

MINUTES

ANN ARBOR CITY PLANNING COMMISSION

REGULAR MEETING

7:00 p.m. – September 21, 2010

Time: Chair Mahler called the meeting to order at 7:00 p.m.

Place: Guy C. Larcom, Jr. Municipal Building, 100 North Fifth Avenue, Second Floor, Council Chamber, Ann Arbor, Michigan.

- c. Public Hearing and Action on Amendments to Chapter 55 (Zoning Ordinance) to Add Regulations Concerning Medical Marijuana Dispensaries and Home Occupations – Staff Recommendation: Postpone

Thacher gave the staff report.

Mark Curtis, 7678 Matthews Road, Spring Arbor, MI spoke in support of medical marijuana and asked the City to realize that their proposals could be modeled by other cities in Michigan. He felt that caregivers shouldn't be limited as well as the fact that there could be multiple users in the same household.

Gersh Avery, 9205 Dexter-Chelsea Road, Dexter, MI spoke in support of the use of medical marijuana, and for less government repression, noting that chronic pain sufferers need alternative drugs such as marijuana. He stated that marijuana is less toxic than water and there are 1800 patients that die every year as a result of side effects from chronic pain medications with a cost of \$ 500,000,000 to the healthcare system.

Mahler stated that the discussion wasn't to decide the benefits or defects of medical marijuana since the voters of Michigan have passed the law and the Commission is now looking at how to zone for it through the ordinances that have been drafted so the medical marijuana can best be dispensed in our community. He stressed that comments regarding the ordinance would be most helpful.

Sam Mendez, 2447 Stone Road, Ann Arbor, MI spoke in support of the proposed medical marijuana ordinance as a caregiver as well as a patient. He requested that City Council would consider a grandfather clause for those clinical facilities that are already in existence to be allowed to operate in order to assist the sick. Mendez expressed that there is a clear difference between clinics that dispense marijuana and caregivers who cultivate marijuana for their patient's use. He stated that there needs to be a clear differentiation in order to allow more than 3 patients in the same home to produce their own medicine and not be designated as a home business.

Erik Mendooz, a free lance reporter from Traverse City, MI spoke against the requirement that public speakers should have to give their home addresses to be broadcast in a live forum, especially since they are caregivers and growers, putting their crop in jeopardy. He stated that it is against the laws of the Health Dept to disclose the addresses of caregivers.

Chuck Ream, handed out and spoke on the provisions of The City Charter, Section 16; 2 e. He noted that there is no reason to be 200 feet from a residential area, no reason not to allow it in District C, no reason to be 500 feet from another dispensary, no reason to force the operation indoors, and landlords can't be made to incriminate themselves in writing to say they are giving permission for tenants to grow something

that is a Schedule One substance. He noted that Section 4 should be omitted from the ordinance; Home Occupations, since it is completely covered under the State law.

Dave Lott, 4792 Washtenaw, Ann Arbor, MI spoke of the need for medical marijuana patients to be treated the same as patients who had other prescriptions in regards to access to medicine.

Michael Mead, 550 Delwood Drive, Ann Arbor, MI spoke as an Ann Arbor resident for 32 years. He commented that Part 1, paragraph b, is inappropriately worded and should be removed since it is already covered under State law. He requested that medical cannabis not be further stigmatized and for legislation not to be based on fear and stereotyping. Mead felt that Part 4, paragraph a, was too restrictive.

Matthew Able, 2930 East Jefferson Ave, Detroit, MI, Attorney, spoke regarding spacing requirements. He stated that since each site plan would be considered on its own merits, the 200 foot buffer was unnecessary. Able noted that since there is no crime being committed the 1000 foot spacing requirements from a school didn't carry any rationale.

Dennis Hayes, Attorney, spoke on behalf of the Ann Arbor Medical Patients Collective Organization, which represents 1,400 patients. He also represents several dispensaries and has written several criticisms dealing with the patients needs that aren't being met under the State statutes. He expressed that Ann Arbor has been on the forefront of dealing intelligently with the regulating of marijuana and the recognition of its accomplishments for the patient.

Hayes noted that even after requesting information on the zoning classifications or the setback requirements it has never been explained as to its reasoning on how or why they were chosen. He stated that the setback issue seems to be creating segregated zones by people who are neither patients or caregivers while there are real patients who have real medical needs and caregivers who are working very diligently to meet those needs. He suggested that the City reach out to the patients through setting a model ordinance that will be used not only by the State but by the country.

