

MEMORANDUM

To: City Planning Commission – Working Session
From: Jill Thacher, City Planner
Date: August 8, 2017
Re: DRAFT Medical Marijuana Zoning Ordinance

Staff has drafted an ordinance to address last year's Medical Marijuana Facilities Licensing Act. The Council-appointed Medical Marijuana Advisory Committee and staff met four times and developed a new medical marijuana facility permitting ordinance. That ordinance is currently tabled at City Council awaiting a companion zoning ordinance.

This draft zoning ordinance revision amends Chapter 55 (Zoning), including (but not limited to) parts of 5:10.14 through 5:10.27 (use regulations by district), and 5:50.1 (regulations concerning medical use of marijuana).

There are five types of businesses that fall under the definition of "marijuana facility" that can procure a permit from the state of Michigan under the MMMA: Growers, processors, secure transporters, provisioning centers, and safety compliance facilities.

The suggested changes accomplish two things: 1) They insert each of the five types of marijuana facilities into the appropriate zoning district as permitted principal uses or special exceptions uses, and; 2) They replace the sections on dispensaries and commercial cultivation facilities with language addressing the five new types of marijuana facilities. The special exception use criteria and marijuana definitions will be located with the other regulations concerning medical use of marijuana in 5:50.1.

More work will need to be done on the ordinance to remove all obsolete references, etc., but this is the heart of the marijuana zoning ordinance.

**DRAFT Medical Marijuana Zoning Ordinance
August 3, 2017**

Please note that this draft is incomplete and likely to change before and/or after City Planning Commission review.

Additions underlined, staff comments in red.

5:10.14. - RE research district.

(2) *Permitted principal uses.*

(g) Medical marijuana safety compliance facility, subject to section 5:50.1.

5:10.14A. - ORL office/research/limited industrial district.

(2) *Permitted principal uses.*

(i) Medical marijuana safety compliance facility, subject to section 5:50.1.

5:10.15. - C-1 local business district.

(4) *Special exception uses pursuant to section 5:104.*

(a) Medical marijuana provisioning centers, subject to section 5:50.1.

5:10.16. - C1A campus business district.

(4) *Special exception uses pursuant to section 5:104.*

(a) Medical marijuana provisioning centers, subject to section 5:50.1.

5:10.17. - C1B community convenience center.

(4) *Special exception uses pursuant to section 5:104.*

(a) Medical marijuana provisioning centers, subject to section 5:50.1.

5:10.18. - C1A/R campus business residential district.

(4) *Special exception uses pursuant to section 5:104.*

(a) Medical marijuana provisioning centers, subject to section 5:50.1.

5:10.19 - D1 and D2 downtown districts.

(2) Uses of land.

- (a) Uses in the D1 and D2 districts are allowed in accordance with Table 5:10.19A - Schedule of Uses. ...

Provisioning Center Core: S Interface: S Regulations: Section 5:50.1

(Add to table under "Commercial":)

5:10.21. - C2B business service district.

(2) *Permitted principal uses.*

(h) Medical marijuana secure transporter, subject to section 5:50.1.

(3) *Special exception uses pursuant to section 5:104.*

(c) Medical marijuana provisioning centers, subject to section 5:50.1.

5:10.23. - C3 fringe commercial district.

(3) *Special exception uses pursuant to section 5:104.*

(c) Medical marijuana provisioning centers, subject to section 5:50.1.

5:10.24. - M1 limited industrial district.

(2) *Permitted principal uses.*

(i) Medical marijuana secure transporter, subject to section 5:50.1.

(j) Medical marijuana safety compliance facility, subject to section 5:50.1.

(4) *Special exception uses pursuant to section 5:104.*

(a) Medical marijuana provisioning centers as an accessory use per 5:10.24(3)(a), subject to section 5:50.1 and all of the regulations that apply in this district.

(b) Medical marijuana grower, subject to section 5:50.1.

(c) Medical marijuana processor, subject to section 5:50.1.

5:10.25. - M1A limited light industrial district.

(4) *Special exception uses pursuant to section 5:104.*

(a) Medical marijuana provisioning centers, subject to section 5:50.1 and all of the regulations that apply in the M1 district.

