

# CITY OF MASON

201 West Ash St.  
Mason, MI 48854-0370

City Hall 517-676-9155  
Fax 517-676-1330

## PLANNING COMMISSION MEETING - COUNCIL CHAMBER

Tuesday, February 9, 2016

6:30 p.m.

### Agenda

1. Call to Order
2. Roll Call
3. Approval of Minutes: January 12, 2016
4. People from the Floor
5. Announcements
6. Regular Business
  - A. Motion – Medical Marihuana Ordinance
  - B. Discussion – Food Truck Ordinance
7. Unfinished Business
8. New Business
9. Correspondence
  - Planning & Zoning News, January 2016
10. Liaison Reports
11. Director's Report
12. Adjournment

**CITY OF MASON  
PLANNING COMMISSION MEETING  
MINUTES OF JANUARY 12, 2016**

Vice Chair Sabbadin called the meeting to order at 6:30 p.m. in the Council Chambers at 201 W. Ash Street, Mason, Michigan.

Present: Commissioners: Barna, Brown, Hagle, Hude, Sabbadin, Scott, Waxman  
Absent: Commissioner: Fischer (excused), Reeser (excused)  
Also present: Deborah S. Stuart, City Administrator  
Deborah J. Cwiertniewicz, City Clerk

**APPROVAL OF MINUTES:**

**Regular Minutes of December 15, 2015**

The regular meeting Minutes of December 15, 2015 were approved as submitted.

**UNFINISHED BUSINESS**

None.

**OATH OF OFFICE**

City Clerk Cwiertniewicz administered the oath of office to John Sabbadin and Lori Hagle.

**ELECTION OF CHAIRPERSON, VICE-CHAIRPERSON, AND SECRETARY**

City Clerk Cwiertniewicz opened nominations for Chairperson.

Nomination by Waxman,  
to elect Ed Reeser as Chairperson.

As there were no other nominations for Chairperson, Cwiertniewicz closed the nominations.

**ED REESER ELECTED CHAIRPERSON**

City Clerk Cwiertniewicz opened nominations for Vice Chairperson.

Nomination by Waxman,  
to elect John Sabbadin as Vice Chairperson.

As there were no other nominations for Vice Chairperson, Cwiertniewicz closed the nominations.

**JOHN SABBADIN ELECTED VICE CHAIRPERSON**

City Clerk Cwiertniewicz opened nominations for Secretary.

Nomination by Brown,  
to elect Seth Waxman as Secretary.

As there were no other nominations for Secretary, Cwiertniewicz closed the nominations.

**SETH WAXMAN ELECTED SECRETARY**

**PEOPLE FROM THE FLOOR**

None.

## **ANNOUNCEMENTS**

Vice-Chairperson Sabbadin welcomed newly appointed City Administrator, Deborah Stuart.

## **REGULAR BUSINESS**

### **Motion – Medical Marihuana Draft Ordinance**

Administrator Stuart stated that the city attorney is currently completing his review of the ordinance. Discussion ensued regarding whether an ordinance regulating medical marihuana were needed because State law enforces regulations.

MOTION by Waxman, second by Hagle,  
to direct staff to prepare a final ordinance including city attorney review for public hearing and recommendation to City Council at the February 9, 2016, Planning Commission meeting.  
MOTION APPROVED

### **Motion – Recommendation to the City Council to Extend the Moratorium on the Issuance of Medical Marihuana Licenses**

MOTION by Waxman, second by Barna,  
to recommend that City Council extend the moratorium on the issuance of medical marihuana licenses .  
MOTION APPROVED

## **UNFINISHED BUSINESS**

None.

## **NEW BUSINESS**

None.

## **CORRESPONDENCE**

Distributed.

## **LIAISON REPORTS**

Brown informed commissioners regarding current City Council business.

## **DIRECTOR REPORT**

No report at this time.

## **ADMINISTRATOR'S REPORT**

Stuart informed the Commission regarding current City business.

## **ADJOURNMENT**

The meeting adjourned at 6:55 p.m.

