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TO: Mayor and Council

FROM: Howard S. Lazarus, City Administrator

CC: Jacqueline Beaudry, City Clerk  
Derek Delacourt, Community Services Area Administrator  
Brett Lenart, Planning Manager

SUBJECT: September 23 Council Agenda Responses

DATE: September 20, 2019

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**WS-1 – Discuss City Proposed Ordinances for the Zoning and Permitting of Adult Use (Recreational) Marijuana Establishments as allowed by the Michigan Regulation and Taxation of Marijuana Act**

**Question:** Are the parts of our code re: the medical marijuana home occupation still relevant? Do we have any concerns about that category becoming de facto microbusinesses in residential areas? (Councilmember Nelson)

**Response:** Yes, it is still possible to be a medical marijuana caregiver as a home occupation. The maximum number of plants permitted in a microbusiness is 150 plants, whereas a home occupation would be limited to up to 72 plants, only for medical use in support of up to 5 cardholders, plus the resident.

**Question:** At least one constituent has expressed concerns to me about the 600 ft. distance between marijuana facilities. Why is it not 1000 ft.? (Councilmember Nelson)

**Response:** Planning Commission originally recommended a 1,000 ft. separation, which was amended by City Council to 600 feet, largely based on consideration of block sizes and existing facility locations at the time. Subsequently, the City Council directed the Planning Commission to reconsider this standard after adoption. The Planning Commission put forth a recommendation of 1,000 feet a second time, which was again denied by the City Council.

## **General and Process-Related**

**Question:** Q1. Can you please provide data on the current number of permits approved for each of the existing 5 types of facilities including how many are currently active facilities and where they are located. Also, is there currently a wait list for provisioning center permits and if so, how many applications are in the queue? (Councilmember Lumm)

**Response:** The following permits have been issued by the City Clerk's Office. They are at varying stages of approval with the State licensing board, and some are in the second year of operation and have renewed their permit with the City Clerk's Office.

Growers – 2 permits (1 expired and not renewed)

Processors – 2 permits (plus one more denied at the State level)

Provisioning Centers – 15 permits (plus two more denied at the State level)

Safety Compliance – 1 permit

Secure Transporter – 2 permits

Attached is a spreadsheet with the data from eTrakit in response to the request for addresses.

26 Provisioning Centers have received a Special Exception Use, and three additional provisioning centers have applications under review or in queue.

**Question:** Q2. Does that state requirement apply to all types of permits/licenses or just selected types? If just selected types, which ones? (Councilmember Lumm)

**Response:** This requirements applies to all recreational marijuana license types where there is a local numerical limit.

**Question:** Q8. While the planning department and clerk's office certainly have been deeply involved in these two ordinances, have the other departments (especially police and fire) had an opportunity to review and comment on the ordinances and regulations/requirements? If not why not, and if so, what were their comments, suggestions, observations (if any)? (Councilmember Lumm)

**Response:** Police and Fire are copied on permit applications for their review at the time they apply with the City Clerk. Police and Fire were not consulted in considering which the appropriate land use districts are for marijuana facilities as appropriate locations.

**Question:** Q10. I recall there was benchmarking conducted when the medical marijuana permitting and planning-related ordinances were approved. Can you please share that information again, and was any further benchmarking done related to recreational marijuana permitting and planning regulations? If so, can you please share that

information and elaborate on what we learned and how that was incorporated into the draft ordinances? (Councilmember Lumm)

**Response:** We did not benchmark other communities at this time, but the proposed ordinances considered the new recreational marijuana uses in the context of existing similar medical uses as currently allowed by the zoning ordinance.

**Question:** **Q12.** Are we aware of any other Michigan cities that have adopted (or are in the process of adopting) ordinances regulating recreational marijuana? What is the status in Lansing/East Lansing, Grand Rapids, and Detroit? (Councilmember Lumm)

**Response:** Chesaning, Manistee, and Bay City have adopted ordinances. We are continuing to contact City Attorneys in other municipalities regarding the status and content of their ordinances.

