



OFFICE OF COMMUNITY DEVELOPMENT

8140 Main Street • Dexter, Michigan 48130-1092 • (734) 580-2233 • Fax (734) 426-5614

STAFF MEMO

To: Chairman Kowalski and Planning Commissioners
Justin Breyer, Interim City Manager

From: Michelle Aniol, Community Development Manager
Michael Auerbach, Assistant Planner

RE: **AP2020.21-12 Text Amendment to Zoning Ordinance – Medical Use of Marijuana as a Home Occupation**

Date: January 26, 2021

The Planning Commission is scheduled to conduct a public hearing to consider a text amendment to the zoning ordinance to allow the medical use of marijuana as a home occupation. The proposed amendments would define Marijuana and establish medical use of marijuana as a home occupation and would include the following:

- (1) An amendment to the current definition of Home Occupation.
- (2) New definitions for Marijuana, Marijuana Collective, Cooperative or Dispensary, and Medical Use of Marijuana.
- (3) Removal of the current definition of Medical Marijuana Home Use.
- (4) New Section 3.29, Medical Use of Marijuana. This new section would include the following:
 - (i) A locational restriction that allows for the cultivation of medical marijuana by primary caregivers, but only as a "home occupation."
 - (ii) A mandate that "medical use" of marijuana by a primary caregiver be conducted entirely within a dwelling or attached garage, except that a registered primary caregiver may keep and cultivate [medical marijuana], in an enclosed, located facility.
 - (iii) A requirement that the medical use of marijuana shall comply at all times with the MMMA and the MMMA General Rules, as amended.
 - (iv) A requirement for a primary caregiver to obtain a permit to grow medical marijuana.
 - (v) An enforcement provision if a primary caregiver who holds a permit departs from the requirements of the Ordinance or the MMMA, including revocation of the permit.
 - (vi) The clarification that a permit is not required for a qualifying patient's cultivation of marijuana for personal use and that a permit is not required for a qualifying patient's possession or use of marijuana in their dwelling.
 - (vii) The prohibition of the distribution or use of items in the administration of marijuana on the premises of the primary caregiver.
 - (viii) A prohibition of a qualifying patients from visiting, coming to, or being present at the residence of the primary caregiver, where the home occupation is occupying, to purchase, smoke, consume, obtain or receive marijuana.
- (5) New Section 3.30, Marihuana Establishments Prohibited, which prohibits all types of "marihuana establishments" defined and used in Michigan Initiated Law 1 of 2018, commonly known as the Michigan Regulation and Taxation of Marihuana Act, all types of "marihuana facilities" as described in Act 281 of 2016, The Medical Marihuana Facilities Licensing Act, and includes a clarification that Section 3.30 shall not limit any privileges, right, immunities or defenses of a person, as provided in the Michigan Medical Marihuana Act, Michigan Initiated Law 1 of 2008, MCL 333.26421, et seq.

Text Analysis and Review Criteria

As established in Section 23.06 of the Zoning Ordinance, the Planning Commission and City Council must consider zoning ordinance text amendments, according to the following criteria, as applicable:

- A. Documentation has been provided from City Staff or the Zoning Board of Appeals indicating problems and conflicts in implementation of specific sections of the Ordinance.

Staff Comments: N/A in this instance.

- B. Reference materials, planning and zoning publications, information gained at seminars or experiences of other communities demonstrate improved techniques to deal with certain zoning issues, or that the City's standards are outdated.

Staff Comments: N/A in this instance.

- C. The City Attorney recommends an amendment to respond to significant case law.

Staff Comments: The City Attorney has informed staff of a ruling this past April, by the Michigan Supreme Court, in the Deruiter v Township of Byron case. The question before the Court was whether Byron Township's zoning ordinance, which regulates the location of registered medical marijuana caregiver activities and requires that a "primary caregiver" obtain a permit before cultivating medical marijuana, is preempted by the Michigan Medicate Marihuana Act (the MMMA), MCL 333.26421 et seq, as previously ruled by the Court of Appeals (MCA No. 338972, Deruiter v Township of Byron and the Michigan Townships Association, and the Michigan Municipal League, in 2018).

*The MI Supreme Court determined the "enclosed, locked facility" requirements in the MMMA concerns **what type of structure marijuana plants** must be kept and grown in for a patient or caregiver to be entitled to protections offered by MCL 333.26424(a) and (b), and the requirement does not speak to **where marijuana plants may be grown**. In other words, because an enclosed, locked facility could be found in various locations, on various types of property, regardless of zoning, this requirement is not in conflict with a local regulation that limits where medical marijuana must be cultivated.*

*The Court further determined that a municipality **may** regulate the land use of a Michigan Medical Marijuana Act activity, so long as:*

- (1) The municipality does not prohibit or penalize the cultivation of medical marijuana, and*
- (2) The municipality does not impose regulations that are unreasonable and inconsistent with regulation established by state law.*

With that decision, the MI Supreme Court held that Bryon Township's home-occupation zoning ordinance does not directly conflict with the MMMA and reversed the Court of Appeals (MCA No. 338972, Deruiter v Township of Byron and the Michigan Townships Association, and the Michigan Municipal League) 20180 decision. You will recall, it was the Court of Appeals ruling that prompted the City to amend its Zoning Ordinance in 2019, to remove medical marihuana home occupation regulations.