Brian Fenneck, Ann Arbor, MI attorney, spoke on the vague language of the State law that was passed , requesting that the City choose ordinance language that won't add to the pitfalls which cause problems. He asked consideration for language on caregivers being classified as businesses and becoming stuck in that same category. He also pointed out concerns with language choices such as *odors* etc when the issue is dealing with caregivers providing medicine for patients.

Liz Pierce, Ann Arbor, MI, spoke on the redundancy of Section 4, g. noting that there are patients that don't feel comfortable providing their addresses because they don't want their personal information disclosed. She stated that these patients feel more comfortable visiting their caregiver. Pierce felt that Section 4, f. addressed the issue and should include those patients who didn't feel comfortable having the caregiver come to their home.

John Gallius, representing a local dispensary in Ann Arbor, MI spoke on Section 4, i. regarding the need for each dispensary to be reviewed and judged on its own merits. He expressed his concerns regarding the proposed ordinance and the need for existing dispensaries to be grandfathered in and allowed to continue to operate to provide medicine to their patients. He stated that the proposed ordinance language would exclude several already existing dispensaries, who have taken the initiative to provide the services that were approved under the State law.

Bona stated that she felt that public applause would be an intimidation for anyone in opposition.

Mark Patserinee, resident of Ann Arbor, spoke as the co-founder of OM Medicine, stating that the issue before them wasn't political but rather a health issue. He said this issue wasn't only for Ann Arbor but for thousands of patients all around Ann Arbor who needed safe access to medical cannabis. He pointed out that the State law was written and passed to protect patients not to restrict them. He requested the Council to grandfather in existing facilities and to allow for caregivers to donate their medical cannabis

overages to dispensaries, which would assist patients in getting their medicine in a safe place during the times when their caregiver's crops might have failed or when they might be out of town. He also explained that there are special patient needs for different delivery methods of the medicine, noting that some need balms or salves while others need tinctures. He encouraged the Commission and Council to educate themselves on an issue that was voted in on a 74% margin.

Alex Limeran, 4095 Stone School Road, Ann Arbor, MI spoke regarding removal of the zoning to allow caregivers and those dispensing a safe and easy way to provide the medicine and not confine them to a zone smaller than other retail or medical businesses which would restrict patients in getting the medicine that they need.

John Westerman, resident of Ann Arbor, MI invited the Commission to interview the patients and caregivers to get a full understanding of the situation before they made their decision, since he felt that there were old fashioned ideas being brought to the table.

Noting no further speakers, Mahler declared the public hearing closed (11:56pm).

Moved by Derezsinski, seconded by Pratt that 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.

Moved by Derezsinski , seconded by Carlberg to amend the motion to postpone action on the proposal until the October 5, 2010 meeting until further suggestions have been received from staff.

Bona suggested that Commissioners bring their questions or concerns to staff before the October 5th meeting in order to give staff a chance to respond to their inquiries.

Westphal inquired if it would be inadvisable to take action on the proposal tonight if Commissioners didn't have too many questions.

Derezsinski stated that he was following staff's recommendation on postponing any action until staff was able to consider and incorporate information received from the public during the evening's public hearing.

Thacher noted that staff would prefer they postpone action since there were ordinance language issues that needed to be clarified before the amendment move on to City Council.

Derezsinski informed the Commission that he and other Commissioners had visited dispensaries giving them a better understand of the dynamics involved with the zoning issue that lay before the Commission.

A vote on the motion showed:

YEAS: Bona, Briggs, Carlberg, Derezsinski, Giannola, Mahler, Pratt, Westphal,
Woods
NAYS: None
ABSENT: None

Motion carried.

Briggs stated that there were some very good points brought before the Commission and she had some concerns about the exclusion of odors in home occupations noting that in summertime when windows are open and people are smoking the odor could pass property lines, just like tobacco smoke and that would seem a little much to regulate.

She requested staff to present the Commission with reasoning behind several of the ordinance points at the next meeting specifically *patient pick-up* and the proposed *200 feet* restriction from residential areas, if at the next meeting, these points are left in the proposed ordinance. She pointing out that given the public comments received these might be too limiting causing hardships.

Pratt asked for clarification on Section 1 g. if it meant that home occupations weren't allowed in non-residential and multi-family dwellings.

Pratt brought his concerns with the language choice *written permission* in Section 3 e. He asked for clarification if that was in conflict with the State law on this issue. He conveyed that landlords can resolve conflicts between tenants currently.

Pratt asked if Section 4 d. could have more consistent language with Section 3 i. relating to indoor vs. outdoor issues.

