

Commission Letter # 105-10
Commission Meeting: 4/19/2010

RE: Zoning Ordinance Text Amendments – Medical Marihuana – First Reading

April 16, 2010

The Honorable Mayor
and
Members of City Commission

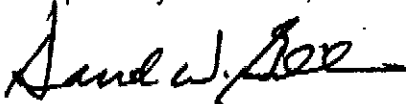
On March 9, 2010, the Planning Commission approved a resolution recommending that the City Commission approve text amendments to the Zoning Ordinance that would allow medical marihuana dispensaries as a special land use in the City's General Business District. Based upon subsequent information that the Planning Department staff received, Planning Director Tim Thwing has recommended that if the Commission chooses to move forward with these amendments, the term "medical marihuana clinic" be used, rather than "medical marihuana dispensary". Mr. Thwing's draft memorandum of March 30, 2010 is attached, and includes a proposed resolution if the Commission chooses to approve the text amendments on first reading.

The second option that the City Commission has is discussed at the top of page three of Mr. Thwing's memorandum. That option is to refer the issue back to the Planning Commission, with a request that the Planning Commission hold a public hearing on text amendments to the Zoning Ordinance that would prohibit any use that is not permitted under federal, state or local law. The possession and delivery of marihuana continue to be prohibited by federal law; if approved, this language would have the effect of completely prohibiting medical marihuana facilities. Chief of Police Christopher Jahnke supports this option, which was rejected by the Planning Commission. If the City Commission chooses to take this action, the following resolution would be appropriate:

BE IT RESOLVED, that the City Commission hereby directs the Planning Commission to hold a public hearing and offer a recommendation on possible text amendments to the Zoning Ordinance that would expressly prohibit any use that is contrary to federal, state or local law.

The third option that the City Commission has is to approve a resolution establishing a short-term moratorium on proposals for medical marihuana facilities. By establishing a moratorium, the Commission would be able to study the issue further, take into consideration the manner in which other communities address the issue, see if either the Michigan Department of Community Health (which oversees the State's medical marihuana program) or the Michigan Attorney General offer any other guidance as to how the Michigan Medical Marihuana Act should be interpreted or implemented, and see if the Michigan legislature takes any action on related legislation that is currently in committee. If the Commission chooses to take this option, a proposed resolution is attached for your consideration.

Respectfully submitted,



David W. Gillam
City Attorney

cc: Donald E. Johnson, City Manager
Melanie Halas, City Clerk
Timothy E. Thwing, Director of Planning
Christopher A. Jahnke, Chief of Police

Commission Memo
Commission Meeting of: 04/19/2010
Re: Discussion and Direction Regarding Medical Marijuana Dispensaries

March 31, 2010

The Honorable Mayor
and
Members of City Commission

First and foremost, I must state the purpose of this memo is strictly confined to my recommendation regarding Medical Marijuana Dispensaries.

On December 8, 2009, I made a recommendation to the Royal Oak Planning Commission to consider not allowing medical marijuana dispensaries as they are in violation of Federal law. I also recommended that the city adopt an ordinance that essentially prohibits the licensure of any business that is in violation of City ordinance, State law or Federal law. I still recommend that the city go in this direction.

City attorney David Gillam addressed a number of critical issues in his recommendation to the Planning Commission, and I agree with his summation - there are too many unanswered questions regarding the law and ensuring compliance is problematic.

I have done a fair amount of research on this subject matter and have found the attached White Paper on Marijuana Dispensaries presented by the California Police Chief's Association's Task Force on Marijuana Dispensaries (2009), to be the most comprehensive, up to date report on the issues surrounding medical marijuana dispensaries.

