

CITY OF MASON

201 West Ash St.
Mason, MI 48854-0370

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PLANNING COMMISSION MEETING - COUNCIL CHAMBER

Tuesday, December 15, 2015

6:30 p.m.

Agenda

1. Call to Order
2. Roll Call
3. Approval of Minutes: November 10, 2015
4. People from the Floor
5. Announcements
6. Regular Business
 - A. Discussion – Medical Marihuana Draft Ordinance
7. Unfinished Business
8. New Business
9. Correspondence
 - Planning & Zoning News – October 2015
10. Liaison Reports
11. Director's Report
 - Imagine Mid-Michigan Project
12. Adjournment

**CITY OF MASON
PLANNING COMMISSION MEETING
MINUTES OF NOVEMBER 10, 2015**

Chairperson Reeser called the meeting to order at 6:30 p.m. in the Council Chambers at 201 West Ash Street, Mason, Michigan.

Present: Commissioners: Barna, Hagle, Hude, Reeser, Sabbadin, Scott, Waxman
Absent: Commissioner: Brown (excused), Fischer
Also present: David Haywood, Zoning & Development Director

APPROVAL OF MINUTES:

Regular Minutes of October 13, 2015

The regular meeting Minutes of October 13, 2015, were approved as submitted.

PEOPLE FROM THE FLOOR

None.

ANNOUNCEMENTS

None.

REGULAR BUSINESS

Discussion – Medical Marihuana Ordinance

A lengthy discussion was held regarding an ordinance that would regulate medical marihuana. Many issues were considered, including multi-family residential structures and home occupations that require care-givers to deliver medical marihuana, to not allow patients to pick up medical marihuana from care-givers, and to review existing home occupation ordinances for best fit. Commissioners requested staff to draft an ordinance for discussion at the December Planning Commission meeting. The Planning Commission also requested that staff provide an update to the City Council regarding the current direction of the Planning Commission.

UNFINISHED BUSINESS

It was discussed that the CIP now has a schedule for equipment replacement for fire apparatus. The Commission expressed that they are grateful that the Council is taking a proactive interest in the document and it was stated that Council should use the document as a resource during budget discussions.

NEW BUSINESS

No new business at this time.

CORRESPONDENCE

Distributed.

LIAISON REPORTS

None.

DIRECTOR REPORT

Haywood informed the Commission regarding current Zoning & Development business.

ADMINISTRATOR'S REPORT

No report at this time.

ADJOURNMENT

The meeting adjourned at 8:20 p.m.

David Haywood, Zoning & Development Director

Seth Waxman, Secretary

Deborah J. Cwierniewicz, City Clerk

City of Mason

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MEMORANDUM

TO: Planning Commission

FROM: David E. Haywood, Zoning & Development Director

A handwritten signature in blue ink, appearing to be "DEH", is written over the name "David E. Haywood" in the "FROM:" line.

RE: Draft Medical Marihuana Ordinance – Discussion

DATE: December 11, 2015

At the November 2015 Planning Commission meeting, the Planning Commission directed staff to begin drafting an ordinance that took into consideration the following issues:

- Concern for multi-family residences
- Enforceability
- Allow as a home occupation
- Require delivery to patients only
- Repeal of existing ordinance

Additionally, staff was requested to report to City Council. A report was submitted to City Council and discussed at their December 7th meeting. The comments made at that meeting included giving consideration to requiring that caregivers register with the City, citing concerns with fire safety and prior knowledge in the event of a complaint or incident. The City Council's concern for registration is valid. After much consideration, I think that it is wise to have a registration process in place in order to notify the Police and Fire Department responders for a variety of reasons, including prior knowledge if the case of fire and/or complaints. It is reasonable that these two emergency response services have prior knowledge where possible. The draft ordinance attached includes a registration requirement.

