

Commission Letter # 221-10  
Commission Meeting: 7/12/2010

RE: Medical Marihuana Moratorium – Request for Hearing, 2521 Torquay

July 8, 2010

The Honorable Mayor  
and  
Members of City Commission

On April 19, 2010, the City Commission approved a resolution establishing a 180-day moratorium on consideration or action on any request for any approval related to a medical marihuana facility. A copy of the resolution is attached.

On May 26, 2010, Director of Planning Tim Thwing met with James Canner, the Managing Partner of AFKF, L.L.C., and David Greene, a prospective tenant, to discuss the potential use of AFKF's industrially zoned property at 2521 Torquay as a "grow room" for registered caregivers. At that time, Mr. Canner and Mr. Greene were advised of the existing moratorium. On June 18, 2010, Mr. Thwing received the accompanying correspondence from Mr. Canner requesting a formal hearing in front of the Planning Commission, or, in the alternative, the opportunity to present the "plan" for the property to the City Commission.

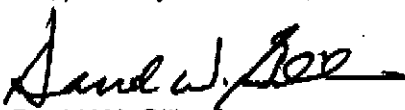
Given the language in the resolution providing for an expedited hearing for a property owner claiming that the moratorium is resulting in the denial of all viable economic use of the property, we would recommend that the City Commission set a date for AFKF to formally present its plan to the Commission, the staff to provide its analysis of the site and the surrounding uses, and the Commission to determine if relief from the moratorium is appropriate. If the Commission agrees, the following resolution would be appropriate:

BE IT RESOLVED, that the request from AFKF, L.L.C., to have the opportunity to present its proposal for the use of 2521 Torquay as a marihuana "grow room" to the City Commission is hereby granted.

BE IT FURTHER RESOLVED, that the hearing on AFKF's proposal for 2521 Torquay shall be scheduled for \_\_\_\_\_, 2010 at \_\_\_\_ p.m.

As a point of information, the next three scheduled Commission meetings are July 19, August 9 and August 16, 2010.

Respectfully submitted,



David W. Gillam  
City Attorney

cc: Donald E. Johnson, City Manager  
Melanie Halas, City Clerk  
Timothy E. Thwing, Director of Planning

**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 180 days.

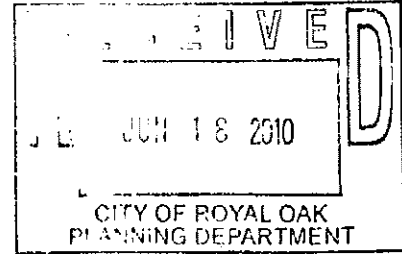
BE IT FURTHER RESOLVED, that during the period of this moratorium, there shall be no consideration or action taken by the City, any elected official, any appointed official, or any employee on any request for any approval related to a medical marihuana facility.

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.

**AFKE L.L.C.**

**5060 Delemere Avenue  
Royal Oak, MI 48073**

June 9, 2010



**City of Royal Oak  
211 Williams Street  
Royal Oak, MI 48068-0064**

**Attention: Mr. Timothy E. Thwing, Director of Planning**

Reference: Use of Building known as 2521 Torquay

Gentlemen:

Thank you for the courtesies extended to me and Mr. David Greene at our meeting in your office on May 26, 2010.

It was indeed disheartening to learn of the moratorium regarding the issuing of Certificates of Occupancy for the industry we have in mind for the referenced address.

As I shared with you, I am currently under tremendous pressure to find a "use" for this building before the bank "takes" it back from me.

I have attempted to lease and or sell this property for over two years. I now have an opportunity to lease the facility and eliminate any risk of the property going to foreclosure. The moratorium obviously endangers this potential solution.

Given that over 63% of the registered voters passed this law, I think it is the cities obligation to create modifications to their current zoning laws to allow for the multiple business opportunities which are currently being formed. One business opportunity is in the building and leasing of professional "Grow" rooms to licensed caregivers. Industrial properties are the ideal location for such services as they are in less desirable areas usually fenced and gated. But more importantly given the loss of manufacturing, millions of SQ. FT. of industrial space will never be released. This is a perfect alternative use for these properties.

All grow rooms are, is an indoor nursery which I think is totally compatible for an industrial use. This facility would comply with all Michigan laws, it would have 24 hour security and the only visitors to this site would be the caregivers. No dispensary services will be performed from this facility.

For your consideration, we would recommend that in modifying the zoning laws, the city could also require an application fee for each caregiver and an annual license fee. Additionally, the

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city could require that a revenue tax be paid on all caregiver/patient services.

We fully understand the political nature of the subject but I think if the city is proactive regarding this subject, a dent could be made in the current budget deficit. Lastly, a new income streams created by these fees could possibly save some fire fighter and police jobs.

**As a tax paying citizen of the city for over 17 years, I humbly request a formal hearing in front of the Planning Commission or in the alternative have our request added to the agenda of the next meeting of the City Council to present our "plan" for the referenced building.**

I thank you again for your time and consideration and I look forward to the assignment of a date for a meeting as requested.

Very truly yours,

AFKF LLC

James B. Canner

Managing Partner

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