---

Deborah J. Cwierniewicz, City Clerk

---

Seth Waxman, Secretary

# City of Mason

201 W. Ash St.  
P.O. Box 370  
Mason, MI 48854-0370  
www.mason.mi.us



City Hall 517 676-9155  
Police 517 676-2458  
Fax 517 676-1330  
TDD 1-800-649-3777

## MEMORANDUM

TO: Planning Commission

FROM: David E. Haywood, Zoning & Development Director 

RE: Draft Medical Marihuana Ordinance – Motion

DATE: February 3, 2016

---

At the January 12, 2016 meeting, the Planning Commission reviewed the second draft of the medical marihuana ordinance, which incorporated prior review comments related to the following sections/issues:

- Striking the definition of “dispensary”
- Section 94-173(k)(4)f.6 – Striking the limitation to the number of primary caregivers per parcel as it pertains to dispensaries
- Section 94-173(k)(6) – Change the registering official from the Zoning and Development Director to the City Clerk

Since that time the draft ordinance was reviewed by the City Attorney with specific emphasis on three areas; entity restrictions, restrictions on the location for assisting qualified patients, and registration requirements. Below is a summary of the City Attorney’s response to each area. Additional details regarding each comment may be found in the City Attorney’s memorandum, as attached.

1. Entity Restrictions, as provided at Section (k)(4)c – **the City Attorney has indicated that the City may impose this restriction**
2. Restriction on location for assisting a qualified patient by a primary caregiver at Section (k)(4)(f)5 – **the City Attorney is recommending that we not impose this restriction**
3. Registration requirements at Section (k)(6) – **the City Attorney has indicated that this requirement is not lawful**

Attached is a revised ordinance showing the changes recommended by the City Attorney. The ordinance changes are shown in “track changes”. Minor typographical and grammatical changes are also shown.

In order to complete the work of drafting a new ordinance, the Planning Commission recommended that the City Council extend the moratorium for an additional 90 days. At their January 18<sup>th</sup> meeting, the City Council extended the moratorium as recommended, with an expiration date of April 30, 2016.

**Recommended Actions:**

**Discuss and edit the draft ordinance as necessary. Move to direct staff to prepare a final draft ordinance and set a public hearing date for the March 15, 2016 Planning Commission meeting.**

Attachment – City Attorney memo (February 2, 2016)

MEMORANDUM

TO: David E. Haywood, Zoning & Development Director  
FROM: Thomas M. Hitch, City Attorney   
RE: **REVIEW OF PROPOSED MEDICAL MARIHUANA ORDINANCE**  
DATE: February 2, 2016

---

The purpose of this memorandum is to respond to your request that I provide my comments on the proposed medical marihuana regulation ordinance before the next Planning Commission meeting on February 9, 2016. Before setting forth my specific comments, it is clear that the Planning Commission has spent a great deal of time on this project. It is my opinion that drafting medical marihuana regulations at the local level is a very difficult task. The statute provides no framework for local regulation, but individual communities find that there are local concerns which support the implementation of a local ordinance. My opinion is that this is a very difficult project and the fact that this has taken as long as it has comes to me as no surprise.

As it pertains to my specific comments, several of those are in response to questions you and the Planning Commission have raised. One other issue that I believe deserves further review is an issue that I discussed previously in one of my earlier memoranda.

My response and concerns regarding the provisions in the ordinance are as follows:

1. **Entity restrictions, as provided at Section (k)(4)c.**

Section (k)(4)c provides that entities, such as corporations, limited liability companies, and partnerships, are prohibited from receiving compensation for costs associated with assisting a registered qualifying patient. The question posed is whether the City can lawfully prohibit corporations, limited liability companies, and partnerships from such activities.

It is my opinion that the City can impose these restrictions. At section 3 of the Michigan Medical Marihuana Act ("MMMA") [MCL 333.26423(i)] a qualifying patient is one who has been diagnosed by a physician as having a debilitating medical condition. At subsection (h) of that same section, a primary care giver or care giver is defined as a person who is at least "21 years old" and who has agreed to assist with the patient's medical use of marihuana.

