; (5) People's Choice, 2245 W. Liberty St.; (6) Greenbee Collective, 401 S. Maple St.; (7) Ann Arbor Wellness Collective, 321 E. Liberty St.; (8) MedMarx at Arborside, 1818 Packard St.; (9) Medical Grass Station, 325 W. Liberty St.; and (10) PR Center, 3820 Varsity Dr.



The city of Ann Arbor received 10 applications from businesses seeking to be licensed as medical marijuana dispensaries. Their locations are indicated with the green pushpins. On Jan. 31, 2012 the medical marijuana licensing board recommended granting licenses to all 10 – two of them conditionally.

The licensing board required little time at its Jan. 31, 2012 meeting to review and deliberate on each application – most of the review had been completed at previous meetings. [See previous Chronicle coverage: "Medical Marijuana: Local Board Eyes 2012" and "Medical Marijuana Board Straw Poll: Yes"]

Recommendations for TreeCity and Greenbee were made conditionally – Greenbee must secure adequate parking, and TreeCity must move to a location allowed under the city's medical marijuana zoning rules.

At the board's December 2011 meeting, it was discussed that Greenbee has only 8 of the needed 14 parking spaces for its intended use of the space as a medical marijuana dispensary. At the Jan. 31, 2012 meeting, the board's discussion suggested that perhaps only five additional spaces were needed.

TreeCity is currently located on a parcel zoned office (O), which is not one of the zones designated for medical marijuana dispensaries. In Ann Arbor, medical marijuana dispensaries can be located only in those districts zoned as D (downtown), C (commercial), or M (industrial), or in PUD (planned unit development) districts where a retail use is permitted in the supplemental regulations.

Of the licenses recommended, nine were made for businesses considered to be operating before the Ann Arbor city council imposed a moratorium on Aug. 5, 2010 for 120 days. The moratorium prohibited any additional uses of property inside the city for cultivation facilities or dispensaries. The moratorium was extended several times in the course of the council's consideration of the medical marijuana issue.

The timing of the application process for pre-moratorium businesses for the first year's applications was slightly earlier than for businesses established after the moratorium. And the maximum number of licenses available in the first year is a function of the number of applications received from pre-moratorium businesses – which the city determined to be nine. Those nine plus 10% (rounded up) yielded the total number of licenses available – 10. The one post-moratorium business recommended for a license is Grass Station.

The owner of the Grass Station had previously argued for inclusion for consideration as a pre-moratorium business. And previously, it appeared that possibly two dispensaries would be considered as post-moratorium applicants – Grass Station and PR Center. That would have set up a situation where the board needed to choose between dispensaries for which it would recommend a license.

However, PR Center was ultimately considered as a pre-moratorium business. The initial analysis as a pre-moratorium business had resulted from the fact that PR Center has more than one location – one of which is in a township island.

Zoning Board of Appeals

The licensing board's report on recommended licenses and changes to the licensing ordinance was due to be submitted to the city council on Jan. 31. One reason the board did not meet until that day to take a final vote on its recommendations was to allow time for a decision by the city's zoning board of appeals (ZBA) on two cases involving dispensaries: TreeCity and Green Planet. The ZBA met to hear those two appeals on Jan. 25.

At issue in both cases was a decision by the city to deny a zoning compliance permit to the dispensaries, on the grounds that the businesses are not located in one of the zones enumerated in the city's zoning code: D (downtown), C (commercial), or M (industrial), or in PUD (planned unit development) districts where a retail use is permitted in the supplemental regulations. Such a permit is a requirement for a medical marijuana dispensary license application.

On a unanimous vote, the ZBA overturned a decision by the city to deny a zoning compliance permit to Green Planet. And on a 5-1 vote, the ZBA upheld the decision by the city to deny TreeCity's zoning compliance permit.

Zoning Board of Appeals: Green Planet

Green Planet is located in a PUD (planned unit development) zoning district. The PUD includes supplemental regulations that lay out types of uses allowed in the district:

- a. Restaurants and Catering Businesses.
- b. Grocery, prepared food and beverage sales, including retail sales of non-food items typically associated with groceries and food preparation. Examples include cookware, glassware, linens, books, kitchen utensils and implements, and small kitchen appliances.
- c. Classrooms and educational instruction.
- d. Tanning, massage and beauty salon.
- e. Business offices, medical or dental offices,

professional and non-profit organization offices. Examples include real estate and insurance agencies, attorneys and law firms, accountants, architects, engineers, travel agencies, consultants, and property management firms.

