

PLANNING AND DEVELOPMENT SERVICES STAFF REPORT

For Planning Commission Meeting of September 21, 2010

SUBJECT: Amendments to Chapter 55 (Zoning), add a new Section 5:52 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 5:52 Regulations Concerning Medical Marijuana.

STAFF RECOMMENDATION

Staff recommends **postponing** action on this amendment until input received at the September 21 public hearing can be considered and incorporated into the ordinance language as appropriate.

STAFF REPORT

In November of 2008, voters passed the Michigan Medical Marijuana Act (MMMA). The act allows people with defined debilitating medical conditions to grow and possess marijuana to relieve the symptoms of their condition. It also allows others to grow marijuana for them under certain circumstances. The MMMA does not address where or how growing and distributing medical marijuana may occur. This poses a challenge for municipalities desiring to regulate these activities the way they do other land uses. As a result, local units of government statewide are taking a variety of approaches ranging from banning medical marijuana use outright (based on Federal law, under which marijuana is illegal) to allowing it in specific zoning districts but usually with special conditions. Per the Michigan Department of Community Health (MDCH), which administers the Act, there is no place to legally buy medical marijuana in the state - - it must be grown by either the patient or their caregiver.

The MMMA defines *patients* and *caregivers*, and the MDCH administers a state registry program for them. Patients must get a statement from a physician certifying that they have a qualifying debilitating medical condition before applying for a *registry card*. Once registered, patients are allowed to grow up to twelve marijuana plants and possess up to 2.5 ounces of usable marijuana. Caregivers may facilitate patients' medical marijuana use by growing plants and possessing usable marijuana for up to five patients. Caregivers must be designated through the state registry program by their patient(s). The maximum number of plants that any individual could grow is 72, if a caregiver grows twelve plants for each of five patients and the caregiver is also a registered patient and grows his own twelve plants. Patients may reimburse caregivers for reasonable expenses incurred.

In 2010, a number of medical marijuana cultivation and distribution businesses were brought to the attention of city staff through building and housing inspections, reports from police, and complaints from neighbors. On August 5, 2010 the Ann Arbor City Council placed a 120 day

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 moratorium expires on December 3, 2010.

Medical marijuana cultivation and distribution is not currently addressed by City Code. The Ordinance Revisions Committee of the City Planning Commission (CPC) met three times to discuss appropriate locations and zoning regulations for medical marijuana uses, and the CPC reviewed the resulting draft at a working session on September 14. The draft ordinance was posted on the city website's planning page on September 15 for public review and comment, and is currently being reviewed by the City Attorney's office.

A number of other issues have been identified by staff and planning commissioners that might be addressed through the zoning compliance permit or licensing. City staff are continuing to investigate the most appropriate method to address building safety, enforcement, and other issues.

PROPOSED AMENDMENTS

The proposed new section 5:52 amending Chapter 55 (Zoning) of City Code is attached. The main points of the section include:

Types of Facilities Allowed

- *Medical marijuana home occupations* consist of one or two caregivers growing and/or transferring medical marijuana from a single-family dwelling in which they reside.
- *Medical marijuana dispensaries* consist of three or more caregivers transferring medical marijuana to patients.
- *Medical marijuana cultivation facilities* consist of three or more caregivers or eleven or more patients growing marijuana on a parcel.
- A patient may grow plants as allowed by the MMMA in their dwelling. If eleven or more patients wish to grow medical marijuana together on a parcel other than where they reside, they are considered to be a cultivation facility.

Location of Facilities

- Medical marijuana home occupations are allowed in a single-family dwelling in any zoning district, subject to limits on the floor area devoted to the home occupation and neighborhood impacts. Caregivers must deliver medical marijuana to their patients.
- Medical marijuana dispensaries and cultivation facilities may not be located in residential, office or neighborhood commercial (C1) districts. Each is allowed in certain commercial, and industrial districts, and cultivation is also allowed in research districts. Neither is allowed within 200 feet of a residential zoning district, and they must be 500 feet from another dispensary or cultivation facility and 1000 feet from a primary or secondary school.

