



Legislation Text

File #: 10-0949, **Version:** 3

An Ordinance to Add Section 5:50.1 of Chapter 55 (Zoning) of Title V of the Code of the City of Ann Arbor Regarding Regulations Concerning Medical Marijuana (CPC Recommendation: Approval - 8 Yeas and 0 Nays) (Ordinance No. ORD-10-37)

Approval of this ordinance language will add a new section to the Zoning Ordinance that 1) provides regulations for medical marijuana dispensaries, cultivation facilities, and home occupations; 2) identifies districts in which these activities would be allowed; and 3) provides additional use regulations.

The City Planning Commission, at its meeting of October 5, 2010, made the following amendments to the October 1, 2010 draft ordinance:

1. Added language to Paragraph (3)(a) regarding locations of medical marijuana dispensaries and cultivation facilities. The following underlined text has been inserted into the October 7 draft: “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.”
2. Eliminated Paragraph (4)(d) regarding medical marijuana dispensary and cultivation facility regulations. The following language has been removed from the October 7 draft: “No person shall lease or sub-lease any property for the purpose of using said property for a medical marijuana dispensary or cultivation facility without the prior express written permission of the owner of the property for such use.”
3. Restored a requirement for medical marijuana home occupation regulations, which had been removed from the October 1 draft. The following has been re-inserted as Paragraph (5)(i) in the October 7 draft: “No transfer of medical marijuana to patients other than those residing on the parcel shall occur on the parcel.”

The City Planning Commission recommended approval of the draft ordinance, as amended. The attached October 7, 2010 draft ordinance incorporates these amendments.

Further, the City Planning Commission recommended that the Mayor and City Council institute a medical marijuana business license to address issues important to the health, safety, and welfare of residents but outside of the scope of the zoning ordinance, such as security, building safety and other code compliance.

Attachments: October 5, 2010 Planning Staff Report
September 21, 2010 Planning Staff Report
October 5, 2010 Planning Commission Minutes
September 21, 2010 Planning Commission Minutes
October 7, 2010 Draft Ordinance

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ORDINANCE NO. ORD-10-37

First Reading : October 18, 2010 Approved : June 20, 2011
Public Hearing : November 15, 2010 Published : June 23, 2011
Effective : August 22, 2011

ZONING
(REGULATIONS CONCERNING THE MEDICAL USE OF MARIJUANA)

AN ORDINANCE TO ADD A NEW SECTION 5:50.1 TO CHAPTER 55 (ZONING) OF TITLE V OF THE CODE OF THE CITY OF ANN ARBOR REGARDING THE REGULATION OF THE MEDICAL USE OF MARIJUANA

The City of Ann Arbor ordains:

Section 1. That Section 5:50.1 of Chapter 55 of Title V of the Code of the City of Ann Arbor is added as follows:

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 the cultivation and transfer of marijuana allowed by the Michigan Medical Marihuana 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. Although some specific uses of marijuana are allowed by the Michigan Medical Marihuana Act, marijuana continues to be classified as a Schedule 1 controlled substance under federal law making it unlawful under federal law to use, manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense marijuana.
 - (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 section.
 - a) 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.
- ii “Marihuana” means that term as defined in section 7106 of the public health code, 1978 PA 368, MCL 333.7106.
- iii “Medical use” means the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient’s debilitating medical condition or symptoms associated with the debilitating medical condition.
- 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.
- v “Qualifying patient” means a person who has been diagnosed by a physician as having a debilitating medical condition.

b) Other Words and Phrases. The words and phrases in this subsection, as used in this section, shall have the following meanings:

- i “Marijuana” means “marihuana” as used in the MMMA.
- 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 one 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).
- 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 one or more registered qualifying patients with the medical use of marijuana who do not reside in the dwelling and (C) complies with the MMMA.
- v “Michigan Medical Marihuana Act” and “MMMA” mean the Michigan Medical Marihuana Act, MCL 333.26421 *et seq.*

(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 1000 feet of a parcel on which a public or private 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 percent 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.
 - k) Medical marijuana dispensaries and medical marijuana cultivation facilities shall be operated in compliance with the MMMA.

(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.

(6) Medical marijuana home occupations are not permitted in multiple-family dwellings and other non-single family dwellings.

(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.

Section 2. That this Ordinance shall take effect on the sixtieth day following legal publication.

As Amended by Ann Arbor City Council on May 2, 2011 and June 6, 2011.