It is my opinion that these provisions can only be met by a natural person, and not legal

entities such as corporations, limited liability companies, or partnerships. As primary caregivers and patients are natural persons and, as such, have the protections and immunities provided under the Act, corporations, limited liability companies, and partnerships would have no such protection under the MMMA.

Consequently, it is my opinion that this provision may be enacted by the City as it conforms with the language of the MMMA.

**2. Restriction on location for assisting a qualifying patient by a primary care giver at section (k)(4)(f)(v).**

Section (k)(4)(f)(v) prohibits a primary care giver from assisting a qualifying patient within the city unless it is within the “confines of the primary residence of the qualifying patient.” I had pointed out, and the Planning Commission may have otherwise been aware, that the City of East Lansing has a similar provision although it is less restrictive than the one proposed by the City of Mason. Under the East Lansing ordinance, the delivery of medical marihuana may be made at a location other than the primary residence of the qualified patient. It is my understanding that the concerns are that there would be increased traffic at the location of the care giver, and that that may be disruptive to the neighborhood. The provision in East Lansing has never been challenged and there are no court cases which provide any guidance as it relates to the lawfulness of this provision.

As I expressed in my earlier memo to the Medical Marihuana Subcommittee, I have a genuine concern regarding whether this provision would survive a legal challenge. As previously pointed out, this restriction on delivery to a qualified patient is not included in the MMMA. Section 7 (MCL 333.26427), provides in pertinent part:

(a) The medical use of marihuana is allowed under state law to the extent that it is carried out in accordance with the provisions of this act.

(1) Undertake any task under the influence of marihuana, when doing so would constitute negligence or professional malpractice.

(2) Possess marihuana, or otherwise engage in the medical use of marihuana:

(A) in a school bus;

(B) on the grounds of any preschool or primary or secondary school; or

(C) in any correctional facility.

- (3) Smoke marihuana:
  - (A) on any form of public transportation; or
  - (B) in any public place.

The statute explicitly provides that the medical use of marihuana is allowed under state law to the extent that it is carried out in accordance with the provision of this Act. In my opinion, this is in the expression of intention that the MMMA controls, rather than any local regulation. At subsections (B)(2) and (3), the Act sets out restrictions such as there shall be no medical use of marihuana in a school bus, on the grounds of any preschool, primary or secondary school, or in any correctional facility and one cannot smoke marihuana with any form of public transportation or in any public. Nowhere are there any restrictions as it relates to the location of where a care giver can provide this “medical treatment” to a qualifying patient.

The Act has been in effect since December 4, 2008 (or a little over seven years). My concern is that in those past seven years, I am not aware of any incidents in Mason in which there were problems associated with qualifying patients receiving medical marihuana at any location, much less at the primary residence of a care giver. I am not aware of any such incidents in the city of East Lansing or elsewhere.

In the absence of any circumstances which have given rise to problems normally associated with increased activity in such locations (such as noise, traffic, and the like), there is no basis to support this provision other than the speculative concern. There does not appear to be an evidentiary basis underlying the need of such a regulation. Given the lack of such evidence, that gives me greater concern regarding the viability of such a restriction.

### **3. Registration requirements at section (k)(6).**

At section (k)(6), the proposed ordinance prohibits the cultivation, distribution, or other assistance to patients by a care giver to other persons permitted under the Act until such location has been registered under the ordinance. Said subsection goes onto provide that the registration shall include the full legal name, date of birth of the primary care giver, and the intended location, a copy of the primary care giver’s registry identification card, and such other information set out in the ordinance. The question posed is whether the City can ask for such information. As noted below, I have very significant concerns that not only can that information not be requested, the City cannot be engaged in the registration process at all.

Section 6 of the MMMA [MCL 333.26426(h)], provides:

- (h) The following confidentiality rules shall apply:
  - (1) Subject to subdivisions (3) and (4), applications and supporting

information submitted by qualifying patients, including information regarding their primary caregivers and physicians, are confidential.

