

PLANNING AND DEVELOPMENT SERVICES STAFF REPORT

For Planning Commission Meeting of October 17, 2017

SUBJECT: Amendments to Chapter 55 (Zoning), Section 5:50.1 (Regulations concerning medical use of marijuana), and Use Regulation Sections 5:10.14 through 5:10.19, 5:10.21, and 5.10.23 through 5:10.27 related to medical marijuana permitted uses and special exception uses

PROPOSED CITY PLANNING COMMISSION MOTION

The Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve the amendments to Chapter 55 (Zoning), Section 5:50.1 (Regulations concerning medical use of marijuana), and Use Regulation Sections 5:10.14 through 5:10.19, 5:10.21, and 5.10.23 through 5:10.27 related to medical marijuana permitted uses and special exception uses.

STAFF RECOMMENDATION

Staff recommends that the proposed amendments to Chapter 55 (Zoning), Section 5:50.1 (regulations concerning medical use of marijuana) and Use Regulation Sections 5:10.14 through 5:10.19, 5:10.21, and 5.10.23 through 5:10.27 related to medical marijuana permitted uses and special exception uses be approved based on changes made to state enabling legislation in 2016.

BACKGROUND

In September 2016, the Michigan Legislature passed the Medical Marijuana Facilities Licensing Act (MMFLA) to provide a licensing and regulatory framework for medical marijuana. The MMFLA was signed into law, and will be implemented by the state by December 15, 2017.

These proposed amendments apply only to Chapter 55 Zoning of city code. They address where various newly-defined medical marijuana uses may be appropriately located, and reasonable restrictions to protect people and other uses in that zoning district. Permitting for medical marijuana facilities is being addressed in a separate code section.

The proposed amendments have been considered by the Ordinance Revisions Committee and reviewed in a working session of the City Planning Commission. With a few recommended changes, they felt it was appropriate to move forward with a public hearing and discussion of the proposed text amendments.

DESCRIPTION AND ANALYSIS

Attached to this report are the proposed text amendments. Deleted text is shown as ~~strikethrough~~, proposed text as underline. The proposed amendments are in increasing numerical order by chapter.

Chapter 55 (Zoning), Section 5:10.14 through .27, most sections – This section adds five new types of marijuana facilities that can be licensed by the state (growers, processors, secure transporters, provisioning centers, and safety compliance facilities) as permitted principal uses and special exception uses in appropriate districts. Table 1 below summarizes each facility type by zoning district.

Note that provisioning centers may be a special exception use in M districts if they are incidental to the principal use and use no more than 10% of the establishment’s floor area. This language is drawn from the permitted accessory use language for retail sales of products customarily incidental to the principal use in M districts.

In PUD districts, provisioning centers are allowed as special exception uses if retail is permitted in the PUD supplemental regulations for the district.

Table 1. Allowed Medical Marijuana Facilities by District

	C1;C1A; C1B; C1A/R	C2B	C3	D1; D2	ORL	M1; M1A; M2	PUD	RE
Grower						SEU		SEU
Processor						SEU		SEU
Secure Transporter		P	P			P		
Provisioning Center	SEU	SEU	SEU	SEU		SEU*	SEU**	
Safety Compliance Facility					P	P		P

P = Principal Permitted use

SEU = Special Exception use

*Provisioning center in an M district must be incidental to the principal use, etc.

**If retail is an allowed PUD use.

Chapter 55 (Zoning), Section 5:50.1 Regulations concerning medical use of marijuana – Amendments in this section remove obsolete references to state legislation and apply updates from the MMFLA. In particular, references to “dispensaries” and “cultivation facilities” are replaced with the five types of facilities listed in Table 1.

Subsection (2) Definitions have been updated to match the MMFLA and remove obsolete terms.

Subsection (3) removes redundant location language. It adds or clarifies the following restrictions:

- Three of the five types of medical marijuana facilities (provisioning center, grower, and processor) may not be located within 1,000 feet of each other. The language clarifies that the measurement is from parcel to parcel. In the attached draft, you will see a comment on page seven. This provision was previously discussed by Planning Commission solely in regard to provisioning centers. An incrementalizing approach

would be to apply the same separation to grower and/or processor facilities. This has been drafted, but warrants a determination by Planning Commission as part of any recommendation to City Council.