The language of the medical marijuana zoning ordinance states:

Medical marijuana dispensaries shall only be located in a district classified pursuant to this chapter as D, C, or M, or in PUD districts where retail is permitted in the supplemental regulations.

Green Planet had argued, in part, that because specific kinds of retail uses are permitted in the PUD's supplemental regulations, they meet the ordinance description of a "PUD district where retail is permitted in the supplemental regulations." In rejecting Green Planet's application for a zoning compliance permit, the city argued that the kind of retail uses described in the supplemental regulation do not include marijuana dispensaries, because marijuana for medical use is not an item "typically associated with groceries and food preparation."



Green Planet's Michael McLeod distributes handouts at the Jan. 25 meeting of the zoning board of appeals. Seated at left are Ben Carlisle and Sabra Briere.

The ZBA's decision relied on the intent of the planning commission as reflected in that body's deliberations on the zoning ordinance at its Oct. 5, 2010 meeting. Green Planet noted that the language on PUDs had been added as an amendment at that meeting and adduced the minutes of the meeting, the video, as well as The

Chronicle's reporting ["Medical Marijuana Zoning Heads to Council"] to argue its case. Green Planet argued that it had not been the intent of the planning commission to ask property owners to revise the supplemental regulations of a PUD in order to specifically allow dispensaries.

The vote by the ZBA to overturn the city's decision on Green Planet was unanimous among the six members attending the meeting of the nine-member board. Absent were Carol Kuhnke and Wendy Carman. Jason Boggs recently resigned, leaving a current vacancy. [An application form for appointments to city boards and commissions is available on the city's website.] Attending his first meeting as a member of the ZBA was Ben Carlisle, who replaced long-time member David Gregorka.

Chairing the ZBA meeting in Kuhnke's absence was Erica Briggs, who also serves on the city's planning commission. As a planning commissioner, she'd actually voted on Oct. 5, 2010 *against* the inclusion of PUDs among those districts that are allowable zones for medical marijuana dispensaries. But given that the majority of her colleagues on the planning commission disagreed with her and the city council eventually enacted the zoning code to include PUDs, she told The Chronicle after the hearing that she was compelled to vote in favor of Green Planet's appeal.

Zoning Board of Appeals: TreeCity

TreeCity is located in a district zoned as office (O), which is not one of the zoning districts allowed for use as a medical marijuana dispensary. TreeCity's appeal was based in part on its contention that a legal, non-conforming use of the property as a medical marijuana dispensary had been established before the zoning laws were passed.

The city's position relied in part on the general principle of Ann Arbor's zoning ordinance that: "Uses not expressly permitted are prohibited." So the city of Ann Arbor argued that there was no legal use of a parcel within the city as a medical marijuana dispensary before the enactment of the zoning ordinance on June 20, 2011. Although several ZBA members expressed sympathy for TreeCity's situation, only one member – Sabra

Briere – voted to overturn the city's denial of the zoning compliance permit.

TreeCity's ZBA denial marked the third key disappointment for TreeCity in its effort to keep its business at the 1712 S. State St. address. At the Oct. 5, 2010 meeting of the planning commission, TreeCity's attorney Dennis Hayes had unsuccessfully advocated for the inclusion of office districts as a possible zone for dispensaries. Then the planning commission (on Aug. 16, 2011), followed by the city council (on Oct. 3, 2011) both rejected TreeCity's request to be rezoned from office to C1 (local business).

At the licensing board's Jan. 31 meeting, assistant city attorney Kristen Larcom reported that the city of Ann Arbor had actually filed a lawsuit a few months ago against TreeCity, but had not served it until after the ZBA hearing. Dori Edwards, an employee who does public relations work for the dispensary, said that TreeCity had been served on Friday, Jan. 27, 2012. The lawsuit, filed in the 22nd circuit court and assigned to judge Donald Shelton, alleges three counts of nuisance.

Other Recommendations

The city council resolution enacting the licensing ordinance, approved by the city council on June 20, 2010, directed the licensing board to make recommendations to the city council for any changes to the ordinance by Jan. 31, 2012. The ordinance itself also provides for regular communication from the board to the council – beyond an annual recommendation for approval or rejection of license applications. The board is also charged with reviewing and recommending licensing criteria, the number of licenses and the fee structure.

Other Recommendations: Completeness, Conditions

The issue of completeness of applications is one that has been a chaffing point between the board and the city staff. City staff have been reluctant to present the board with license applications that it does not consider complete. For example, one of the elements of an license application is a zoning

compliance permit, for which the city has a separate application.