(2) The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Except as provided in subdivisions (3) and (4), individual names and other identifying information on the list are confidential and are exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(3) The department shall verify to law enforcement personnel whether a registry identification card is valid, without disclosing more information than is reasonably necessary to verify the authenticity of the registry identification card.

(4) A person, including an employee, contractor, or official of the department or another state agency or local unit of government, who discloses confidential information in violation of this act is guilty of a misdemeanor, punishable by imprisonment for not more than 6 months, or a fine of not more than \$1,000.00, or both. Notwithstanding this provision, department employees may notify law enforcement about falsified or fraudulent information submitted to the department.

In the aforementioned statute, it is plain that the information pertaining to the information contained in registry cards is considered confidential. At subsection (1), applications and supporting information submitted by qualifying patients, including information regarding the primary caregivers and physicians, is confidential. In subsection (2), the department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. It is provided that except for the circumstances as outlined in subdivisions (3) and (4), individual names and other identifying information on the list are confidential and exempt from disclosure. This section also provides that the department is entitled to verify to law enforcement personnel whether the registered identification card is valid, but it must do so in a manner so as to minimize the disclosure of the information. That is, while local law enforcement may make inquiries, the department can do no more than provide "what is reasonably necessary" to verify the authenticity of the registration card. The final subdivision sets forth that a person who discloses confidential information in violation of the Act is guilty of a misdemeanor, subject to enumerated penalties.

By mandating registration of the location of primary caregivers, it is my opinion that the City is, in effect, creating a registry list for primary caregivers in the city of Mason that would, for all intents and purposes, be identical to the confidential list maintained by the Department of Licensing and Regulatory Affairs. As set forth in subsection (h)(1), information regarding primary caregivers is confidential. I believe that the mere maintenance of such a list (being identical to the department's

list as it relates to primary caregivers in Mason) would violate the law.

It is my opinion that even if a list could lawfully be created, the information on that list could not be disseminated without running afoul of subdivision (4) set forth above. It is my understanding that there are concerns regarding whether fire personnel would need to be made aware that a location they are called out to is a caregiver's residence, as there may be highly flammable materials onsite. The problem with that rationale is that nowhere is it permitted under the Act for disclosures to anyone as it relates to this confidential information, except for law enforcement personnel when seeking to determine the validity of a registry identification card.

As I pointed out in my earlier memo to the Medical Marihuana Subcommittee, the Michigan Supreme Court has found that the purpose of the MMMA is to allow a limited class of individuals the "medical use of marihuana" and that the Act declares this purpose to be an "effort for the health and welfare of [Michigan] citizens." See *People v Kolanek*, 491 Mich 382, 393 (2012). It should be remembered that the use of medical marihuana under the Act is a "medical treatment." Historically, medical treatments by physicians are confidential. Not only is treatment confidential, but the *fact* of treatment (that is, whether or not one receives medical treatment) is confidential as between a physician and a patient. It is my opinion that that confidentiality associated with medical treatment is continued under the MMMA, at the aforementioned section providing this information is confidential and that the confidential information may not be disclosed unless in conformance with the MMMA.

It is my opinion that the establishment of a registry list that essentially contains all of the confidential information as maintained by the Department of Licensing and Regulatory Affairs for primary caregivers in the city of Mason would violate the MMMA. It is my further opinion that if challenged, it would be struck down. More importantly, it is my opinion that the maintenance, much less the dissemination of information on such a list, would constitute an unlawful disclosure, and subject the City employees to prosecution under the aforementioned Act.

It is thus my opinion, in the strongest terms, that section (k)(6) be deleted from the proposed ordinance. It is my opinion that if this section were enforced, it would significantly increase the likelihood of a challenge to the ordinance. It is further my opinion that that challenge would, in all likelihood, be successful.

bks

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.

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 for costs associated with growing or distributing medical marihuana for or to other persons.

(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 Licensing and Regulatory Affairs' 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 Licensing and Regulatory Affairs' 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 shall~~ 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.