### **Permitting Ordinance (Ch. 96)**

**Question:** **Q13.** Currently we cap the number of provisioning centers at 28. Under the proposed ordinance, there could be up to 84 “retail/transactional” type-facilities where marijuana is sold or consumed (28 each for provisioning center/retailer, designated consumption facility, and microbusiness). Do we have any benchmarking data on the number of retail/transaction facilities per capita in other communities in states with legalized recreational marijuana? (Councilmember Lumm)

**Response:** No.

**Question:** **Q14.** While I understand the caps were set by council (not staff) and were arbitrary (based on the number of applications at a point in time), what are staff’s views regarding the appropriate cap numbers for Ann Arbor? Does the police department believe additional resources will be necessary if the cap numbers are largely realized? (Councilmember Lumm)

**Response:** City Council established the cap for provisioning centers in 2018 based on pending permit requests at the time, and a desire to limit the total number as Council concluded that the number allowed was enough to serve the community. Staff did not propose any additional caps beyond the initial cap of 28 that was adopted for medical provisioning centers. The City Administrator and Police Chief have begun the discussion of additional resource requirements, and will address required adjustments at the December budget retreat. They anticipate budget amendments will most likely be needed during the current fiscal year.

**Question:** **Q15.** Do other communities that cap the number of retail-type facilities also cap the number of growers or processors and if so, what are those caps? (Councilmember Lumm)

**Response:** We do not have this information.

**Question:** Q16. Under the MRTMA, there are two license types related to one-time events. The cover memo for C-1 on Sep 16<sup>th</sup> indicated that the Ann Arbor “ordinance amendment does not require obtaining a city permit under Chapter 96. However, other ordinances applicable to events in general may apply.” Can you please clarify what that means – will these be handled like events with temporary liquor licenses (council approves event if part of a street closing)? Does the state law speak to local approval of temporary event licenses? (Councilmember Lumm)

**Response:** Ordinances of general application would apply, for example sidewalk or street occupancy permit requirements, which apply only to events being held in the public right-of-way. Similarly, the City’s noise ordinance would also apply. The state law does allow for local approval of event licenses.

**Question:** Q17. Regarding fees, the current permit fee under the medical marijuana ordinance is \$5,000 a year and my understanding is that is the maximum allowed by state law under the MMFLA. Can you please confirm that and are there maximum fees cities can charge under the MRTMA? If so, what are they? (Councilmember Lumm)

**Response:** \$5000 is the maximum fee for medical marijuana and we charge this fee at the time of application with the City Clerk. It is due annually and is also charged for renewal permits. MRTMA allows fees up to \$5,000 per year per facility type.

**Question:** Q18. The definition of a Designated Consumption establishment does not specifically mention sale. I’m assuming one could purchase the marijuana products they consume these facilities (like purchasing a beer at a bar), but can these facilities also sell products that are not consumed there? (Councilmember Lumm)

**Response:** No, however, based on amendments to the ordinances at City Council, a Designated Consumption establishment could be located at the same property as a provisioning center and/or marijuana retailer. Under MRTMA rules separate licenses at the same facility must have distinct and identifiable areas that have separate entrances and exits, inventory, record keeping, and point of sale operations.

**Question:** Q19. The definition of Microbusiness does not mention consumption, just growing, processing and selling – in addition to selling product, can consumption occur at these facilities? (Councilmember Lumm)

**Response:** No.

**Question:** Q20. Section 7:607 (2) (b) defines the security measures requirements to obtain a permit (cameras, monitored alarm system, storage room). Do these requirements apply to all permit types? Also, section (i) mentions that “the City Administrator may adopt regulations implementing this requirement” – did that ever happen? If so, can you please provide the details and if not, why not? (Councilmember Lumm)

**Response:** This section applies to all permit types. Rules are discretionary and no rules have been proposed or adopted.

**Question:** Q21. Section 7:608 regulates the conduct of business at a facility and 7:609 outlines prohibited acts. How much inspection (if any) has occurred since the medical marijuana ordinances were passed and if any violations were discovered, what happened? Going forward, how much inspection is planned and who will be performing it? (Councilmember Lumm)

**Response:** No inspections have been conducted beyond those that occur at establishment and up to issuance of a certificate of occupancy. The state inspects facilities as part of the licensure process.