The "White Paper on Marijuana Dispensaries" highlights the problems that California has had to endure as a result of the passage of Proposition 215 of 1996 regarding medical marijuana and the opening of medical marijuana dispensaries in their state. Below is a synopsis of the different problems that the opening of dispensaries has created:

Increase in crime in the immediate area and adjoining neighborhoods
Breaking and entering
Robberies of persons coming to (money) and leaving (drugs) the dispensary
Assaults
Larceny
Loitering in the area and neighborhoods
Street Dealers frequenting the area in an effort to recruit new customers
Non-residents coming into the city just to purchase marijuana
An increase of Driving under the Influence of Marijuana
Neighboring businesses experiencing a loss of customers due to:
clients coming to the dispensary
odors from the dispensary
Increase of unreported crime in for a variety of reasons:
Operating outside the guidelines of the law
Fear negative publicity
Card holders selling marijuana to non-card holders
People smoking marijuana in public
Lack of effort on the part of the dispensary owners/employees to control unlawful or nuisance behavior in and around the business
Increase of Organized Crime infiltrating the dispensaries

The report also found that there was increased noise and pedestrian traffic in the adjacent neighborhoods. Some of this increase from non-residents were criminals in search of potential victims to rob of their marijuana or money; criminals looking to resell their just purchased marijuana; or criminals looking to sell marijuana at a cheaper price than the dispensary.

After a 2007 raid on 11 Southern California clinics, the head of the Los Angeles DEA stated to CBS News that "Today's enforcement operations show that these establishments are nothing more than drug-trafficking organizations bringing criminal activities to our neighborhoods and drugs near our children and schools."

Of the many points that the "White Paper on Marijuana Dispensaries" highlight is "the presence of marijuana dispensing businesses contributes to the existence of a secondary market for illegal, street level distribution of marijuana. This fact was even recognized by the United States Supreme Court: "The exemption for cultivation by patients and caregivers can only increase the supply of marijuana in the California market. The likelihood that all such production will promptly terminate when the patients recover or will precisely match the patients' medical needs during their convalescence seems remote; whereas the danger that excesses will satisfy some of the admittedly enormous demand for recreational use seems obvious." (Gonzales v. Raich, supra, 125 S.Ct. at p. 2114.)" (page 27).

Finally to put the law in perspective: a patient is allowed to have 12 marijuana plants.

Each plant can produce ½ pound of marijuana each time it is cultivated.

Each plant can be cultivated 4 times per year yielding 24 pounds of marijuana per year.

12 plants x ½ pound x 4 cultivations = 24 lbs

Generally, you are able to get 900 cigarettes out of a standard, legal pound of tobacco.

Talking to experts in the field, a pound of marijuana will yield 900-1100 marijuana cigarettes.

Using the 900/lb figure; a patient will be able to produce 21,600 marijuana cigarettes per year (900 x 24 lbs) or over 59 cigarettes per day.

In speaking to a known marijuana user; they generally smoke 3-4 cigarettes a day.

A caregiver is allowed to have 5 "patients."

Conclusion

Though this highlights issues that Californians are experiencing, they are consistent in what towns in other states such as Colorado are experiencing. There is no reason to think that we would not encounter the same issues.

Because medical marijuana dispensaries have shown to cause harmful secondary effects on the public health, safety and welfare of communities and are against Federal law, I would recommend that the City adopt an ordinance that prohibits any business that is in violation of City ordinance, State law or Federal law.

Respectfully submitted,



Chief Christopher M. Jahnke
Police Department

Approved,



Donald E. Johnson
City Manager

Commission Letter #: 105-10

Commission Meeting: 4 / 05 / 2010

RE: Zoning Ordinance Text Amendment for Medical Marihuana – 1st Reading

March 30, 2010

The Honorable Mayor
and
Members of City Commission

At its regular meeting of May 12, 2009, the Planning Commission conducted a public hearing on a proposed text amendment to the city's Zoning Ordinance regarding the Michigan Medical Marihuana Act. The following resolution was adopted 7 to 1 by the Planning Commission at their regular meeting of March 9, 2010:

WHEREAS, the Planning Commission held a public hearing on Tuesday, May 12, 2009, to consider text amendments to the Zoning Ordinance, Chapter 770 of the Code of the City of Royal Oak, for the purpose of complying with the Michigan Medical Marihuana Act; and