In light of the MI Supreme Court ruling, combined with recent inquiries this office has received regarding MMMA activities, the city attorney has recommended the city initiate a text amendment to the Zoning Ordinance, to define Marijuana and establish medical use of marijuana as a home occupation.

- D. The amendment would promote implementation of the goals and objectives of the City's Master Plan.

Staff Comments: N/A in this instance.

Proposed Text Amendments

The proposed Zoning Ordinance text amendments are listed below. Text to be added is underlined; ~~strikeout~~ text is to be deleted. A clean copy of the proposed amendments accompanies this memorandum.

SECTION 2.02 DEFINITIONS

Home Occupation: ~~A use conducted entirely within an enclosed building employing only the inhabitants thereof, which is clearly residential occupancy and does not change the character thereof.~~ An occupation or professional that is customarily incidental and secondary to residential occupancy and does not change the use of the dwelling. It is customarily conducted within a dwelling, carried out by its occupants utilizing equipment customarily found in a home and, except for a sign allowed by this Ordinance, is generally not distinguishable from the outside. Specifically excluded is the storage and display of merchandise not produced by such home occupation, business activity involving any building alterations, window display, construction features, equipment, machinery or outdoor storage, any of which is visible from off the lot on which located.

Marijuana: Marijuana, also known as Marihuana, also known as Cannabis. The term shall have the meaning given to it in Section 7601 of the Michigan Public Health Code, 1978 PA 368, as amended, MCL 333.7106 et seq., as is referred to in Section 3(d) of the Michigan Medical Marihuana Act, PA 2008, Initiated Law 1, MCL 333.26423(d). Any other term pertaining to marijuana used in this Ordinance and not otherwise defined shall have the meaning given to it in the Michigan Medical Marihuana Act and/or in the General Rules of the Michigan Department of Community Health issued in connection with that Act.

Marijuana Collective, Cooperative or Dispensary: Any facility, structure, dwelling or other location where medical marijuana is grown, cultivated, processed, stored, transmitted, dispensed, consumed, used, given, delivered, provided, made available to and/or distributed by two or more of the following: a registered primary caregiver or a registered qualifying patient, as defined by the Michigan Medical Marihuana Act, PA 2008, Initiated Law 1, MCL 333.26421 et seq. (the "Act"), or a person in possession of an identification card issued under the Act or in possession of an application for such an identification card. The term "collective" or "cooperative" shall not apply to an individual registered primary caregiver that provides necessary care and medical marijuana for medical use exclusively to his/her five or fewer designated qualifying patients in strict accordance with the Michigan Medical Marihuana Act, PA 2008, Initiated Law 1, MCL 333.26421 et seq. or the Administrative Rules of the Michigan Department of Community Health, Michigan Admin Code, R 333.101 through R 333.133. A "marijuana collective, cooperative or dispensary" shall not include the following uses: a State-licensed health care facility; a State-licensed residential care facility for the elderly or infirm; or a residential hospice care facility, as long as any such use complies strictly with applicable laws and rules of the State of Michigan.

Marijuana Dispensary or Dispensary: See Marijuana Collective, Cooperative or Dispensary.

Medical Marihuana Home Use: ~~Means a dwelling unit that is the primary residence of a qualifying patient, as defined in Sec. 3 of the Act, MCL §333.26423(h), who is registered with the Department of Community Health (MDCH). In his or her primary residence, a registered qualifying patient may lawfully cultivate medical marihuana for him or herself in accordance with the Michigan Medical Marihuana Act of 2008 and the MDCH Administrative Rules, as amended. In his or her primary residence, a registered qualifying patient may receive assistance from his or her primary caregiver with whom the registered qualifying patient is connected to through the MDCH registration process pursuant to MCL §333.26426(d) in accordance with the Michigan Medical Marihuana Act of 2008 and the MDCH Administrative Rules, as amended.~~

Medical Use of Marijuana: The acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer or transportation of marijuana 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, as defined under the Michigan Medical Marihuana Act, PA 2008, Initiated Law 1, MCL 333.26421 et seq.

SECTION 3.29 MEDICAL USE OF MARIJUANA

The acquisition, possession, cultivation, use, delivery or distribution of marijuana to treat or alleviate a debilitating medical condition is prohibited except in compliance with the Michigan Medical Marijuana Act ("MMMA") of 2008 and applicable provisions of the City Zoning Ordinance.