Assistant city attorney Kristen Larcom.

A zoning compliance permit has long been a standard part of the city’s review process, and is not peculiar to medical marijuana dispensaries. For two dispensaries (TreeCity and Green Planet), the city denied had the permit because the city determined they were located in the wrong zone. So the license applications were considered to be incomplete.

Until Green Planet’s denial was overturned by the ZBA on Jan. 25, the licensing board had not reviewed and evaluated that dispensary’s application for a license. At the board’s Jan. 31 meeting, Green Planet’s Michael McCleod described how the city planning staff had subsequently been very helpful in assisting him in identifying any other gaps in his license application materials. The application requires, for example, evidence of operation before the moratorium was imposed on Aug. 5, 2010, and statements about any felony convictions for dispensary owners and operators.

So at the Jan. 31 meeting, board members reviewed the Green Planet application and came to a quick consensus that the dispensary should be recommended for a license.

At the same meeting, Dori Edwards of TreeCity indicated that she’d not known she should contact city staff for help in reviewing any missing materials. But TreeCity’s ZBA appeal had been turned down, so from the city staff’s perspective, the application was fundamentally not complete and TreeCity had exhausted all possible avenues for making it complete. And as the board mulled the question of how to deal with TreeCity’s application, assistant city attorney Kristen Larcom said she wanted to remind the board that its purview was to evaluate and make a recommendation on each *complete* application.

Larcom allowed that the ordinance does provide for conditional approvals, but indicated that a possible condition would not extend to the issuance of a zoning compliance permit – having that permit was a matter of completeness of the application.



Medical marijuana licensing board members Sabra Briere and Jim Kenyon.

Sabra Briere told Larcom point blank: “I disagree with you.” Briere is the city council representative to the medical marijuana licensing board. And Briere said that during deliberations on council, the

council didn't talk about why there'd be conditional approvals or limits on those conditions.

So the board forged ahead and included TreeCity as a recommended license – with the condition that it obtain a zoning compliance permit. That would mean the business would need to move from its current location.

The attorney for TreeCity, Dennis Hayes, wrote in an email to The Chronicle that he hoped the lawsuit the city has filed against TreeCity would be resolved by TreeCity finding a new location.

Edwards indicated at the Jan. 31 board meeting that she's actively seeking an alternate location and hoped to sign a lease within a week or two. After that it would take perhaps a month to complete a move, she said.

Larcom stressed that for now, the dispensary use that TreeCity wants to make of its current location is not legal – other aspects of the business could possibly persist, but the dispensary use violates zoning. And the city is required to uphold the zoning law – that's why a lawsuit has been filed, Larcom said.

Related to the issue of completeness, the licensing board agreed at its Jan. 31 meeting to recommend that the explicit role of city staff in determining completeness of applications be struck from two places in the ordinance [added language in italics; deleted language with strike-through]:

7:504 (4) Following official confirmation by staff that the applicant has submitted a complete application *City Council approval of the issuance of a license*, a new license shall not be issued to a medical marijuana dispensary until the applicant for the license complies with all of the following requirements...

7:505. If the applicant has successfully demonstrated compliance with all requirements for issuance of a license within 10 weeks (70 calendar days) after the date of City staff's official confirmation that the application for a license was complete *City Council's approval of a license*, the city administrator or designee shall grant renewal of an existing or issue a new license...

At the board's Jan. 18 meeting, the idea was entertained to remove staff from part of the process, by requiring that all the application materials be forwarded directly to the board, instead of to the city planning staff. Jill Thacher is the city planner who's shouldered that task for the first year's round of applications. Ultimately, the board weighed the volume of actual work it would take for board members to handle application materials, concluding it was more than a clerical task.

But related to the issue of what can constitute a condition on granting a license, the board agreed to a recommendation making explicit that there is flexibility in the kind of conditions that can be set.

7:502 (7) ... The Board shall annually send to City Council a proposed resolution recommending either approval or rejection of each complete license application. A recommended resolution may set conditions for approval. *The conditions may include a waiver by City Council of any provision or provisions of the licensing ordinance, and/or the imposition of a new provision or new provisions, if the public interest so requires.*

Other Recommendations: Entry for Inspection

Licensing board member Patricia O'Rourke was particularly concerned about a provision in the ordinance that requires dispensaries to consent to inspection. The board agreed to recommend a change that makes explicit that requests from the city to inspect a dispensary would be complaint-driven:

Pursuant to a complaint, an authorized person shall consent to the entry into a medical marijuana dispensary by the Building Official and zoning inspectors for the purpose of inspection to determine compliance with this chapter pursuant to a notice posted in a conspicuous place on the premises two (2) or more days before the date of the inspection or sent *and* by first class mail to the address of the premises four (4) or more calendar *business* days before the date of the inspection.