(b) Medical marijuana grower, subject to section 5:50.1.

(c) Medical marijuana processor, subject to section 5:50.1.

5:10.26. - M2 heavy industrial district.

(4) Special exception uses pursuant to section 5:104.

(a) Medical marijuana provisioning centers, subject to section 5:50.1 and all of the regulations that apply in the M1 district.

(b) Medical marijuana grower, subject to section 5:50.1.

(c) Medical marijuana processor, subject to section 5:50.1.

5:10.27. - PUD planned unit development district.

(3) Special exception uses pursuant to section 5:104.

(a) Medical marijuana provisioning centers, subject to section 5:50.1 and where retail is permitted in the PUD supplemental regulations.

Additions generally underlined, staff comments in red.

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 medical marijuana facilities allowed by the Michigan Medical Marihuana Act, MCL 333.26421 et seq, and the Medical Marihuana Facilities Licensing Act. 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 Marihuana Act, marijuana continues to be classified as a Schedule 1 controlled substance under federal law: It is unlawful under federal law to: use, manufacture, distribute, or dispense marijuana; or to possess with the 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 Medical Marijuana Facilities Licensing Act ("MMFLA"). This Chapter contains some words and phrases that are defined in the MMFLA. As used in this Chapter, they have the same meaning as provided in the MMFLA, except that if at any time the definition of a word or phrase set forth in this section conflicts with the definition in the MMFLA, then the definition in the MMFLA shall apply. These words and phrases are as follows:

- (i) "Grower" means a licensee that is a commercial entity located in this state that cultivates, dries, trims, or cures and packages marijuana for sale to a processor or provisioning center.
- (ii) "Licensee" means a person holding a state operating license.
- (iii) "Marijuana" means that term as defined in section 7106 of the public health code, 1978 PA 368, MCL 333.7106.
- (iv) "Marijuana facility" means a location at which a license holder is licensed to operate under the MMFLA.
- (v) Marijuana plant" means any plant of the species Cannabis sativa L.
- (vi) "Marijuana-infused product" means a topical formulation, tincture, beverage, edible substance, or similar product containing any usable marijuana that is intended for human consumption in a manner other than smoke inhalation. Marijuana-infused product shall not be considered a food for purposes of the food law, 2000 PA 92, MCL 289.1101 to 289.8111.
- (vii) "Michigan medical marijuana act" means the Michigan medical marijuana act, 2008 IL 1, MCL 333.26421 to 333.26430.
- (viii) "Person" means an individual, corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or other legal entity.
- (ix) "Plant" means any living organism that produces its own food through photosynthesis and has observable root formation or is in growth material.

- (x) "Processor" means a licensee that is a commercial entity located in this state that purchases marihuana from a grower and that extracts resin from the marihuana or creates a marihuana-infused product for sale and transfer in packaged form to a provisioning center.
- (xi) "Provisioning center" means a licensee that is a commercial entity located in this state that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualifying patients, directly or through the patients' registered primary caregivers. Provisioning center includes any commercial property where marihuana is sold at retail to registered qualifying patients or registered primary caregivers. A noncommercial location used by a primary caregiver to assist a qualifying patient connected to the caregiver through the department's marihuana registration process in accordance with the Michigan medical marihuana act is not a provisioning center for purposes of this act.
- (xii) "Rules" means rules promulgated under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, by the department in consultation with the board to implement this act.
- (xiii) "Safety compliance facility" means a licensee that is a commercial entity that receives marihuana from a marihuana facility or registered primary caregiver, tests it for contaminants and for tetrahydrocannabinol and other cannabinoids, returns the test results, and may return the marihuana to the marihuana facility.
- (xiv) "Secure transporter" means a licensee that is a commercial entity located in this state that stores marihuana and transports marihuana between marihuana facilities for a fee.
- (xv) "State operating license" or, unless the context requires a different meaning, "license" means a license that is issued under this act that allows the licensee to operate as 1 of the following, specified in the license:
- a. A grower.
 - b. A processor.
 - c. A secure transporter.
 - d. A provisioning center.
 - e. A safety compliance facility.