Staff was also requested to research the number of caregivers registered under the registration/licensing requirement in East Lansing. Staff confirmed with the East Lansing City Clerk that zero caregivers have registered since the ordinance requiring registration was adopted in 2009. However, while at the Michigan Association of Planning Transportation Bonanza Conference yesterday, I had heard of at least one other community had several caregivers register with their municipality.

An additional concern that has been brought to my attention that was not mentioned at the Council meeting is the concern for potential concentrations of caregiver operations developing within a single neighborhood. For example, as the draft ordinance stands it would be permissible for two, three, four or more caregiver operations to locate on the same residential street, block or neighborhood. Although this is a valid concern, I think we may be constrained by the same legal limitation that was presented to us by the City Attorney that the

Michigan Medical Marihuana Act prohibits restricting the location of lawful medical marihuana registered patients and caregivers. I will be sure to ask this question of the City Attorney upon final review of the proposed ordinance.

The draft ordinance included in this packet is somewhat different than what the Planning Commission had requested in that rather than addressing it as a home occupation strictly, it addresses caregiver operations city-wide. The proposed ordinance now addresses caregivers that operate in a non-residential setting, such as commercial or industrial districts. The Village of Metamora, Michigan, has a well-written ordinance that solves that very problem by addressing caregivers as a stand-alone ordinance. It is silent on home occupation, but treats the issue as if it were anywhere in the ordinance. This model was recommended to us by the City Attorney as “well-written”, so it has passed an initial litmus test. The draft resolution is modeled after the Village of Metamora with edits to fit our community and the concerns listed above.

Recommended Action:

Discuss and edit the draft ordinance as necessary. Move to direct staff to prepare a final ordinance for public hearing and recommendation to City Council for the January Planning Commission meeting.

Introduced: _____
First Reading: _____
Second Reading: _____
Adopted: _____
Effective: _____

CITY OF MASON

MEDICAL MARIHUANA REGULATION ORDINANCE (DRAFT)

AN ORDINANCE TO AMEND SECTION 94-173 – SUPPLEMENTAL USE REGULATIONS – BY ADDING SUBSECTION (k) MEDICAL MARIHUANA – WHICH DEFINES MEDICAL MARIHUANA AND SETS FORTH THE REQUIREMENTS FOR COMPLIANCE WITH THE MICHIGAN MEDICAL MARIHUANA ACT OF 2008

THE CITY OF MASON ORDAINS:

Section 94-173 of Chapter 94 of the Mason City Code is hereby amended by adding subsection (k) to establish regulations for medical marihuana, which amended section shall read as follows:

Sec. 94-173. Supplemental use regulations.

(k) Medical Marihuana

(1) Findings.

- a. Voters in the State of Michigan approved a referendum authorizing the medical use of marihuana in certain limited situations.
- b. The intent of the referendum was to enable certain specified persons who comply with the various registration provisions of the law to legally possess and use marihuana for medical purposes without fear of criminal prosecution under limited, specific circumstances.
- c. Despite the details of the state legislation and the activities legally allowed under the Medical Marihuana Act, marihuana is still a controlled substance under Michigan law and the legalization of possession, cultivation/growth, use and distribution in specific circumstances has a potential for abuse that should be closely monitored to avoid activities that can cause a public nuisance and other than conditions detrimental to the health, safety and welfare of the residents of the City of Mason.

(2) Intent.

It is the intent of this Ordinance to regulate the use of medical marihuana to protect the health, safety and welfare of the residents of the City of Mason. It is not the intent of this Ordinance to violate any rights protected by the Constitution of either the State of Michigan or the United States of America. It is the intent of the City of Mason that nothing in this Ordinance be construed to allow persons to engage in conduct that endangers others or causes a public nuisance, or to allow the use, possession or control of marihuana for non-medical purposes or to allow activity relating to cultivating, storing, possessing, distributing or consuming marihuana that is otherwise illegal under federal or state law. This Ordinance is not intended to condone, authorize or provide immunity from prosecution for violations of federal or state law, but rather only to describe the type of conduct which constitutes a violation of this Ordinance.