**Question:** Q22. Beyond inspections, have we benchmarked other cities where recreational marijuana has been legalized in term of additional policing resources they have deployed? If so, can you please share the information and if not, please do. (Councilmember Lumm)

**Response:** No.

**Question:** Q23. The penalties for violations under the city's medical marijuana ordinance were up to \$500 a day and that isn't changing. Have any fines been levied for violations to date and do we have any information on the penalties in other communities? (Councilmember Lumm)

**Response:** There have been no prosecutions, hence no fines levied. We do not have information on penalties in other communities.

### **Planning-Related Ordinance (Sections of Ch. 55 - UDC)**

**Question:** Q24. The existing restriction that a provisioning center can't be being located within 600 feet of another provisioning center will apply to a marijuana retailer or microbusiness, but not to a Designated Consumption facility. That means for areas not within 1,000 feet of a school, there is no limit on the number of consumption facilities that can be located in that specific area (except the 28 limit in total). Can you please explain the logic behind prohibiting concentrations of provisioning centers/retailers and microbusiness, but not consumption facilities? (Councilmember Lumm)

**Response:** It is anticipated that designated consumption facilities will not be as prevalent as provisioning centers and/or retail centers. If the community experience that the number and/or concentration of designated consumption facilities is of concern, consideration of adding these uses to the 600 ft. restriction could be considered.

**Question:** Q25. Also on designated consumption facilities, the Planning Commission meeting minutes included a statement that "at their earlier work session, the Commission had expressed wanting more control over the Consumption Facility Designation, so a

special exception use request was discussed for that category.” Can you please elaborate on that discussion and provide more texture on the concerns expressed? (Councilmember Lumm)

**Response:** At the work session, the Planning Commission mostly focused on designated consumption facilities as a new use, and discussed the potential for such facilities to be adjacent to provisioning centers and/or retailers. The commission also discussed that it was difficult to predict whether such uses might function more like private clubs or hookah lounges.

**Question:** Q26. With medical marijuana, council considered, but rejected expanding the 1,000 foot rule related to schools to include “school-like” facilities like child care centers or group child care homes (included in Michigan’s school-like definition) or youth centers (included in LA ordinance). Given what likely is a dramatic increase in volume/activity with recreational use compared with just medical marijuana use. did staff or the planning commission discuss expanding the school definition this time around? What is staff’s view on including child care centers, group child care homes and/or youth centers in Ann Arbor’s 1,000 foot restriction? (Councilmember Lumm)

**Response:** No, the Planning Commission did not discuss such changes. Staff’s perspective remains that childcare centers and group childcare homes primarily provide care for younger children, who would not be independently at risk to access marijuana facilities. Youth centers remains a generalized term that would be difficult to define, measure, and potentially enforce.

**Question:** Q27. I was encouraged to see that Special Exception Use approval is required for the two new facility categories (consumption facility, microbusiness) in the zoning districts where they are allowed. Can you please confirm the citizen participation requirements for the SEU approval in these instances are the more rigorous Type 1 requirements as they are for provisioning centers now? (Councilmember Lumm)

**Response:** Yes, any special exception use application requires compliance with Type 1 citizen participation requirements.

**Question:** Q28. Although the permitted use table indicates that designated marijuana consumption facilities require special exception use approval, section 7 (P 19) which outlines what the SEU special requirements are, does not list designated consumption facility. Is that an oversight? If not, what specifically are the SEU requirements for designated consumption facilities? (Councilmember Lumm)

**Response:** Yes, this is a scrivener’s error, and the use will be included in the proposed ordinance.

**Question:** Q29. On page 19, section 6 b states that no smoking, inhalation, or consumption of marijuana shall take place on the premises of any marijuana facility except a designated consumption facility and section 6 c states that all activities of a

marijuana facility must be indoors. Does that actually mean what it suggests – that designated consumption facilities can't have outdoor seating or standing areas and that no consumption can occur at the other facility types period (either inside building or on property)? (Councilmember Lumm)

**Response:** Yes, on all accounts.

**Question:** Q30. On Table 5-19-1, it indicates that there is no requirement for minimum vehicle parking at a designated consumption facility, but there is a requirement for minimum bicycle parking. Assuming I'm reading this right and it is not a mistake, please explain how that makes sense? (Councilmember Lumm)

**Response:** You are reading it correctly. The rationale is to look for opportunities to advance our collective community infrastructure around non-motorized transportation options. Additionally, any potential impact of an impaired bicycle rider is a lower community risk than an impaired vehicle operator.