WHEREAS, the proposed amendment would only apply to primary caregivers who either receive or otherwise have qualified patients visit the caregiver's home or another location for treatment, and/or possess medical marijuana for patients who do not live at that same location, but not to any other aspect of medical marihuana use; and

WHEREAS, the proposed amendment would not prevent a primary caregiver from visiting the home of a qualified patient to assist that patient with their medical marihuana use, and would not prevent a caregiver from possessing a patient's marihuana at the patient's home; and

WHEREAS, the amendment would not prevent a spouse of a qualified patient or other resident of the patient's home from acting as that patient's primary caregiver, but only prohibit the spouse or resident from receiving other qualified patients for treatment who do not live in the same house, or from possessing medical marihuana for patients who do not live in the same house; and

WHEREAS, the proposed amendments to the Zoning Ordinance are consistent with the goals and objectives of the Royal Oak Master Plan;

THEREFORE, BE IT RESOLVED, that the Planning Commission hereby accepts the following Zoning Ordinance text amendments and forwards their recommendation for approval to the City Commission:

- A. §770-8, Definitions, is amended to add a definition of "medical marihuana dispensary," which shall read as follows:

MEDICAL MARIHUANA DISPENSARY – A facility where primary caregivers who are legally registered by the Michigan Department of Community Health may lawfully receive and assist visiting qualifying patients who are also legally registered by the

Department with the medical use of marihuana in accordance with the Michigan Medical Marihuana Act (MCL 333.26421 to 333.26430).

- B. §770-41, General Business, is amended to add "medical marihuana dispensaries" as a special land use under subparagraph (C), Special Land Uses, as follows:

(20) Medical marihuana dispensaries, subject to the requirements set forth in § 770-55, Medical marihuana dispensaries.

- C. Article V, Special Provisions, is hereby amended to add §770-55, Medical Marihuana Dispensaries, which shall read as follows:

§770-55. Medical Marihuana Dispensaries.

All medical marihuana dispensaries shall be subject to the following requirements:

- A. No medical marihuana dispensary shall be permitted within a one-thousand-foot radius of any of the following: school; library; park or playground; licensed group day-care home or center; church, convent, monastery, synagogue or similar place of worship; adult-oriented commercial enterprise; or another medical marihuana dispensary. Measurement of the one-thousand-foot radius shall be made from the outermost boundaries of the lot or parcel upon which the respective uses are or would be situated.
- B. Hours of operation for any medical marihuana dispensary shall be limited to between 8:00 a.m. and 8:00 p.m.
- C. Any medical marihuana dispensary which purports to have engaged in the medical use of marihuana either prior to enactment of the Michigan Medical Marihuana Act (MCL 333.26421 to 333.26430), or after enactment of said Act but without being legally registered by the Michigan Department of Community Health, shall be deemed to an illegally established use, and therefore not entitled to legal nonconforming status under the provisions of this chapter and/or state law.

In response to the Act, the Planning Department drafted the proposed text amendment that would define "primary caregivers" that receive "qualified patients" at their place of business as a "medical marihuana dispensary." Under the proposed amendment such a use would be allowed only as a special land use in the General Business zoning district. The terms used in the definition are taken directly from the Act.

For background purposes, attached are a copies of reports from staff to the Planning Commission regarding the amendment. Also attached is a copy of the Medical Marihuana Act along with information available on the Department of Community Health's website regarding the Michigan Medical Marihuana Program (MMMP). It includes frequently asked questions further identifying what is and isn't allowed under the Act. Additional information can be found at <http://www.michigan.gov/mmp>.

The City Attorney made an alternative suggestion to the Planning Commission that they not recommend adoption of the proposed amendment by the City Commission, and instead pursue another amendment that would prohibit any land use from being established in the city that violated local, state or federal law. Such an amendment would have effectively prohibited primary caregivers from receiving qualified patients at a place of business as doing so would violate federal law. However, the Planning Commission instead recommends adoption of the originally proposed amendment that would allow and regulate such uses.