**Comment [d1]:** Ask City Attorney if we can do this. City Attorney has confirmed that we can limit the entity to natural persons and that this is supported in law. **City Attorney has determined this is a legal restriction. See memo dated 2/2/16.**

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~~Department of Licensing and Regulatory Affairs' 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~~Licensing and Regulatory Affairs.

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.~~

**Comment [d2]:** City Attorney has indicated that limiting the location for assistance is not supported by law. See memo dated 2/2/16.

~~6. No more than one (1) primary caregiver per parcel shall be permitted to operate out of any medical marijuana dispensary facility.~~

7.5. 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.~~

(67) 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:**

Comment [d3]: City Attorney has indicated that we cannot require registration. See memo dated 2/2/16.

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

# City of Mason

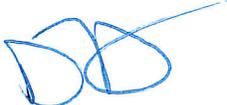
201 W. Ash St.  
P.O. Box 370  
Mason, MI 48854-0370  
www.mason.mi.us



City Hall 517 676-9155  
Police 517 676-2458  
Fax 517 676-1330  
TDD 1-800-649-3777

## MEMORANDUM

TO: Planning Commission

FROM: David E. Haywood, Zoning & Development Director 

RE: Discussion – Food Truck Ordinance

DATE: February 8, 2016

---

Due to a recent request to permit a food truck vendor in the City's road right of way, and due to the lack of existing policy to guide decisions on the issue, City Council has requested staff to develop a regulatory framework to address food trucks. The City Clerk has requested that this issue be brought before each board and commission of the city for comment and feedback. The following is a statement from the City Clerk:

“The growing trend of food trucks is promoted by the Michigan Municipal League as part of Place Making. Many Michigan communities have had such businesses operating for some time now. The new business trend has led Michigan communities to enact ordinances to address food trucks.

The City of Mason is considering the adoption of an ordinance regulating food truck vendors. Upon review of several Michigan city ordinances, staff has determined that the Traverse City Mobile Food Vending ordinance would be a good model for our city. Some of the items addressed in the ordinance relate to the fee structure, approved locations, fire and safety regulations, hours of operation, the impact on area restaurant businesses, code enforcement, and inspections.

Various city boards and commissions are being asked to review the model ordinance and offer comment. The Traverse City ordinance is included in this packet for your consideration.”

Your insight and comment are critical to developing a meaningful ordinance. We look forward to a constructive discussion!

Also, please be aware that a forum on the issue is scheduled for **Thursday, February 11, 2016, at 6pm at Mason City Hall.**

# Chapter 865

## Mobile Food Vending

865.01	Intent	865.09	Parking Beyond Limits
865.02	Definitions		Allowed by City Ordinance
865.03	Permit Required		and Order
865.04	Duration; Non-Transferability	865.10	Impoundment
865.05	Application	865.11	Other Permits
865.06	Fees	865.12	Revocation
865.07	Investigation by the Chief	865.13	Complaints; Appeals
	Of Police	865.14	Appearance Tickets
865.08	Requirements	865.15	Civil Infraction

**865.01 INTENT.**

In the interest of encouraging mobile food vendors who add to the vibrancy and desirability of Traverse City, while providing a framework under which such businesses operate, this ordinance is established. (Ord. 963. Passed 5-6-13)

**865.02 DEFINITIONS.**

- (a) *Mobile Food Vending* shall mean vending, serving, or offering for sale food and/or beverages from a mobile food vending unit which meets the definition of a Food Service Establishment under Public Act 92 of 2000, which may include the ancillary sales of branded items consistent with the food, such as a tee shirt that bears the name of the organization engaged in Mobile Food Vending.
- (b) *Mobile Food Vending unit* shall mean any motorized or non-motorized vehicle, trailer, or other device designed to be portable and not permanently attached to the ground from which food is vended, served, or offered for sale.
- (c) *Vendor* shall mean any individual engaged in the business of Mobile Food Vending; if more than one individual is operating a single stand, cart or other means of conveyance, then Vendor shall mean all individuals operating such single stand, cart or other means of conveyance.
- (d) *Operate* shall mean all activities associated with the conduct of business, including set up and take down and/or actual hours where the mobile food vending unit is open for business.