(b) *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.
- (c) *Other words and phrases.* The words and phrases in this Chapter, as used in this Chapter, shall have the following meanings:
- (i) "Marijuana" means "marihuana" as defined in the MMFLA.
 - (ii) "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 1 or more registered qualifying patients with the medical use of marijuana who do not reside in the dwelling and (C) complies with the MMA. As used in this subsection, "accessory use" has the same meaning as it does in Chapter 55 (Zoning) of the Ann Arbor City Code.
 - (iii) "Medical Marihuana Facilities Licensing Act" and "MMFLA" mean Public Act 281 of 2016, MCL 333.27101, et seq.
 - (iv) "Permittee" means a person holding a City permit under this Chapter.
 - (v) "Class A grower" means a grower of not more than 500 marihuana plants.
 - (vi) "Class B grower" means a grower of not more than 1,000 marihuana plants.
 - (vii) "Class C grower" means a grower of not more than 1,500 marihuana plants.
 - (viii) "Facility" means "marijuana facility" as defined in the MMFLA.
 - (ix) "Marijuana facility" means "marihuana facility" as defined in the MMFLA.

(3) Locations of medical marijuana facilities. A medical marijuana facility may be located in the city only in accordance with the following restrictions:

- (a) A provisioning center shall only be located in a district classified pursuant to this chapter as D or C, or M as a permitted accessory use, or in PUD districts where retail is permitted in the supplemental regulations.
- (b) A grower shall only be located in a district classified pursuant to this chapter as M or RE.
Consider a minimum parcel size or buffer from residential uses
- (c) A processor shall only be located in a district classified pursuant to this chapter as M or RE.
Consider a minimum parcel size or buffer from residential uses
- (d) A secure transporter shall only be located in a district classified pursuant to this chapter as C2B, C3, or M.
- (e) A safety compliance facility shall only be located in a district classified pursuant to this chapter as RE, ORL, or M.
- (f) No medical marijuana provisioning center, grower, or processor shall be located within 1,000 feet of a parcel on which another medical marijuana provisioning center, grower, or processor is located.
- (g) No medical marijuana provisioning center, grower, or processor shall be located within 1,000 feet of a parcel on which a public or private K-12 elementary or secondary school is located, including private kindergartens.

(4) 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.

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

(6) *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.

(7) *Medical marijuana facility regulations.*

- (a) No person shall reside in or permit any person to reside in a marijuana facility, except as allowed in the M1 and M2 zoning districts.
- (b) No smoking, inhalation, or consumption of marijuana shall take place on the premises of any marijuana facility.
- (c) 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% of the floor area of the total establishment.
Subject to state law/licenses.
- (d) All activities of a marijuana facility shall be conducted indoors.
- (e) No equipment or process shall be used in any marijuana facility which creates noise, dust, vibration, glare, fumes, odors or electrical interference detectable to the normal senses beyond the property boundary.
- (f) Marijuana facilities shall comply with all other regulations of the zoning district in which the marijuana facility is located, except when they are in conflict, in which case this section shall prevail.

DRAFT

(8) Special exception use regulations for medical marijuana facilities. In addition to the regulations found in section 5:104 Special Exceptions, the following information shall be provided to the Planning Commission to help it apply standards or impose conditions. Additional information may be requested by staff or the Planning Commission.

(a) For provisioning centers, growers, and processors:

(i) An operations statement that describes, but is not limited to, the life-cycle of marijuana and marijuana-infused products entering, stored on, grown, dried, and leaving the site; this may include how deliveries are handled, methods of storage, cash handling, a business floor plan, or other pertinent information.

(ii) A detailed safety and security plan that addresses marijuana, customers, employees, and neighboring residents, offices, or businesses.

(iii) A description of methods to be used to contain all odors within the building.

(iv) A waste disposal plan specific to marijuana, marijuana plant waste, and marijuana-infused products.

(v) Days and hours of operation.

(b) For growers:

(i) A water/wastewater statement that describes the expected volume of water used and any on-site wastewater treatment, permits required for wastewater disposal, the expected volume of wastewater based on the maximum number of plants allowed in that facility's grower class, or other pertinent information.