The Act seems to have raised as many issues as it attempted to address. For example, the Act allows registered primary caregivers and qualified patients to grow and possess certain amounts of medical marihuana. However, the Act does not address how they may acquire or otherwise obtain that marihuana. The sale of marihuana and paraphernalia is still illegal under the Act and Federal law. The state has yet to resolve this discrepancy.

On March 26, 2010, the Planning Department attended a seminar on Michigan's Medical Marihuana Act presented by the Michigan Municipal League and the state Department of Community Health. Based on information provided at that seminar, the Planning Department recommends that the language of the text amendment recommended by the Planning Commission be modified to avoid potential problems and clarify what is and isn't allowed.

First, the word "dispensary" should change to "clinic" or another suitable term. Dispensaries are commonly referred to as store-front operations that actually sell medical marihuana to patients. These operations have proliferated in California under their act. Such uses are not provided for under Michigan's law and are considered illegal in the state, and they are not what the proposed text amendment was intended to address. The word "dispensary" may also be in conflict with the Federal Controlled Substances Act by inferring the sale of marihuana. The term "clinic" has therefore been substituted for "dispensary" within the following amendment.

The definition of "medical marihuana clinic" should also be revised to address primary caregivers growing and possessing medical marihuana for qualified patients. The intent of the text amendment was to allow primary caregivers that received visiting qualified patients at their site only as a special land use in the General Business zoning district, thereby prohibiting them as a home occupation. It was also the intent of the amendment to treat primary caregivers that grew or possessed medical marihuana for patients that did not live with the caregiver in the same manner. The definition has therefore been revised to specify this intent.

Another issued raised at the seminar was how to treat businesses whose sole activity was to issue physician's certificates of debilitating medical conditions that are required when applying for a registry identification card as a qualifying patient. Such businesses have already opened in nearby cities, although it is not clear whether primary caregivers are also operating in conjunction with these uses.

The Act requires that the names of individuals issued registry identification cards by the state as primary caregivers or qualified patients be kept confidential. Therefore, the amendment should specify that neither the names of any caregivers or patients nor copies of their registry cards be required as part of any application for a medical marihuana clinic. Only the number of primary caregivers that will be operating at a location should be required.

Finally, there are a number of related activities that area not covered under Michigan's Act and are therefore still considered illegal. These activities include uses such as dispensaries, growing co-ops, and collectives, third-party providers or advocates, and the sale of marihuana and paraphernalia. The amendment for additional clarity could specifically list these as prohibited activities.

These changes to the text amendment are highlighted within the attached resolution. Should the City Commission adopt the amendment on first reading and schedule a second reading, the Planning Department will refer the modified language to the Planning Commission at their April 13, 2010 regular meeting. Any comments the Planning Commission may have on the modified language will be forwarded to the City Commission for the amendment's second reading.

A claim by the American Civil Liberties Union and others that Michigan's Act pre-empts local zoning control of medical marihuana was also discussed at the MML seminar. According to information provided at the seminar and by the City Attorney, there is no specific language within the Michigan Medical Marihuana Act that precludes the city from regulating medical marihuana clinics as a land use under our Zoning Ordinance. Further, claims that Michigan's Right to Farm Act pre-empts local zoning control of medical marihuana clinics is also baseless.

Another matter discussed at the MML seminar but not included as part of the proposed text amendment is the local licensing of medical marihuana clinics. The City Commission could require a city-issued business license for such clinics and that they meet certain criteria in addition to receiving a special land use permit from the Planning Commission. Such licenses are required by ordinance for other uses and could readily be applied to medical marihuana clinics should the City Commission chose to do so.