(Ord. 963. Passed 5-6-13)

**865.03 PERMIT REQUIRED.**

No vendor shall engage in Mobile Food Vending without a permit from the City Clerk authorizing such vending. The City Clerk shall prescribe the form of such permits and application for such permit. All permits shall be prominently displayed on the mobile food vending unit. No vending through a Mobile Food Vending Unit of food and/or other human

consumables shall be permitted unless it meets the definition of Mobile Food Vending as defined by this ordinance. (Ord. 963. Passed 5-6-13)

**865.04 DURATION; NON-TRANSFERABILITY.**

Permits may be issued by the City Clerk for a calendar year from the date of issuance. Any permit issued under this Chapter is non-transferable. (Ord. 963. Passed 5-6-13)

**865.05 APPLICATION.**

Every vendor desiring to engage in Mobile Food Vending shall make a written application to the City Clerk for a permit under this Chapter. The applicant shall truthfully state, in full, all information requested by the City Clerk and be accompanied by a fee established by resolution of the City Commission. Additionally, the applicant shall provide all documentation, such as insurance, as required by the city. (Ord. 963. Passed 5-6-13)

**865.06 FEES.**

An application for a permit under this Chapter shall be accompanied by a fee in the amount established by resolution of the City Commission. There shall be no proration of fees. Fees are non-refundable once a permit has been issued by the City Clerk. No fee shall be charged to any honorably discharged veteran of the United States Military who is a resident of the State of Michigan and submits official documentation evidencing such to the City Clerk. If operating on non-city property, no fee shall be charged to a business which is on the city's tax rolls whose normal business includes the sale of food and/or beverages. No one shall hire or subcontract such vendors in an attempt to evade the provisions of this Chapter. (Ord. 963. Passed 5-6-13)

**865.07 INVESTIGATION BY THE CITY CLERK.**

For Mobile Food Vending within residential areas, approval must be given by the City Clerk prior to issuance of a permit by the City Clerk. (Ord. 963. Passed 5-6-13. Ord. 1026. Passed 9-8-15)

**865.08 REQUIREMENTS.**

Any vendor engaging in Mobile Food Vending shall comply with the following requirements:

1. Provide appropriate waste receptacles at the site of the unit and remove all litter, debris and other waste attributable to the vendor on a daily basis.
2. If operating on city-owned or controlled property, may only locate on such property as established in a resolution adopted by the City Commission. If parked on public streets, vendors shall conform to all applicable parking regulations.
3. Not operate on public property within one block of a city-authorized street fair, public festival, farmers market or event being conducted without authorization from the event sponsor.
4. Not use any flashing or blinking lights or strobe lights; all exterior lights over 60 watts shall contain opaque, hood shields to direct the illumination downward.
5. Not use loud music, amplification devices or "crying out" or any other audible methods to gain attention which causes a disruption or safety hazard as determined by the City.
6. Comply with the city's Noise Ordinance, Sign Ordinance and all other City

ordinances.

7. Comply with all applicable federal, state and county regulations.
8. May have one portable sign that is six square feet, with no dimension greater than 3 feet and no height (with legs) greater than 4 feet, located within five feet of the unit; and under no circumstances shall such sign be placed upon the sidewalk or impede pedestrian and/or vehicle safety.
9. Within residential areas, a mobile food vendor may only operate between the hours of 9 a.m. and 9 p.m.; and in commercial areas, a mobile food vendor may only operate between the hours of 7 a.m. and 11 p.m. On private property within Commercial Area, a mobile food vendor may only operate between the hours of 6:00 a.m. and 3 a.m. Other restrictions regarding hours of operation may be established by resolution of the City Commission.
10. No Mobile Food Vending Unit may be left unattended for more than 2 hours; and any Mobile Food Vending Unit not in operation shall be removed between the hours of 11 p.m. and 7 a.m. in commercial areas and 9 p.m. to 9 a.m. in residential areas. This subsection applies to Mobile Food Vending Units operating on city-controlled property only.
11. Not represent the granting of a permit under this Chapter as an endorsement by the city.
12. Shall not utilize any electricity or power without the prior written authorization of the power customer; no power cable or similar device shall be extended at or across any city street, alley, or sidewalk except in a safe manner.