(3) Definitions.

Any term used in this Ordinance which is defined in the Michigan Medical Marihuana Act (MCL § 333.26421 et seq) shall have the meaning given it by the Michigan Medical Marihuana Act.

(4) Prohibited Conduct Described.

a. General Compensation Restrictions: Patient-to-Patient Compensation Restrictions

No person shall receive or share in compensation for the costs associated with assisting a qualifying patient with the medical use of marihuana to a qualifying patient except for a registered caregiver who is distributing marihuana to a qualifying patient that the registered caregiver is connected to through the Michigan Department of Community Health's registration process and the transaction is otherwise in compliance with the Michigan Medical Marihuana Act. No qualifying patient shall receive compensation for costs associated with assisting other qualifying patients with the medical use of marihuana unless the qualifying patient providing the assistance is a registered primary caregiver connected to the qualifying patient receiving the marihuana through the Michigan Department of Community Health's registration process and the transaction is otherwise in accordance with the Michigan Medical Marihuana Act.

b. Possession and Access Restriction Limits

No primary caregiver or qualifying patient or other person shall possess marihuana or marihuana plants in excess of the amount he or she is allowed to possess under MCL § 333.26424(a) or (b). The possession limits for a registered caregiver under the Michigan Medical Marihuana Act are as follows:

1. 2.5 ounces of usable marihuana for each qualifying patient that is connected to the caregiver.

2. 12 marihuana plants kept in an enclosed, locked facility, for each registered qualifying patient who has specified that the qualified caregiver will be allowed to cultivate marihuana for the qualifying patient.
3. Any incidental amount of seeds, stalks, and unusable roots.

The possession limits for a qualifying patient under the Michigan Medical Marihuana Act are as follows:

1. 2.5 ounces of usable marihuana.
2. 12 marihuana plants kept in an enclosed, locked facility provided that the qualifying patient has not specified that a primary caregiver will be allowed to cultivate marihuana for the qualifying patient.
3. Any incidental amount of seeds, stalks, and unusable roots shall also be allowed under state law and shall not be included in this amount.

Medical marihuana growing areas where primary caregivers or qualified patients share space with other caregivers or other qualifying patients in the same room are prohibited under this Ordinance. Primary caregivers may not allow access to their medical marihuana growing room(s) to any other primary caregivers, qualifying patients or non-caregivers or non-patients, nor to any employees or contractors or any other person other than an ordinance or other law enforcement officials present for ordinance or law enforcement duties.

c. Entity Restrictions

The following entities are expressly prohibited from receiving compensation for costs associated with assisting a registered qualifying patient in the medical use of marihuana: corporations, limited liability companies, and partnerships.

d. Common Facilities Restrictions

It shall be a violation of this ordinance for any person to participate as a registered primary caregiver in a jointly operated facility where primary caregivers jointly share building space which is used in common to assist more than 5 qualifying patients with the medical use of marihuana. Use “in common,” as that phrase is used in this subparagraph, shall include a shared or common reception area, a shared or common customer service area, and a shared or common area for the growing of medical marihuana.

e. Restrictions Against Delegation of Caregiver Functions (Restriction on Use of Employees)

It shall be a violation of this Ordinance for a primary caregiver to delegate to an employee or other person not independently authorized by the Michigan Medical Marihuana Act the authorization or permission to provide assistance with the medical use of marihuana to a qualifying patient.

