

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