- An exception is that in the M districts, co-location is allowed for up to five different facilities. For example, a grower, processor, secure transporter, safety compliance facility, and provisioning center may co-locate on one parcel. This is noted on page eight, and could be removed, or amended to specify a total number of licensed facilities, regardless of type (i.e. “stacking” vs. colocation). Note that this provision would not apply in the RE district.
- Locating a provisioning center, grower, or processor within 1000 feet of a K-12 school remains in the ordinance. Under the proposed language, it would follow the model set by the Liquor Control Commission that clarifies that private kindergartens are only included when component to a larger school (i.e. K through higher grades). There are a few private kindergartens affiliated with preschools in Ann Arbor, such as Doughty Montessori on South Ashley and Daycroft Montessori on Oakbrook which would not fall into this definition.

Subsections (4), (5), and (6) address medical marijuana home occupations and are unchanged from the current ordinance.

Subsection (7) addresses medical marijuana facility regulations. These are a partial carryover from the current ordinance – some of the previous facility regulations were determined to be unnecessary (restrictions on drive-throughs), redundant (M district accessory use language), or made obsolete by state regulations.

Subsection (8) describes information required for medical marijuana facility special exception use applications. It applies to growers, processors, and provisioning centers. It also reiterates the 5:104 Special Exceptions requirement for a site plan, and clarifies that approval of the special exception use is contingent upon Council approval of the site plan.

STAFF COMMENTS

Special exception uses may be granted by the City Planning Commission. They are used to ensure that the proposed use is compatible with the zoning district and not detrimental to the neighborhood, and may impose reasonable conditions to reduce undesirable aspects of the use. These conditions may insure that the following are provided:

- Adequate public services for the grower, processor, or provisioning center, including (but not limited to) sewer, water, streets, solid waste pickup, or fire protection. Staff anticipates the availability of water to growers and adequate fire hydrant coverage for all to be the most prevalent concerns. This information will be documented and reviewed during the site plan process.
- Protection of the natural environment and energy conservation.
- Compatibility with adjacent uses.
- Use of the land in a socially and economically desirable manner.

Any spacing requirement between growers, processors, and provisioning centers would have a limiting effect on the number of these uses throughout the city. (The spacing requirement does not apply to secure transporters or safety compliance facilities.) Because the current version of the city’s marijuana facility permit ordinance being considered by City Council does not limit the number of permits that the city may issue, staff recommends a spacing

requirement in the zoning ordinance. Additionally, or alternatively, the companion permitting Ordinance could consider a cap on the total number of licensed facilities to be considered by the City.

Prepared by Jill Thacher
Reviewed by Brett Lenart
mg

Attachment: Draft Medical Marijuana Zoning Ordinance

c: City Attorney
Systems Planning
Fire Marshal
File

**DRAFT Medical Marijuana Zoning Ordinance
For City Planning Commission 10/17/17
October 11, 2017**

[Additions underlined, deletions in ~~strikeout~~.]

Chapter 55 Zoning

5:10.14. - RE research district.

(2) *Permitted principal uses.*

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

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

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

(c) Medical marijuana processor, 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. - C1 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

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.

(2) *Permitted principal uses.*

(b) 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.

5:10.24. - 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, provided that provisioning center is incidental to the principal use and that the total amount of internal floor area of the structure devoted to provisioning center does not exceed 10% of the floor area of the total establishment, and subject to section 5:50.1.

(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, provided that provisioning center is incidental to the principal use and that the total amount of internal floor area of the structure devoted to provisioning center does not exceed 10% of the floor area of the total establishment, subject to section 5:50.1.

(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, provided that provisioning center is incidental to the principal use and that the total amount of internal floor area of the structure devoted to provisioning center does not exceed 10% of the floor area of the total establishment, subject to section 5:50.1.

(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.

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 Medical Marijuana Facilities Licensing Act, a unique land use with ramifications not addressed by more traditional zoning district and home occupation regulations.
- (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 Chapter.