f. Primary Caregiver Distribution/Growing Restrictions

1. It shall be a violation of this Ordinance for a primary caregiver to grow medical marihuana for or distribute medical marihuana to any person who is not a qualifying patient to whom the primary caregiver is connect through the Michigan Community Health Department's registration process.
2. It shall be a violation of this Ordinance for any person other than a registered primary caregiver to receive compensation from any person or entity for the costs associated with assisting a registered qualifying patient in the medical use of marihuana.
3. It shall be a violation of this Ordinance for a primary caregiver to assist another person with his or her medical use of marihuana unless the primary caregiver is approved as a registered primary caregiver by the Michigan Department of Community Health.
4. It shall be a violation of this Ordinance for a primary caregiver to assist more than five (5) qualifying patients with their medical use of marihuana.
5. It shall be a violation of this Ordinance for a primary caregiver to assist a qualifying patient within the city limits of the City of Mason unless it is within the confines of the primary residence of the qualified patient.
6. No more than one (1) primary caregiver per parcel shall be permitted to operate out of any medical marijuana dispensary facility.
7. All necessary building, electrical, plumbing, and mechanical permits shall be obtained for any portion of the structure which contains electrical wiring, lighting, ventilation, and watering devises that support the cultivation, growing or harvesting of marihuana.

As used in this Section 4(f), the term "assist" or "assisting" shall mean to grow medical marihuana for or distribute medical marihuana to, or receive compensation from for costs associated with growing or distributing medical marihuana for or to other persons.

As used in this Section 4, the phrase "Medical Marijuana Dispensary Facility" mean a facility where any "primary caregiver" grows, cultivates, stores, dispenses or offers medical marijuana for sale to "qualifying patients" under the Michigan Medical Marijuana Act of 2008.

(5) Additional Operational Restrictions.

- a. The sale, distribution, cultivation and possession of marihuana or marihuana plants are prohibited to the extent it is in violation of the Michigan Medical Marihuana Act.

(6) Registration Required.

- a. No cultivation, distribution or other assistance to patients by a caregiver or other person permitted under the Act shall be lawful at a location until such location has been registered under this ordinance with the Zoning and Development Director. By way of exception, it is not the intent of this ordinance to require registration for the principal residence of a patient where marihuana is cultivated or used exclusively for such patient's personal consumption. However, a location other than a patient's principal residence where a patient cultivates or uses marihuana shall be subject to the registration requirements of this ordinance.
- b. Registration shall include the full legal name, date of birth of the primary caregiver and intended location of the dispensary or primary caregiver operation, a copy of the primary caregiver's registry identification card, the number of registered qualifying patients and the registry identification numbers of each registered qualifying patient, the maximum amount of usable marihuana and maximum number of marihuana plants the primary caregiver may have on the property at any one time, whether marijuana will be grown on the premises and whether any electrical devices are used or intended to be used in conjunction with the growing of the marihuana, and whether any structural, mechanical or plumbing modifications have been made or are intended to be made in conjunction with the registered dispensary or caregiver operation.
- c. Registration of a dispensary or caregiver operation with the City of Mason does not prohibit prosecution by the federal government of its laws or prosecution by state authorities for violations of the Michigan Medical Marihuana Act or other violations not protected by the Michigan Medical Marihuana Act.

(7) Severability.

If any portion of this Ordinance or the application thereof to any person is adjudged to be invalid by a court of competent jurisdiction, such determination shall not affect the validity of any other portion of this Ordinance, or the application to any other portion of this Ordinance to any such person or other persons.

THE CITY OF MASON FURTHER ORDAINS:

Previously enacted Ordinance No. 196 adopted July 7, 2014, is hereby repealed in its entirety from the Code of the City of Mason.

Effective Date. Notice of this ordinance shall be published in a newspaper of general circulation in the city within 15 days after its adoption and mailed in accordance with the requirements of MCL 125.3401. This ordinance shall take effect upon the expiration of 20 days after its adoption.

The foregoing Ordinance was moved for adoption by Council Member _____ and supported by Council Member _____, with a vote thereon being: YES () NO (), at a regular meeting of the City Council held pursuant to public notice in compliance with the Michigan Open Meetings Act, on the _____ day of _____, 2016. Ordinance No. _____ declared adopted this _____ day of _____, 2016.

Mike Waltz, Mayor

Deborah J. Cwierniewicz, City Clerk