Enforcement

- Zoning compliance permits are required annually for dispensaries, cultivation facilities, and home occupations.

Amendments to Chapter 55 (Zoning)

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- Violations of the zoning ordinance are a civil infraction, punishable by a fine of up to \$500 per instance.

Prepared by Jill Thacher

Reviewed by Wendy Rampson

c: City Attorney

Attachments: City Council Moratorium Resolution,
Proposed Amendments to Chapter 55 dated September 17, 2010



City of Ann Arbor

100 N. Fifth Avenue
Ann Arbor, MI 48104
[http://a2gov.legistar.com/
Calendar.aspx](http://a2gov.legistar.com/Calendar.aspx)

Council Action

Resolution: R-10-286

File Number: 10-0793

Enactment Number: R-10-286

Resolution to Impose a Temporary Moratorium on the Use of Property and Structures in the City for Dispensing and Cultivating Marihuana

Whereas, City staff has received inquiries concerning the use of property and structures in the City for use as facilities for dispensing medical marihuana and/or cultivating medical marihuana plants;

Whereas, the City of Ann Arbor's Zoning Ordinance does not specifically provide for properties or structures to be used as facilities for dispensing marihuana or cultivating marihuana plants for medical or any other purposes, and this use was not envisioned when the zoning ordinance was adopted;

Whereas, the City of Ann Arbor Master Plan: Land Use Element adopted on November 5, 2009, by Council Resolution R-09-438, and the City's general prohibition on uses not expressly permitted by the City's Zoning Ordinance must be considered in addressing whether and/or where to allow facilities for dispensing marihuana and/or cultivating marihuana plants;

Whereas, the Michigan Medical Marihuana Act ("the Act") permits registered qualifying patients and primary caregivers to possess specific amounts of marihuana and to cultivate a specific number of plants, but the Michigan Medical Marihuana Act does not specifically provide for facilities for dispensing medical marihuana and/or cultivating medical marihuana plants;

Whereas, the federal law contains no provisions for the dispensation or cultivation of marihuana for medical or any other purposes;

Whereas, it is unclear whether any state and/or federal regulations that apply to entities that dispense controlled substances, for the benefit of the public health, safety, and welfare, would apply to facilities where marihuana is dispensed or where marihuana is cultivated;

Whereas, therefore, federal, state, and local laws lack clarity as to whether such facilities might be allowed and, if allowed, where they might be located that is conducive to the public health, safety and welfare of the City;

Whereas, the issue of allowing or disallowing facilities for the dispensing or cultivating of marihuana may be settled by the state Legislature;

Whereas, the City desires to ascertain the best and safest path to compliance with the Michigan Medical Marihuana Act, MCL 333.26423(d) in order to protect the public health,

safety, and welfare;

Whereas, City Council has determined that it is necessary to amend City Code to address this issue and is directing City staff and the Planning Commission to study, and make specific recommendations to amend City Code regarding such facilities; and

Whereas, it is therefore prudent to immediately forbid use of all property and structures in the City of Ann Arbor as facilities for dispensing marihuana or cultivating marihuana plants for medical or any other purposes for a limited period of time until City Code can be amended to address such facilities;

RESOLVED, That City Council hereby imposes a temporary moratorium prohibiting the initiation or expansion of the use of any property in the City as a facility for dispensing marihuana for medical and any other purpose and for cultivating marihuana plants, and that any zoning compliance permits or building and trade permits for such uses be deferred for a period of 120 days from the date of this resolution, in conjunction with the study and revision of the City's Zoning Ordinance or other ordinances regarding this issue;

RESOLVED, That this moratorium does not apply to the following:

- A dwelling unit (as defined by the Zoning Ordinance) where a qualifying patient under the Act resides and is cultivating up to the maximum number of marihuana plants permitted by the Act for personal use or possesses up to the maximum amount of marihuana permitted by the Act for personal use.
- A building or structure (as defined by the Zoning Ordinance) other than a dwelling unit where no more than one qualifying patient under the Act is cultivating up to the maximum number of marihuana plants permitted by the Act for personal use or possesses up to the maximum amount of marihuana permitted by the Act for personal use.
- A dwelling unit or other building or structure where no more than one primary caregiver under the Act is cultivating up to the maximum number of marihuana plants permitted by the Act for assisting a qualifying patient or possesses up to the maximum amount of marihuana permitted by the Act for assisting a qualifying patient.