The Michigan Zoning Enabling Act, Public Act 110, of 2006, does not require that the City Commission conduct another public hearing on the proposed amendments, although it may do so, if desired. The City Charter, however, provides that an amendment to an ordinance cannot be approved upon introduction but must receive a second review. Therefore, the following options are available to the City Commission:

- Adopt the ordinance, upon introduction or first reading with or without modification, and direct staff to prepare the ordinance for final disposition;
- Adopt the ordinance, upon introduction or first reading with or without modification and schedule a public hearing prior to final disposition;
- Refer the ordinance back to the Planning Commission for additional information or study identifying specific areas of concern; or
- Reject the ordinance (no further action is required).

Should the City Commission choose to accept the Planning Commission's recommendation, including the Planning Department's modifications and adopt the amendment to the Zoning Ordinance on first reading, the following resolution is offered for its consideration:

RESOLUTION

Whereas, the Royal Oak Planning Commission held a public hearing on May 12, 2009, and recommended approval of proposed text amendments to the City of Royal Oak

Zoning Ordinance (Chapter 770 of the Code of the City of Royal Oak) on March 9, 2010;
and

Whereas, the Royal Oak City Commission has determined that the proposed Zoning Ordinance text amendments are consistent with the goals and objectives of the Royal Oak Master Plan; and

Whereas, the Royal Oak City Commission has received the record of public comments taken at the public hearing held at the Royal Oak Planning Commission meeting of May 12, 2009.

Therefore, be it resolved, that Ordinance 2010-3 entitled an Ordinance to amend the City of Royal Oak, Chapter 770, Zoning, thereof entitled City of Royal Oak Zoning Ordinance, is hereby adopted on First Reading.

The City of Royal Oak Ordains:

Section 1 Ordinance

Pursuant to the provision of the Michigan Zoning Enabling Act, P.A. 110 of 2006, as amended, and pursuant to all applicable provisions of law, Chapter 770, City of Royal Oak Zoning Ordinance, as amended, is further amended to read as follows:

- A. §770-8, Definitions, of Article II, Definitions; Rules Applying to Text, is amended to add a definition of "medical marihuana clinic," which shall read as follows:

MEDICAL MARIHUANA CLINIC –

- A. Any facility where primary caregivers who are legally registered by the Michigan Department of Community Health may lawfully ~~grow and/or possess medical marihuana~~ for qualifying patients who are also legally registered by the Department, ~~and may otherwise~~ receive and assist visiting qualifying patients with the medical use of marihuana, in accordance with the Michigan Medical Marihuana Act (MCL 333.26421 to 333.26430).
- B. §770-41, General Business, of Article IV, Zone Regulations and General Provisions, is amended to add "medical marihuana ~~clinics~~" as a special land use under subparagraph (C), Special Land Uses, as follows:
- (20) Medical marihuana ~~clinics~~, subject to the requirements set forth in § 770-55, Medical marihuana ~~clinics~~.
- C. Article V, Special Provisions, is hereby amended to add §770-55, Medical Marihuana ~~Clinics~~, which shall read as follows:

§770-55. Medical Marihuana ~~Clinics~~.

All medical marihuana ~~clinics~~ shall be subject to the following requirements:

- A. No medical marihuana clinic shall be permitted within a one-thousand-foot radius of any of the following: school; library; park or playground; licensed group day-care home or center; church, convent, monastery, synagogue or similar place of worship; adult-oriented commercial enterprise; or another medical marihuana clinic. Measurement of the one-thousand-foot radius shall be made from the outermost boundaries of the lot or parcel upon which the respective uses are or would be situated.

- B. Hours of operation for any medical marihuana clinic shall be limited to between 8:00 a.m. and 8:00 p.m.

- C. The names of any primary caregivers and/or qualified patients shall not be included as part of any application required under this chapter for any medical marihuana clinic. Such applications need only specify the number of primary caregivers that will be operating as part of the clinic.

- D. Any medical marihuana clinic which purports to have engaged in the medical use of marihuana either prior to enactment of the Michigan Medical Marihuana Act (MCL 333.26421 to 333.26430), or after enactment of said Act but without being legally registered by the Michigan Department of Community Health, shall be deemed to an illegally established use, and therefore not entitled to legal nonconforming status under the provisions of this chapter and/or state law.