1. A registered primary caregiver, operating in compliance with the MMMA General Rules, the MMMA and the requirements of this subsection, shall be permitted as a home occupation, as regulated by this subsection. The City makes the following findings, in support of its determination that the regulation of registered primary caregivers as a permitted home occupation is consistent with the purposes and intent of the MMMA:
 - a. The MMMA does not create a general right for individuals to use, possess, or deliver marijuana in Michigan.
 - b. The MMMA's protections are limited to individuals suffering from serious or debilitating medical conditions or symptoms, to the extent that the individuals' marijuana use is carried out in compliance with the provisions of the MMMA, including the provisions related to the operations of registered primary caregivers.
 - c. The MMMA's definition of "medical use" of marijuana includes the "transfer" of marijuana "to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition," but only if such "transfer" is performed by a registered primary caregiver who is connected with the same qualifying patient through the registration process established by the Department of Licensing and Regulatory Affairs, and who is otherwise operating in strict compliance with the MMMA and the MMMA General Rules.
 - d. The MMMA provides that a registered primary caregiver may assist no more than five qualifying patients with their medical use of marijuana.
 - e. The MMMA does not, therefore, create a new vocation for entrepreneurs or others who wish to engage in the sale of marijuana to more than five persons in a commercial setting. Instead, the MMMA is directed at improving the health and welfare of qualifying patients.
 - f. The health and welfare of qualifying patients is improved by permitting the operations of registered primary caregivers as a home occupation, because this allows qualifying patients who suffer from serious or debilitating medical conditions or symptoms to obtain the benefits of the medical use of marijuana in a residential setting, without having to unnecessarily travel into commercial areas.
 - g. By permitting the operations of registered primary caregivers as a home occupation, rather than in a commercial setting, this promotes the MMMA's purpose of ensuring that:
 - (i) A registered primary caregiver is not assisting more than five qualifying patients with their medical use of marijuana, and
 - (ii) A registered primary caregiver does not unlawfully expand its operations beyond five qualifying patients, so as to become an illegal commercial operation, in the nature of a marijuana collective, cooperative or dispensary.
2. The following standards and requirements shall apply to the location at which the medical use of marijuana is conducted by a primary caregiver.
 - a. The medical use of marijuana shall comply at all times with the MMMA and the MMMA General Rules, as amended.
 - b. A registered primary caregiver shall not possess marijuana, or otherwise engage in the medical use of marijuana, in a school bus, on the grounds of any preschool or primary or secondary school, or in any correctional facility.

- c. Not more than two registered primary caregivers, who shall also be full-time residents of the dwelling, shall be permitted to operate at any one property.
 - d. The medical use of marijuana shall be conducted entirely within a dwelling or attached garage, except that a registered primary caregiver may keep and cultivate, in an "enclosed, locked facility" (as that phrase is defined by the MMMA), up to 12 marijuana plants for each registered qualifying patient with whom the registered primary caregiver is connected through the registration process established by the Department of Licensing and Regulatory Affairs, and up to 12 additional marijuana plants for personal use, if the primary caregiver is also registered as a qualifying patient under the MMMA.
 - e. A sign identifying the home occupation by word, image or otherwise, or indicating that the medical use of marijuana is taking place on the premises, shall not be permitted; nor shall any vehicle having such a sign be parked anywhere on the premises.
 - f. Except for lighting, heating, watering, drying or other equipment, or fertilizers, herbicides or other chemicals directly related to the medical use of marijuana, no other materials or equipment not generally associated with normal ownership, use, and maintenance of a dwelling shall be permitted.
 - g. Distribution of marijuana or use of items in the administration of marijuana shall not occur at or on the premises of the primary caregiver. A qualifying patient shall not visit, come to, or be present at the residence of the primary caregiver to purchase, smoke, consume, obtain or receive possession of any marijuana.
 - h. Except for the primary caregiver, no other person shall deliver marijuana to the qualifying patient.
 - i. No one under the age of 18 years shall have access to medical marijuana.
 - j. No on-site consumption or smoking of marijuana shall be permitted within the dwelling (or on the property) of a primary caregiver, except for lawful medical marijuana consumption by the primary caregiver if registered as a qualifying patient under the MMMA.
 - k. Medical marijuana shall not be grown, processed, handled or possessed at the dwelling of the primary caregiver beyond that which is permitted by law.
 - l. All necessary building, electrical, plumbing and mechanical permits shall be obtained for any portion of a building or structure in which equipment and devices that support the cultivation, growing or harvesting of marijuana are located or used.
 - m. If marijuana is grown or located in a room with windows, all interior lighting shall be shielded to prevent ambient light from creating a distraction for adjacent properties.
 - n. Related merchandise or products shall not be sold or distributed from the dwelling or property of the primary caregiver, apart from the permitted quantity of medical marijuana.
 - o. To ensure compliance with all applicable requirements and laws, the portion of a building or other structure, such as a cultivation room, where energy use and heating requirements exceed typical residential limits and chemical storage occurs, are subject to inspection and approval by the zoning administrator or other authorized official.
 - p. The property, dwelling and all enclosed, locked facilities shall be available for inspection upon request by the zoning administrator, building official or law enforcement official.
3. The operations of a registered primary caregiver, as a home occupation, shall be permitted only with the prior issuance of a Zoning Compliance Permit.
- a. A complete and accurate application shall be submitted on a form provided by the City and an application fee in an amount determined by resolution of the City shall be paid.