When asked if she saw any problem with the "pursuant to complaint" language, city planner Jill

Thacher said, no – that’s the way city staff handles issues like that anyway.

In weighing whether the notice given should be done by posting and mail, a brief discussion unfolded about the merits of certified mail versus first class mail and the future of the U.S. Postal Service.

Other Recommendations: Number of Licenses, Frequency of Recommendation

At its Jan. 31 meeting, the licensing board grappled with the tension between having a single annual recommendation on licenses (as the ordinance now specifies) versus a rolling recommendation as applications are submitted. Board member Jim Kenyon said he liked the idea of being responsive and meeting regularly. However, he noted that if there are a limited number of licenses available, a rolling recommendation process would result in giving privilege to those applying first.



Board members Jim Kenyon and Patricia O’Rorke.

Kenyon gave the example of the University of Michigan, which he said had wound up admitting nearly its entire freshman class through the early admission this year. “The music stopped and there were no chairs,” he said. That does not necessarily result in the most qualified applicants being admitted. On the other hand, he said, he did not want to make people wait a calendar year to have their application for a dispensary license processed.

During the board’s discussion, Sabra Briere noted that as far as evaluating one dispensary against another, the board had not faced that situation this year, and had not applied qualitative criteria to the evaluation. The board had essentially made its criteria for recommendation a matter of whether a dispensary had “jumped through all the right hoops.”

The board mulled what the number of licenses should be. With respect to potential demand, city planner Jill Thacher reported that before the city council passed its licensing and zoning ordinances, she’d fielded numerous phone calls from out-of-state people interested in setting up shop. After the Ann Arbor legislation was passed, she said, the phone calls had fallen off precipitously.

Board member Gene Ragland suggested that it should be possible to work out the math of the demographics of patients and calculate the potential consumer demand. Local attorney Dennis Hayes, who attended the meeting, ventured that there were perhaps 50,000-60,000 registered patients who did not have caregivers – that might be a way to gauge potential consumer demand. Kenyon said that he himself would not use a caregiver to obtain medical marijuana, if a dispensary were an option.

Ultimately, the board settled on capping the number of licenses at 20, which is the maximum number specified in the ordinance for the first year.

... but not more than 20 medical marijuana dispensary licenses shall be issued in the first year *and shall be capped at that number.*

The board also agreed not to suggest changing from the process described in the ordinance as an annual recommendation for the award of licenses. Also recommended was a standardization of the timing requirements for applications – in some places there’s a 70-day condition but in others it’s a 90-day condition. The board agreed to recommend making that timing requirement uniformly 90 days.

Other Recommendations: Operation in Compliance with MMMA

The board also recommended striking a clause in the zoning ordinance as superfluous:

5:50.1.4(k) Medical marijuana dispensaries and medical marijuana cultivation facilities shall be operated in compliance with the MMMA.

The discussion at the board's Jan. 18, 2012 meeting on this issue included concern expressed by dispensary owner Chuck Ream, that deleting the phrase could cause alarm and attract unwanted attention to Ann Arbor if it were incorrectly perceived as sending a message that Ann Arbor's dispensaries would not be following Michigan's medical marijuana law.

Other Recommendations: Licensing Fee

The final issue on which the licensing board needed to weigh in was setting the licensing fee for medical marijuana dispensaries – which is separate from the application fee of \$600. One point of comparison for the board was neighboring Ypsilanti's \$2,500 initial license fee, with a \$1,100 renewal each year. Patricia O'Rorke was inclined to set them much lower. Sabra Briere joked that perhaps Ann Arbor's fees should be higher because Ann Arbor was "more prestigious."



Medical marijuana licensing board member Gene Ragland.

Jim Kenyon said he felt the goal of the fee should be to make it high enough to prevent someone from applying "casually." He continued by saying that the \$600 application fee, plus a \$1,100 initial licensing fee would do that.

Gene Ragland, who fills the physician's slot on the licensing board, noted that his narcotics license cost him only \$350. But Briere wondered how much Ragland's medical education had cost. Ragland offered that when he'd finished medical school, he'd owed \$8,000 in loans – and he'd paid those off in two years. But that was long ago, he allowed.