RESOLVED, That City Council directs City staff and the Planning Commission to study and make specific recommendations for ordinance amendments that restrict facilities for dispensing marihuana to appropriate zoning districts along with spacing requirements, and to also regulate such use in residential districts;

RESOLVED, That the moratorium imposed by this resolution shall expire the earlier of 120 days from its effective date or upon adoption by City Council of ordinance amendments regarding the issue of facilities for dispensing marihuana and/or cultivating plants for medical or any other purposes.

As Amended by Ann Arbor City Council on August 5, 2010

Sponsored by: Councilmembers Higgins, Taylor, Rapundalo and Teall.

At a meeting of the City Council on 8/5/2010, a motion was made by Stephen Rapundalo, seconded by Christopher Taylor, that this Resolution R-10-286 be Approved as Amended. The motion passed.

Ann Arbor City Code Chapter 55 - Zoning

5:52. Regulations Concerning Medical Marijuana Dispensaries and Medical Marijuana Home Occupations

- (1) Definitions. The following words and phrases shall have the following definitions when used in this section.
 - a) Caregiver. A person who has agreed to assist with a patient's medical use of marijuana and has been issued a registry identification card and who otherwise meets the definition of a "registered primary caregiver" under the Michigan Medical Marihuana Act, MCL 333.26421 *et seq.*
 - b) Drug paraphernalia. All equipment, products, and materials of any kind, which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance as defined in Section 7104 of the Michigan Public Health Code (Act No. 368 of the MI Public Acts of 1978 as amended) in violation of the laws of the State of Michigan.
 - c) Medical marijuana. Marijuana grown, used, or transferred for medical use as defined by the Michigan Medical Marihuana Act, MCL 333.26421 *et seq.*
 - d) Medical marijuana cultivation. Growing marijuana as allowed by the Michigan Medical Marihuana Act, MCL 333.26421 *et seq.*
 - e) Medical marijuana cultivation facility. Three or more caregivers growing marijuana on a parcel, or eleven or more patients cultivating medical marijuana on a parcel on which they do not reside.
 - f) Medical marijuana dispensary. Three or more caregivers operating from a parcel with the intent to transfer medical marijuana to a patient.
 - g) Medical marijuana home occupation. An accessory use of a nonresidential nature which is performed within a single-family dwelling or within an accessory building to that single-family dwelling, and conducted by one or two caregivers residing in the dwelling.
 - h) Patient. A person who has been diagnosed by a physician as having a debilitating medical condition and has been issued a registry identification card and who otherwise meets the definition of "registered qualifying patient" under the Michigan Medical Marihuana Act, MCL 333.26421 *et seq.*