**Question:** Q31. Also on parking, what is the rationale for requiring minimum parking at a provisioning center/retailer, but not at a designated consumption facility where the expected stay would be longer? (Councilmember Lumm)

**Response:** The proposed parking for provisioning centers, and now retailers, is not proposed to change from the current standard. Provisioning Centers do not permit any consumption in the facility. Designated Consumption facilities are for the purpose of marijuana use, and City staff and Planning Commission felt that dictating a number of vehicular parking spaces where the consumption of marijuana is the primary business, was not important.

**Question:** Q32. For growers (or microbusinesses), there's a new requirement that 10% of their energy is generated from on-site solar panels. Is this a requirement other communities have related to marijuana businesses? Does this mean existing growers without solar panels are non-compliant and must install solar panels or lose their permit? Finally, setting aside the question of whether it is fair or equitable, is it even legal for the city to have such a requirement for one type of business/activity that it doesn't have on any others? (Councilmember Lumm)

**Response:** Staff is unaware if it is a requirement in other communities, however, other communities have experienced significant power demand challenges based on the introduction of marijuana grow facilities. Existing growers would not be required to comply with this, as zoning is prospective, and any grower previously approved would become legally non-conforming. Based on the proposed energy demand of these uses, it is appropriate for the City to consider the appropriate standards and conditions that are necessary to successfully integrate these uses into the community.

**Question:** Q33. For the two new facilities (microbusinesses and designated consumption facilities), can you please provide the rationale for the zoning district selection? (Councilmember Lumm)

**Response:** Microbusinesses will include growing, processing and sales. The rationale for keeping these districts in the C3, RE, ORL, M1, M1A, and M2 is that majority of the floor area will likely be dedicated to the growing and processing functions. Additionally, the necessary size to accommodate these uses would be more likely in these districts.

Designated Consumption Facilities are proposed in commercial districts, as they are similar in nature to retail or service uses (e.g. bars, restaurants).



