

PLANNING AND DEVELOPMENT SERVICES STAFF REPORT

For Planning Commission Meeting of June 19, 2018

SUBJECT: Proposed Amendment to Chapter 55, Section 5:50.1 Regulations Concerning Medical Use of Marijuana (3) (a)

PROPOSED CITY PLANNING COMMISSION MOTION

The Ann Arbor City Planning Commission, after hearing all interested persons and reviewing relevant information, recommend approval of the proposed amendment to Chapter 55, Section 5:50.1 Regulations Concerning Medical Use of Marijuana as presented.

STAFF RECOMMENDATION:

Staff recommends that the proposed text amendment be recommended for approval to the City Council.

DESCRIPTION OF AMENDMENT:

The proposed amendment would increase the minimum separation requirement of medical marijuana provisioning centers from 600 feet to 1,000 feet. This separation requirement is measured from the two nearest parcel boundaries on which existing and/or proposed provisioning centers are located.

HISTORY AND PLANNING BACKGROUND:

In 2017, after review and recommendation by the Planning Commission, the City enacted amendments to the Zoning Ordinance, to regulate land use aspects of medical marijuana facilities. This effort resulted in the identification of appropriate zoning districts, and other regulations, for five types of medical marijuana facilities, including provisioning centers.

This ordinance was largely enacted as recommended by the Planning Commission, but included one notable change to separation distance requirements between medical marijuana provisioning centers. The Planning Commission had recommended a separation requirement of 1,000 feet, but at the time of adoption, the City Council revised this provision to require a separation of 600 feet. Subsequent to adoption of this zoning ordinance, the City has received 38 applications for special exception use consideration for medical marijuana provisioning centers.

On April 16, 2018, the City Council passed a resolution directing the City Administrator and Planning Commission to:

- Reconsider the proposed separation requirement between medical marijuana provisioning centers, specifically a proposed 1,000 feet separation in place of the current 600 feet requirement, and
- Consider any other revisions that would limit the concentration of facilities within zoning districts
- Consider exceptions for pending and approved provisioning centers from any new requirements

The City Council has identified the basis of this direction from:

- Concern about the health, safety and welfare of all of its residents
- The number and concentration of provisioning centers
- The proximity of provisioning centers to established neighborhoods

ANALYSIS:

As this was the original recommendation, it seems appropriate to forward the 1,000 feet recommendation again. Increasing this dimension from 600 to 1,000 feet would achieve a reduced concentration of provisioning centers. In addition to any proposed changes to this dimension, the City Council has now limited the number of provisioning centers to 28, which could further limit concentration.

To further address concentration, the City could consider restriction on the districts in which provisioning centers are permitted. For example, if provisioning centers were not permitted in C1 or C1B districts, fewer areas in the City could accommodate them. At this same time, this could have the impact of furthering concentration in C3, D1, D2 or other districts. Additionally, despite differing intents of commercial zoning districts, there are instances of all commercial zoning districts abutting established neighborhoods. Thus eliminating the inclusion of provisioning centers from a particular commercial zone may not have the impact of addressing any proximity of centers to residential neighborhoods.

The proposed ordinance amendment establishes September 30, 2018 as a date of determination for applicability of the proposed changes. Based on the proposed language, any medical marijuana provisioning center that is issued a special exception use permit by the Planning Commission after September 30th would require a 1,000 separation between a similarly used parcel. For those approved prior, the standard would remain at 600 feet.

Alternatively, this provision could be struck and any amendment to 1,000 feet would render six previously approved provisioning centers legally non-conforming, and would prevent further consideration of three additional petitions, depending on the projected effective date of any ordinance amendment.

Zoning Text Amendment – Chapter 55, Section 5:50.1 Regulations Regarding the Medical Use
of Marijuana – Provisiong Center Separation Requirement
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Prepared by Brett Lenart, Planning Manager
6/15/18

Attachments: Proposed Ordinance Amendment
Analysis of Proposed Amendment on current petitions

cc: Community Services Administrator, Derek Delacourt
Senior Assistant City Attorney, Kevin McDonald
File

Proposed Ordinance Amendment

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, MCL 333.2701 et seq. This is a unique land use with ramifications not addressed by more traditional zoning district regulations.

(b) It is the intent of this section to also provide appropriate locations and reasonable restrictions for the cultivation and transfer of marijuana allowed by the Michigan Medical Marijuana Act, MCL 333.26421 et seq. This is a unique land use with ramifications not addressed by more traditional zoning district and home occupation regulations.

(c) 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"), MCL 333.2701 et seq. 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) 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) 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.

(xi) 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.

(xii) 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 chapter, 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) Marihuana means that term as defined in Section 7106 of the Public Health Code, 1978 PA 368, MCL 333.7106.

(ii) 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) 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) 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 MMMA.

(3) Additional medical marijuana facility location restrictions:

(a) For any medical marijuana provisioning center for which a Special Exception Use Permit has been granted prior to September 30, 2018, no ~~No~~ parcel containing a medical marijuana provisioning center shall be located within 600 feet of a parcel on which another medical marijuana provisioning center is located. Any other medical marijuana provisioning center shall not be located within 1,000 feet of a parcel on which another medical marijuana provisioning center is located.

(b) A maximum of 1 state operating license shall be utilized per parcel.

(i) Exceptions: In the M1, M1A and M2 districts, a maximum of 5 marijuana facilities with state operating licenses may co-locate on a single parcel, and in the RE and ORL districts, a maximum of 2 marijuana facilities with state operating licenses may co-locate on a single parcel. No 2 facilities of the same type (grower, processor, secure transporter, provisioning center as an incidental use, and safety compliance facility) may be located on the same parcel.

(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) 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 two-family or multiple-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.

(d) No smoking, inhalation, or consumption of marijuana shall take place on the premises of any marijuana facility.

(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.

(8) Special exception use regulations for medical marijuana facilities.

(a) In addition to the requirements in section 5:104 (Special exceptions), the following information shall be provided to the Planning Commission for consideration of an application for special exception use. 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, and the expected volume of wastewater based on the maximum number of plants allowed in that facility's grower class.

(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.

(Ord. No. 10-37, § 1, 6-20-11, eff. 8-22-11; Ord. No. 17-21, § 14, 12-18-17)

Medical Marijuana Provisioning Center Separation Requirement – 600 to 1,000 Feet Analysis (as of 6/15/18)

Approved Facilities

Address	1,000 feet Conflicts
2730 Jackson	None
2460 W Stadium	None
2793 Plymouth	None
321 E Liberty	111 S Main (approved); 603 E. William (approved)
111 S Main	321 E Liberty (approved); 338 S Ashley (approved); 202 Miller (under review)
338 S Ashley	111 S Main (approved); 450 S Main (approved); 202 Miller (under review)
1818 Packard	None
423 Miller	202 Miller (under review)
603 E. William	321 E. Liberty (approved)
450 S Main	338 S Ashley (approved)
3820 Varsity	None
700 Tappan	None
702 S Main	None
2394 Winewood	None

Applications Under Review

Address	1,000 feet Conflicts
202 Miller	423 Miller (approved); 111 S Main (approved)
3152 Packard	3005 Packard (under review)
3005 Packard	3152 Packard (under review)
3430 Washtenaw	None
3720 Washtenaw	None
2247 W Liberty	None
2019 W Stadium	None
811 N Main	None
1115 Broadway	None
1958 S Industrial	None
1251 N Main	None

Based on analysis of petitions currently under review, up to nine provisioning centers (six from approved provisioning centers, and three from petitions under review) would be legally non-conforming if only separation distance modified from 600 to 1,000 feet.