- b. The permit application shall include the name and address of the applicant; the address of the property; proof, such as a driver's license, voter registration card or similar record showing that the dwelling is the applicant's full-time residence; a current state registration card issued to the primary caregiver; a full description of the nature and types of equipment which will be used in marijuana cultivation and processing; and a description of the location at which the use will take place. The zoning administrator may require additional information necessary to demonstrate compliance with all requirements. The zoning administrator shall review the application to determine compliance with this Ordinance, the MMMA and the MMMA General Rules. A permit shall be granted if the application demonstrates compliance with this Ordinance, the MMMA and the MMMA General Rules.
 - c. The use shall be maintained in compliance with the requirements of this Ordinance the MMMA and the MMMA General Rules. Any departure shall be grounds to revoke the permit and take other lawful action. If a permit is revoked, the applicant shall not engage in the activity unless and until a new permit is granted.
 - d. Information treated as confidential under the MMMA, including the primary caregiver registry identification card and any information about qualifying patients associated with the primary caregiver, which is received by the City, shall be maintained separately from public information submitted in support of the application. It shall not be distributed or otherwise made available to the public and shall not be subject to disclosure under the Freedom of Information Act.
4. It is unlawful to establish or operate a for-profit or nonprofit marijuana dispensary, collective or cooperative within the City, even if such use is intended for the medical use of marijuana.
 5. The use of the dwelling or other permitted facility of a qualifying patient to cultivate medical marijuana in accordance with the MMMA, solely for personal use, does not require a permit under this subsection; however, all applicable state and City ordinance requirements must be met.
 6. The provisions of this subsection do not apply to the personal use and/or internal possession of marijuana by a qualifying patient in accordance with the MMMA, for which a permit is not required.

SECTION 3.30 MARIHUANA ESTABLISHMENTS PROHIBITED

1. Any and all types of a "marihuana establishment," as that term is defined and used in Michigan Initiated Law 1 of 2018, commonly known as the Michigan Regulation and Taxation of Marihuana Act, are completely prohibited in the City, and may not be established or operated in any zoning district, by any means, including by way of a variance.
2. Any and all types of "marihuana facilities" as described in Act 281 of 2016, the Medical Marihuana Facilities Licensing Act are completely prohibited in the City and may not be established, licensed or operated in any zoning district, by any means, including by way of a variance.
3. Nothing in this Section 3.30 shall limit any privileges, rights, immunities or defenses of a person as provided in the Michigan Medical Marihuana Act, Michigan Initiated Law 1 of 2008, MCL 333.26421, et seq.

Suggested Motions

Staff have prepared the following suggested motions; 1) to recommend approval or denial of the proposed zoning ordinance text amendments as presented, 2) to recommend approval of the proposed text amendments with modifications, or 3) to postpone action on the proposed text amendments.

1. Pursuant to Section 23.06 of the City of Dexter Zoning Ordinance, together with the information presented by staff and the input received during the public hearing conducted by the Planning Commission on February 1, 2021, the Planning Commission recommends City Council **(approve/deny)** AP2020.21-12 Text Amendment to the Zoning Ordinance to allow Medical Use of Marijuana as a Home Occupation, as provided herein.

2. Pursuant to Section 23.06 of the City of Dexter Zoning Ordinance, together with the information presented by staff and the input received during the public hearing conducted by the Planning Commission on February 1, 2021, the Planning Commission recommends that City Council **approve** AP2020.21-12 Text Amendment to the Zoning Ordinance to allow Medical Use of Marijuana as a Home Occupation, as provided herein, **subject to the following changes (identify sections to remove and/or sections and text to modify):**
 1. _____
 2. _____
 3. _____
 4. _____

3. Based on the information presented by staff and the input received during the public hearing conducted by the Planning Commission on February 1, 2021, the Planning Commission moves to **postpone** the action on AP2020.21-12 Text Amendment to the Zoning Ordinance to allow Medical Use of Marijuana as a Home Occupation, as provided herein until **(date)** to allow more time to address the following:
 1. _____
 2. _____

Thank you and let me know if you have any questions.