Address	Permit Number	Applicant	Permit SubType	Status	Applied Data	Issued Data	Owner's Name	Description
3820 VARSITY DR	MMJ18-0006	Exclusive Brands 3820 Varsity	GROWER - CLASS A	EXPIRED	05/17/2018		SRE PARTNERS, LLC	Exclusive Brands (3820 Varsity)
975 PHOENIX DR	MMJ19-0022	Exclusive Brands	GROWER - CLASS C	ISSUED	08/28/2019		GOETZ PAULETTE D TRUST	Exclusive Brands (975 Phoenix)
2251 W LIBERTY ST	MMJ19-0001	Detroit Fudge Company	PROCESSOR	DENIED	01/14/2019		B & L LIBERTY PROPERTIES, LLC	Detroit Fudge Company
124 W SUMMIT ST B	MMJ19-0005	Arbor Kitchen LLC	PROCESSOR	APPROVED	04/30/2019	02/07/2019	SUMMIT PLAZA ASSOC	Arbor Kitchen LLC
3820 VARSITY DR	MMJ19-0019	Exclusive Brands	PROCESSOR	TEMPORARY	08/08/2019		3800 Varsity Partners LLC	Exclusive Brands, LLC
338 S ASHLEY ST	MMJ18-0001	Greenstone	PROVISIONING CENTER	ISSUED	04/24/2018	02/07/2019	A & B LLC	Greenstone
450 S MAIN ST	MMJ18-0012	Rabbit Club LLC	PROVISIONING CENTER	TEMPORARY	07/25/2018		444 SOUTH MAIN, LLC	Rabbit Club LLC
2793 PLYMOUTH RD K	MMJ18-0013	MMM of A2 Inc- Medicine Man	PROVISIONING CENTER	ISSUED	08/03/2018	02/07/2019	WATERSHED III LLC	MMM of A2 Inc- Medicine Man
2247 W LIBERTY ST	MMJ18-0015	People's Choice	PROVISIONING CENTER	DENIED	11/20/2018		B & L LIBERTY PROPERTIES, LLC	People's Choice
3152 PACKARD RD	MMJ19-0002	Huron View Provisioning	PROVISIONING CENTER	ISSUED	09/18/2018		KHAN GOLAM & HASAN LUSY	Huron View Provisioning
603 E WILLIAM ST	MMJ19-0003	LIV WELLNESS & CAFE	PROVISIONING CENTER	TEMPORARY	04/08/2019		601 EAST WILLIAM L.L.C.	Liv Wellness
321 E LIBERTY ST	MMJ19-0006	Arbors Wellness	PROVISIONING CENTER	APPROVED	04/30/2019	02/07/2019	COPI WILLIAM A	Arbors Wellness
2732 JACKSON AVE	MMJ19-0008	Gr Vending MI, LLC d/b/a Herbology	PROVISIONING CENTER	TEMPORARY	05/10/2019		ARBOR WEST ENTERPRISE, LLC	Gr Vending MI, LLC d/b/a Herbology
423 MILLER AVE	MMJ19-0009	DAP Synergy, LLC	PROVISIONING CENTER	ISSUED	05/14/2019	02/07/2019	SUSTAINABLE PROPERTIES, LLC	DAP Synergy, LLC (dba Bloom City Club)
1818 PACKARD ST	MMJ19-0010	Arborside Consumer Protection	PROVISIONING CENTER	DENIED	05/15/2019		ONYX MANAGEMENT, LLC	Arborside Consumer Protection
2793 PLYMOUTH RD K	MMJ19-0012	The Calmic, LLC	PROVISIONING CENTER	UNDER REVIEW	06/18/2019		Plymouth Road Plaza Associates, LLC	The Calmic, LLC
111 S MAIN ST	MMJ19-0014	Om of Medicine	PROVISIONING CENTER	ISSUED	07/02/2019	02/07/2019	111 SOUTH MAIN, LLC	Om of Medicine
450 S MAIN ST	MMJ19-0016	Rabbit Club, LLC	PROVISIONING CENTER	TEMPORARY	07/24/2019		444 SOUTH MAIN, LLC	Rabbit Club, LLC
700 TAPPAN ST	MMJ19-0017	Green Planet Patient Collective	PROVISIONING CENTER	ISSUED	07/30/2019		R & D PARTNERSHIP, LLC	Green Planet Patient Collective
3820 VARSITY DR	MMJ19-0020	Exclusive Brands	PROVISIONING CENTER	TEMPORARY	08/08/2019		3800 Varsity Partners LLC	Exclusive Brands, LLC
1958 S INDUSTRIAL HWY A	MMJ19-0023	Skymint	PROVISIONING CENTER	UNDER REVIEW	09/12/2019		COLONIAL LANES PLAZA	Skymint
3720 WASHTENAW AVE	MMJ19-0024	Ann Arbor Healing, LLC	PROVISIONING CENTER	TEMPORARY	09/12/2019		FL MI Re 8	
3970 VARSITY DR	MMJ19-0013	PSI Labs, LLC	SAFETY COMPLIANCE FACILITY	ISSUED	06/20/2019		ANN ARBOR COMMERCE CENTER LLC	PSI Labs, LLC
573 S MAPLE RD	MMJ19-0007	Greenline Express Inc	SECURE TRANSPORTER	TEMPORARY	05/06/2019		INWOOD JON & JANICE	Greenline Express, Inc.
3810 PACKARD RD 200	MMJ19-0021	Premier Specialized Logistics, LLC	SECURE TRANSPORTER	TEMPORARY	08/13/2019	08/15/2019	GUENTHER ROBERT F & SANDRA R	Premier Specialized Logistics, LLC