He expressed his concern with the proposed language in Section 4 g. relevant to delivery of medical marijuana. He stated that if we disallow the transfer of marijuana on the parcel in home occupations then the question arises where will we allow them to go to do the transfer. He asked for staff to review this language.

Pratt noted that in Section 4 i. the annual zoning compliance permit might be problematic with State law, and asked for review of that point.

In Section 4 f. he questioned if the proposed language *in the vicinity* was too undefined.

Pratt remarked on the public comments noting that given the proposed ordinance there are lots of places where dispensaries and home occupations would be allowed to operate and he didn't find that using the word "exclusionary" was appropriate. He denoted that pharmacies are restricted to certain areas and even though we might think that there aren't that many places for them to go, there still seems to be a lot of them. Pratt didn't see the proposed distances as too restrictive or concerning in providing services as outlined.

Carlberg asked if they were to consider pursuing *grandfathering* existing dispensaries how would they obtain such a list.

Mahler questioned if they were to approve the proposal with amendments that included grandfathering of existing dispensaries, how many of those dispensaries would be nonconforming. He stated that it would be helpful for the Commission to have such a list to review by the next meeting.

Thacher responded that not all the operations want to be identified or provide their current location. She stated that as they come forward they are identified but staff currently doesn't have a comprehensive list.

Carlberg referred to a list from public speaker Hayes.

Thacher commented that the list had been provided to City Council and she had read it for the first time this evening. She offered to scan the list and send it to the Commissions.

Westphal asked for clarified on the zoning compliance permits, if they excluded caregivers.

Thacher answered that the permits would be for home occupations, dispensaries and cultivations and not for caregivers.

Westphal asked for further clarification on the odor issue mentioned his understanding was that there would be odor issues that went beyond smoking.

Thacher mentioned that they understand there could be odor issues related to growing as well as packaging and repackaging. She cited that the odor language is the same language used as for any other type of home occupation zoning, which wasn't unique to this zoning proposal.

Westphal asked how the complaints would be handled of odor issues, and how would someone go about bringing a complaint.

Thacher responded that it would be enforced similar to noise and other complaints. She stated that the City would have to send out a zoning official to stand on the property line to see if they could smell an odor.

Westphal asked if a violation was found and a civil infraction was issued would those accrue.

Thacher indicated that the infractions would go to court and a judge would decide.

Westphal asked if in instances where civil infractions were involved if annual zoning compliance permits might be withheld for compliance.

Thacher answered yes.

Westphal stated that he would be waiting for forthcoming information on the grandfathering and spacing issues.

Woods asked if home occupations wouldn't be allowed if you lived in an apartment.

Thacher responded that you wouldn't be allowed to operate a home occupation if you lived in a multi-family dwelling, which an apartment is considered.

Woods asked if a caregiver and a patient who lived in an apartment wouldn't be able to operate from their apartment. She requested clarification on this issue since not everyone can afford to live in their own home.

Thacher answered that a patient can always grow in their own home wherever they live. She noted that in Section 4 a. it states that two (2) registered caregivers per single family dwelling are each limited to providing medical marijuana to five patients other than themselves.

Woods agreed that the language *drug paraphernalia* in Section 1 b. and Section 3 k. seemed contradictory in how the definition was being used and she felt it might send the wrong message. She asked for clarification on this possible contradiction.

Woods stated that she understand the school buffer and believed it was in compliance with State or Federal laws.

Thacher indicated that it was State law that there be a 1000 foot buffer around private and public secondary schools. She noted this was another issue that staff were looking into to see if there were any conflicting laws surrounding this point.

Bona mentioned that the City, through the Ordinance Review Committee, has tried to maintain consistency with Home Occupations. She stated that it would be helpful for the Commission as well as City Council to know which sections and which language was not consistent with the other existing Home Occupation language.

Briggs asked if for future public hearings if speakers could simply state that they live in Ann Arbor and not need to state their home address for the record.

Mahler noted that they would bring it up for future discussion.

Mahler asked if staff was aware of any deliberations or public hearing being held at the State level to supplement the amendment through the Administrative Code that the Commission needed to be aware of before they could act of the proposal.

Thacher said she wasn't aware of anything but she would check with the City Attorney's office.

Woods asked how the proposed amendment would apply to University of Michigan students in a residence hall.

Mahler responded that he believed that the University wasn't under our zoning laws so it wouldn't affect them, but he deferred the issue to the City Attorney's office for their response.

Westphal asked for further clarification on the regulations for the number of patients and caregivers if there were no transfers.

Giannola asked the City allowed other home occupations in an apartment and if so she felt that the City needed to be consistent with other home occupations. Discussion concerning landlord's rights to further restrict uses followed.