- (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) "Marihuana" means that term as defined in section 7106 of the public health code, 1978 PA 368, MCL 333.7106.
 - (iv) "Marihuana facility" means a location at which a license holder is licensed to operate under the MMFLA.
 - (v) "Marihuana plant" means any plant of the species Cannabis sativa L.
 - (vi) "Marihuana-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. Marihuana-infused product shall not be considered a food for purposes of the food law, 2000 PA 92, MCL 289.1101 to 289.8111.

- (vii) "Plant" means any living organism that produces its own food through photosynthesis and has observable root formation or is in growth material.
- (viii) "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.
- (ix) "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.
- (x) "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.
- (xi) "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.
- (xii) "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.
- (xiii) "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.

(a)(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.~~
 - (i) ~~(ii)~~ *Marihuana* means that term as defined in Section 7106 of the Public Health Code, 1978 PA 368, MCL 333.7106.
 - (ii) ~~(iii)~~ *Medical Use of Marijuana* means the acquisition, possession, cultivation, manufacture, extraction, use, internal possession, delivery, transfer, or transportation of marijuana, marijuana-infused products, or paraphernalia relating to the administration of marijuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition.
 - (iii) ~~(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.
 - (iv) ~~(v)~~ *Qualifying patient* means a person who has been diagnosed by a physician as having a debilitating medical condition.
- (c) ~~(b)~~ *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 used defined in the ~~MMMA~~ MMFLA.
 - ~~(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 1 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).~~
 - (ii) ~~(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 1 or more registered qualifying patients with the medical use of marijuana who do not reside in the dwelling and (C) complies with the MMMA. 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 Marijuana Facilities Licensing Act” and “MMFLA” mean Public Act 281 of 2016, MCL 333.27101, et seq.

(iv) “Facility” means “marijuana facility” as defined in the MMFLA.

(v) “Marijuana facility” means “marijuana facility” as defined in the MMFLA.

~~(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 1,000 feet of a parcel on which a public or private elementary or secondary school is located.~~

(3) Additional medical marijuana facility location restrictions:

(a) No parcel containing a 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.

(b) A maximum of one state operating license shall be utilized per parcel.

(i) Exception: In the M1, M1A and M2 districts, a maximum of five state operating licensed facilities may co-locate on a single parcel. No two facilities of the same type (grower, processor, secure transporter,

Commented [LB1]: Planning Commission members previously discussed limiting this to provisioning centers only. Draft includes three types of facilities to limit complete conversion of districts to singular use.

provisioning center as an incidental use, and safety compliance facility) may be located on the same parcel.

Commented [LB2]: This would restrict multiple uses to be diverse (i.e. differing types of facilities. Alternatively, a total number of licensed facilities per parcel could be considered (i.e. five distinct grow facilities), or no limit.

(c) No parcel containing a 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.

(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% 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.~~

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

~~(4) (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.

~~(5) (6) Medical marijuana home occupations are not permitted in two-family or multiple-family dwellings.~~

~~(6) (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.

(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.
 - (c) No smoking, inhalation, or consumption of marijuana shall take place on the premises of any marijuana facility.
 - (d) In M1 and M2 districts, retail sales of products customarily incidental to the principal use shall be allowed as a special exception use 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.
 - (e) All activities of a marijuana facility shall be conducted indoors.
 - (f) 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.
 - (g) 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.
- (8) Special exception use regulations for medical marijuana facilities.
- (a) 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.
 - (i) For provisioning centers, growers, and processors:
 - a. 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.
 - b. A detailed safety and security plan that addresses marijuana, customers, employees, and neighboring residents, offices, or businesses.
 - c. A description of methods to be used to contain all odors within the building.

d. A waste disposal plan specific to marijuana, marijuana plant waste, and marijuana-infused products.

e. Days and hours of operation.

(ii) For growers:

a. 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.

(b) A site plan that meets the requirements of Chapter 57, Subdivision and Land Use Controls, is required. For sites that require City Council approval of a site plan, approval of the special exception use by the City Planning Commission shall be contingent upon site plan approval by City Council.

Zoning ordinance draft 101117.v2.docx