Section 2 Severability

If any section, subsection, clause, phrase or portion of this ordinance is for any reason held invalid or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent portion of this ordinance, and such holding shall not affect the validity of the remaining portions of this ordinance.

Section 3 Savings

As proceedings pending and all rights and liabilities existing, acquired or incurred at the time this ordinance takes effect are saved and may be consummated according to the law in force when they are commenced.

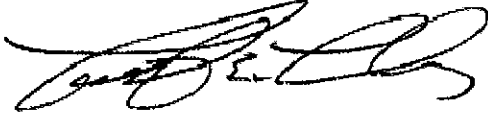
Section 4 Repealer

All ordinance or parts of ordinances in conflict herewith are hereby repealed only to the extent necessary to give this ordinance full force and effect.

Section 5 Effective Date

This ordinance shall be published in a newspaper of general circulation in the City of Royal Oak and shall become effective ten (10) days after publication, as provided by law.

Respectfully submitted,



Timothy E. Thwing
Director of Planning

Approved,

Donald E. Johnson
City Manager

Attachments

cc: D. Gillam, City Attorney
M. Halas, City Clerk
C. Jahnke, Deputy Police Chief

**RESOLUTION DEFERRING REVIEW OF APPLICATIONS FOR REZONING, SPECIAL LAND USE
APPROVAL, SITE PLAN APPROVAL, LICENSE APPROVAL, AND/OR OTHER APPROVALS
PERTAINING TO MEDICAL MARIHUANA FACILITIES**

WHEREAS, on November 4, 2008, Michigan voters approved a ballot initiative that legalized medical marihuana; and

WHEREAS, on December 4, 2008, Michigan's Medical Marihuana Act (MMMA), MCL 333.2641 et seq., took effect; and

WHEREAS, on April 4, 2009, the Michigan Department of Community Health adopted rules to implement the MMMA; and

WHEREAS, on March 9, 2010, the City's Planning Commission offered a recommendation that medical marihuana facilities be permitted as a special land use in the General Business District; and

WHEREAS, there continues to be a great deal of uncertainty among municipalities across the State as to how best to regulate the dispensing of medical marihuana; and

WHEREAS, the City Commission has determined that it is necessary to give further study to the Planning Commission's recommendation, in order to insure consistent, cohesive and sensible land use and development in the City; and

WHEREAS, the City Commission has determined that during this further study, it would be counterproductive if applications for approvals related to medical marihuana facilities were allowed to move forward; and

WHEREAS, the City Commission also recognizes that deferring review of applications for approvals related to medical marihuana facilities could result in hardship to some applicants;

THEREFORE, BE IT RESOLVED, that during the course of the City Commission's deliberations on the Planning Commission's recommendation as to the appropriate zoning for medical marihuana facilities, review of all applications related to medical marihuana facilities should be deferred, and that a moratorium is hereby declared, effective immediately, for a period of 90 days.

BE IT FURTHER RESOLVED, that during the period of this moratorium, there shall be no consideration or action taken by the City, any elected official, any appointed official, or any employee on any request for any approval related to a medical marihuana facility.

BE IT FURTHER RESOLVED, that during the period of this moratorium, any entity or property owner alleging that the deferred review resulting from the moratorium will result in the denial of any viable economic use of property or would otherwise result in a violation of applicable federal or state constitution or law shall be entitled to an expedited hearing before the City Commission. At the conclusion of this hearing, the City Commission shall make findings and conclusions with respect to whether or not the Petitioner has demonstrated that all viable economic use of the property has been denied by the deferred review, and/or whether or not this resolution on its face or as applied to the Petitioner violates applicable federal or state constitution or law. If it is demonstrated and found that the deferral has the effect of denying all viable economic use of the property, or that the deferral violates applicable federal or state constitution or law, the City Commission shall grant relief from the moratorium to the extent necessary to cure the violation.