- i) Registry identification card. A document issued by the Michigan Department of Community Health that identifies a person as a registered qualifying patient or registered primary caregiver
- (2) Locations of medical marijuana dispensaries and cultivation facilities. A medical marijuana dispensary or cultivation facility may be located in the City only in accordance with the following restrictions:
- a) No medical marijuana dispensary or cultivation facility shall be located on a parcel within 200 feet of a district which, pursuant to this chapter, has been classified R1A, R1B, R1C, R1D, R2A, R2B, R3, R4A, R4B, R4C, R4C/D, R4D, or R6, or PUD containing solely residential uses.
 - b) Medical marijuana dispensaries shall only be located in a district classified pursuant to this chapter as D1, D2, C2B, C3, M1, or M2..
 - c) Medical marijuana cultivation facilities shall only be located in a district classified pursuant to this chapter as C2B, C3, M1, M2, RE, or ORL.
 - d) In C2B and C3 districts, buildings used for dispensaries or cultivation facilities shall meet the minimum parking requirements of Chapter 59 for retail uses, with no exceptions.
 - e) No medical marijuana dispensary or cultivation facility shall be established on a parcel within 500 feet of another parcel on which either a medical marijuana dispensary or cultivation facility is located.
 - f) No medical marijuana dispensary or cultivation facility shall be located within 1000 feet of a parcel on which a primary or secondary school is located.
- (3) Medical marijuana dispensary and cultivation facility regulations.
- a) No person shall reside in or permit any person to reside in a medical marijuana dispensary or cultivation facility, except as allowed in the M1 and M2 zoning districts.
 - b) The operators of a medical marijuana dispensary or cultivation facility must be registered caregivers.
 - c) No one under the age of 18 shall be allowed to enter a medical marijuana dispensary or cultivation facility unless accompanied by a parent or guardian.
 - d) No smoking, inhalation, or consumption of medical marijuana shall take place on the premises.

- e) No person shall become the lessee or sublessee of any property for the purpose of using said property for a medical marijuana dispensary without the express written permission of the owner of the property for such use.
 - f) An annual zoning compliance permit shall be required.
 - g) 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 does not exceed 10 percent of the floor area of the total establishment.
 - h) Drive-in medical marijuana dispensaries shall be prohibited in all locations/districts.
 - i) All activity in a medical marijuana dispensary or cultivation facility shall be done indoors.
 - j) No equipment or process shall be used in any medical marijuana dispensary or cultivation facility which creates noise, dust, vibration, glare, fumes, odors or electrical interference detectable to the normal senses beyond the property boundary.
 - k) No sales or transfers of drug paraphernalia are permitted at any medical marijuana dispensary, except to qualifying patients.
 - l) Medical marijuana dispensaries and cultivation facilities shall comply with all other regulations of the zoning district in which the dispensary or cultivation facility is located, except when they are in conflict this section shall prevail.
 - m) Medical marijuana dispensaries and cultivation facilities shall be operated in compliance with the provisions of the Michigan Department of Community Health and the Medical Marijuana Act MCL 333.26421 et seq.
- (4) Medical marijuana home occupation regulations
- a) Two registered caregivers per single family dwelling are each limited to providing medical marijuana to five patients other than themselves. Caregivers may not give, sell, or otherwise transfer medical marijuana to anyone other than the five patients that have designated them as their caregiver through the Michigan Department of Community Health.
 - b) Total floor area devoted to medical marijuana as a home occupation in the principal or accessory building shall not exceed 25% of the gross floor area of the dwelling.

- c) Outside appearance of premises shall have no visible evidence of the conduct of a home occupation.
 - d) No outdoor display of goods or outside storage of equipment or materials used in the home occupation shall be permitted.
 - e) No article or service shall be sold or offered for sale on the premises except those which are produced by such home occupation on the premises.
 - f) Medical marijuana as a home occupation shall not generate more than 5 business-related vehicle trips in any one day in the vicinity of the home occupation.
 - g) No transfer of medical marijuana to patients other than those residing on the parcel shall occur on the parcel.
 - h) No equipment or process shall be used in such home occupation which creates noise, dust, vibration, glare, fumes, odors or electrical interference detectable to the normal senses beyond the property boundary.
 - i) An annual zoning compliance permit shall be required.
 - j) Medical marijuana home occupations shall be operated in compliance with the provisions of the Michigan Department of Community Health and the Medical Marijuana Act, MCL 333.26421 *et seq.*
- (5) Medical marijuana in dwelling units other than single family dwellings.
- a) Medical marijuana cultivation shall comply at all times with the provisions of the Michigan Department of Community Health and the Michigan Medical Marijuana Act, MCL 333.26421 *et seq.*
 - b) 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.
 - c) The principal use of the dwelling unit shall be a dwelling and shall be in actual use as such.
 - d) No transfer of medical marijuana to patients other than patients residing within the dwelling unit shall occur.