Based on Ragland's narcotics license, the board agreed to recommend the annual license renewal fee be set at \$350, to go along with a \$1,100 initial license fee.

Next Step: City Council

Even if granted a local Ann Arbor license, dispensaries in Ann Arbor would still need to operate in conformance with the Michigan Medical Marijuana Act, which was enacted by statewide voter referendum in 2008. The city has explicitly required applicants for dispensary licenses to explain how their business conforms with the law, including an Aug. 23, 2011 court of appeals ruling that has been interpreted by many authorities to mean that no medical marijuana dispensaries are legal. [.pdf of the McQueen case ruling].

Ann Arbor's city attorney, Stephen Postema, is open to the possibility that dispensary business models may exist that do conform to the McQueen case ruling, but Postema has not issued a written opinion describing business models that he believes conform. The city council will receive advice from the city attorney before it votes on awarding the licenses that the board has now recommended. Any vote by the council would come at the earliest on Feb. 21.

At the Jan. 31 meeting, dispensary owners felt it was important for Ann Arbor to demonstrate a working model for local licensing – it would provide a basis for state legislation, which may be introduced soon, that would explicitly enable local options for regulation of dispensaries.

ZONING
(REGULATIONS CONCERNING THE MEDICAL USE OF MARIJUANA)

AN ORDINANCE TO AMEND SECTION 5:501 OF CHAPTER 55 (ZONING) OF TITLE V OF THE CODE OF THE CITY OF ANN ARBOR REGARDING THE REGULATION OF THE MEDICAL USE OF MARIJUANA.

The City of Ann Arbor ordains:

Section 1. That Section 5:50.1 of Chapter 55 of Title V of the Code of the City of Ann Arbor is added as follows:

5:50.1. Regulations Concerning Medical Use of Marijuana

- (1) Intent.
 - (a) It is the intent of this section to provide appropriate locations and reasonable restrictions for the cultivation and transfer of marijuana allowed by the Michigan Medical Marihuana Act, MCL 333.26421 *et seq.* This is a unique land use with ramifications not addressed by more traditional zoning district and home occupation regulations. Although some specific uses of marijuana are allowed by the Michigan Medical Marijuana Act, marijuana continues to be classified as a Schedule 1 controlled substance under federal law making it unlawful under federal law to use, manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense marijuana.
 - (b) It is the intent of this section to protect the health, safety, and general welfare of persons and property by limiting land uses related to marijuana to districts that are compatible with such uses. Additional regulations in this section are intended to provide reasonable restrictions within districts so that these uses do not compromise the health, safety, and general welfare of persons in the district, or other uses allowed in each district.
- (2) Definitions. The following words and phrases shall have the following definitions when used in this section.
 - a) Words and Phrases Contained in the Michigan Medical Marihuana Act (“MMMA”), MCL 333.26421 *et seq.* This subsection contains some words and phrases that are defined in the MMMA. As used in this section, they have the same meaning as provided in the MMMA, except that if at any time the definition of a word or phrase set forth below conflicts with the definition in the MMMA, then the definition in the MMMA shall apply. These words and phrases are as follows:
 - i “Department” means the state department of community health.
 - ii “Marihuana” means that term as defined in section 7106 of the public health code, 1978 PA 368, MCL 333.7106.

- iii “Medical use” means the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient’s debilitating medical condition or symptoms associated with the debilitating medical condition.
- iv “Primary caregiver” means a person who is at least 21 years old and who has agreed to assist with a patient’s medical use of marihuana and who has never been convicted of a felony involving illegal drugs.
- v “Qualifying patient” means a person who has been diagnosed by a physician as having a debilitating medical condition.

b) Other Words and Phrases. The words and phrases in this subsection, as used in this section, shall have the following meanings:

- i “Marijuana” means “marihuana” as used in the MMMA.
- ii “Medical marijuana cultivation facility” means a building or part of a building where marijuana plants are being grown in compliance with the MMMA, other than a medical marijuana home occupation or a dwelling unit in which marijuana is being cultivated for a qualifying patient who resides in the dwelling unit as permitted under subsection (7).
- iii “Medical marijuana dispensary” means a building or part of a building where one or more primary caregivers operate with the intent to transfer marijuana between primary caregivers and/or qualifying patients, other than a medical marijuana home occupation or a dwelling unit in which the transfer of marijuana occurs between a primary caregiver and qualifying patient who resides in the dwelling unit as permitted under subsection (7).
- iv “Medical marijuana home occupation” means an accessory use of a nonresidential nature that is conducted by a registered primary caregiver who resides in the dwelling and (A) is performed within a single-family dwelling or within an accessory building to that single-family dwelling; (B) is for the purpose of assisting one or more registered qualifying patients with the medical use of marijuana who do not reside in the dwelling and (C) complies with the MMMA.
- v “Michigan Medical Marihuana Act” and “MMMA” mean the Michigan Medical Marihuana Act, MCL 333.26421 *et seq.*

(3) Locations of medical marijuana dispensaries and medical marijuana cultivation facilities. A medical marijuana dispensary or medical marijuana cultivation facility may be located in the City only in accordance with the following restrictions:

- a) Medical marijuana dispensaries shall only be located in a district classified pursuant to this chapter as D, C, or M, or in PUD districts where retail is permitted in the supplemental regulations.

- b) Medical marijuana cultivation facilities shall only be located in a district classified pursuant to this chapter as C, M, RE, or ORL.
- c) In C districts, buildings used for medical marijuana dispensaries or medical marijuana cultivation facilities shall meet the minimum parking requirements of Chapter 59 for retail uses, with no exceptions for existing nonconforming parking.
- d) No medical marijuana dispensary or medical marijuana cultivation facility shall be located within 1000 feet of a parcel on which a public or private elementary or secondary school is located.

(4) Medical marijuana dispensary and medical marijuana cultivation facility regulations.

- a) No person shall reside in or permit any person to reside in a medical marijuana dispensary or medical marijuana cultivation facility, except as allowed in the M1 and M2 zoning districts.
- b) No one under the age of 18 shall be allowed to enter a medical marijuana dispensary or medical marijuana cultivation facility unless accompanied by a parent or guardian.
- c) No smoking, inhalation, or consumption of marijuana shall take place on the premises.
- d) In M1 and M2 districts, retail sales of products customarily incidental to the principal use shall be allowed provided that the total amount of internal floor area of the structure devoted to sales and display of such products does not exceed 10 percent of the floor area of the total establishment.
- e) Drive-in medical marijuana dispensaries shall be prohibited.
- f) All activities of a medical marijuana dispensary or medical marijuana cultivation facility shall be conducted indoors.
- g) No equipment or process shall be used in any medical marijuana dispensary or medical marijuana cultivation facility which creates noise, dust, vibration, glare, fumes, odors or electrical interference detectable to the normal senses beyond the property boundary.
- h) A zoning compliance permit shall be required consistent with Section 5:92.
- i) No more than 72 marijuana plants shall be grown on the premises of any medical marijuana cultivation facility.

j) Medical marijuana dispensaries and medical marijuana cultivation facilities shall comply with all other regulations of the zoning district in which the medical marijuana dispensary or medical marijuana cultivation facility is located, except when they are in conflict, in which case this section shall prevail.

k) ~~Medical marijuana dispensaries and medical marijuana cultivation facilities shall be operated in compliance with the MMMA.~~

(5) Cultivation or other medical use of marijuana as a medical marijuana home occupation in single-family dwellings.

a) In a single family dwelling in any zoning district, no more than 72 marijuana plants shall be grown on the premises, regardless of the number of registered primary caregivers and/or registered qualifying patients residing in the dwelling. The principal use of the single-family dwelling shall be a residential occupancy and shall be in actual use as such.

b) A zoning compliance permit shall be required, consistent with Section 5.92.

c) All other performance standards for home occupations as provided in Section 5:10.2(4)(c) shall be required.

(6) Medical marijuana home occupations are not permitted in multiple-family dwellings and other non-single family dwellings.

(7) Cultivation or other medical use of marijuana in dwelling units when the use is not a medical marijuana home occupation.

a) In a dwelling unit in any zoning district, where medical use of marijuana is not a medical marijuana home occupation, no more than 12 plants for each registered qualifying patient who resides in the dwelling unit shall be grown.

b) The principal use of the dwelling unit shall be residential occupancy and shall be in actual use as such.

c) No equipment or process shall be used in cultivation which creates noise, dust, vibration, glare, fumes, odors or electrical interference detectable to the normal senses beyond the property boundary.

d) All aspects of the medical use of marijuana shall comply at all times with the provisions of the MMMA.

Section 2. That this Ordinance shall take effect on the sixtieth day following legal publication.