(Ord. 963. Passed 5-6-13, Ord. 988. Passed 1-21-14)

**865.09            PARKING BEYOND LIMITS ALLOWED BY CITY ORDINANCE AND ORDER.**

Any Mobile Food Vending Unit with a valid Mobile Food Vending License may park in a city-controlled parking space for durations as authorized by the permit; and such Mobile Food Vending Unit shall not be restricted to the hours where parking would otherwise be allowed in the particular parking space. Provided, however, that no Mobile Food Vending Unit shall park in a city-controlled parking space if parking is prohibited altogether. Any Mobile Food Vending Unit parked in a metered parking space with a valid Mobile Food Vending License shall activate the meter at all times while parked by depositing the appropriate sum of money into the parking meter. (Ord. 963. Passed 5-6-13)

**865.10            IMPOUNDMENT.**

Any equipment associated with food vending that are not in compliance with this Chapter and left on public property may be impounded at the owner's expense. (Ord. 963. Passed 5-6-13)

**865.11            OTHER PERMITS.**

A permit obtained under this Chapter shall not relieve any vendor of the responsibility for obtaining any other permit, or authorization required by any other ordinance, statute or administrative rule. (Ord. 963. Passed 5-6-13)

**865.12            REVOCATION**

The City Clerk shall revoke the permit of any vendor engaged in Mobile Food Vending who ceases to meet any requirement of this Chapter or violates any other federal, state or local regulation, makes a false statement on their application, or conducts activity in a manner that is adverse to the protection of the public health, safety and welfare.

Immediately upon such revocation, the City Clerk shall provide written notice to the permit holder by certified mail to their place of business or residence as indicated on the application. Immediately upon such revocation, the permit shall become null and void. (Ord. 963. Passed 5-6-13)

**865.13 COMPLAINTS; APPEALS.**

If a written complaint is filed with the City Clerk alleging a Food Vendor has violated the provisions of this Chapter, the City Clerk shall promptly send a copy of the written complaint to the vendor together with a notice that an investigation will be made as to the truth of the complaint. The vendor shall be invited to respond to the complaint and present evidence and respond to evidence produced by the investigation. If the City Clerk, after reviewing all relevant material, finds the complaint to be supported by a preponderance of the evidence, the complaint shall be certified. If a permit is denied or revoked by the City Clerk, or if a written complaint is certified pursuant to this Chapter, the applicant or holder of a permit may appeal to and have a hearing before the City Manager. The City Manager shall make a written determination, after presentation by the applicant and investigation by the City Clerk, as to whether or not the grounds for denial, revocation or complaint are true. If the City Manager determines that such grounds are supported by a preponderance of the evidence, the action of City Clerk or filing of the complaint shall be sustained and the applicant may appeal the City Manager's decision to a court of competent jurisdiction. (Ord. 963. Passed 5-6-13)

**865.14 APPEARANCE TICKETS.**

The Police Chief and sworn officers of the Police Department, or such other officials as designated by the City Manager are authorized to issue and serve appearance tickets with respect to a violation of this Chapter pursuant to Michigan law. Appearance tickets shall be in such form as determined by the City Attorney and shall be in conformity with all statutory requirements. (Ord. 963. Passed 5-6-13)

**865.15 CIVIL INFRACTION.**

A vendor who violates this Chapter is responsible for a civil infraction and subject to a fine of \$500 per day. Provided, however, that the fine for parking violations shall be those as outlined in Chapter 488 of these codified ordinances. (Ord. 963. Passed 5-6-13. Ord. 970. Passed 6-3-13)