

CITY OF CHARLEVOIX CITY COUNCIL
CHARLEVOIX TOWNSHIP BOARD OF TRUSTEES
CITY OF CHARLEVOIX PLANNING COMMISSION
CHARLEVOIX TOWNSHIP PLANNING COMMISSION
SPECIAL JOINT MEETING MINUTES
Monday, August 22, 2011 – 7:00 p.m.
210 State Street, City Hall, Council Chambers, Charlevoix, MI

The meeting was called to order at 7:00 p.m. by Mayor Norman L. Carlson, Jr.

I. Roll Call of Members Present

Mayor: Norman L. Carlson, Jr.
Attorney: Assistant City Attorney Bryan Graham
City Manager: Rob Straebel
City Planner: Mike Spencer
Members Present: City Council: S. Cole, J. Picha, G. Stevens, B. Vollmer, L. Gennett, D. Kusina
Township Trustees: C. Center, D. Glass, C. Martin, T. Williams, N. Rajewski
City Planning Commission: L. Boog, F. Flanders, J. Clock, J. Elzinga, S. Chamberlain, J. Hess
Township Planning Commission: S. Martin, D. Ulrich, D. Christiansen, J. Dixon
Absent: City Planning Commission: T. Felter, D. Buday, R. Doan
Other officials present: Charlevoix County Planner Larry Sullivan

II. Inquiry Regarding Possible Conflicts of Interest

None.

III. Approval of Agenda

IV. New Business

1. Presentation on the Michigan Medical Marihuana Act (MMHA)

Mr. Graham reviewed the Act in general. The Act is a state statute that provides a regulatory scheme for qualifying patients and primary care givers. The MMHA does not legalize marihuana; if an individual falls within the parameters of the statute, they will not be prosecuted criminally under Michigan law for possessing marihuana if they qualify and are registered under the MMHA. Marihuana is still a violation of the state and public health code and it is also a violation of the Federal Controlled Substances Act. The MMHA also does not allow for a primary care giver to sell marihuana; it allows the primary care giver to be reimbursed for the reasonable costs incurred in providing the medical marihuana to the qualifying patients. The MMHA places limits on amounts of marihuana that can be possessed by a qualifying patient and also limits the number of patients that a primary care giver may assist. The MMHA is a regulatory act that provides for registration, limits, securing the marijuana, etc., but it does not address land use regulations regarding where this particular land use will be allowed. Local municipalities need to address the land use/zoning regulations for medical marihuana.

2. Options for Local Government

Mr. Graham reviewed the various options for local government, which had been provided on pp. 1-5 of the meeting packet. Mr. Graham advised against taking the approach of total prohibition under the reason that it is a violation of federal law. That approach is likely to result in litigation, due to the fact that the local entities would be attempting to make a law that goes against a state law. Mr. Graham stated that, regardless of the members' personal views, the voters have voted that medical marihuana is a legitimate land use. If the municipalities' zoning regulations fail to allow a legitimate land use in the face of a documented need, that meets the definition of exclusionary zoning. The municipalities need to figure out how they want to allow medical marihuana within their zoning regulations.

Primarily the regulations being discussed would apply to the primary care givers, not the patients themselves; registered patients using/growing for themselves is considered an accessory use to the residential property for their own use, similar to making a dress or baking a cake, though there would be regulations such as an enclosed facility and limiting the impact of grow lighting on the neighbors. Mr. Graham reviewed the two different approaches to land use: Concentrated or Dispersed.

The Concentrated approach would allow medical marihuana facilities in a designated zoning district, typically commercial or industrial. Medical marihuana facilities would not be allowed in any other areas of the municipality. Mr. Graham reviewed the pros and cons to this approach.

The Dispersed approach would allow medical marihuana facilities in dwellings; regulations would make the use inconspicuous. Municipalities then would need to decide how to regulate the type of service: whether they would allow dispensing from the facility, whether consumption would be allowed at the facility, or whether the primary care giver would be required to deliver. Municipalities would also need to decide whether the use would be considered a Use by Right or would require a Special Use Permit (SUP). A SUP would require a public hearing and notice to neighbors. This would increase visibility of the operation. Because of a stipulation in the MMHA that prohibits public disclosure of the identity of primary care givers under penalty of a criminal misdemeanor, Mr. Graham advises against issuing SUPs for the facilities. Mr. Graham suggested the municipalities should designate spacing requirements from schools, churches, playgrounds, and between facilities. Spacing requirements would prevent a concentration of facilities in any neighborhood and provide an objective, non-discriminatory method of limiting the number of facilities in the municipality. However, Mr. Graham cautioned against making the spacing requirements so restrictive in would exclude any facilities from being located within the municipality.

3. Call for Public Comment

The Mayor called for public comment. There were no public comments.

4. Questions from Elected Officials and Planning Commissioners

The following information was disclosed:

- If Livonia and Bloomfield Hills win their court case is this all academic?
Yes. If the federal courts rule medical marihuana is a violation of federal law, the whole process (registration cards, etc.) is gone.
- Why can't we wait for the court decision?
Because the municipalities could be sued at any time for exclusionary zoning. A moratorium can only be in place for the shortest time reasonably necessary to develop your regulations.

- Because of the conflicts between state/federal/local statutes, are we creating a liability by putting an ordinance in effect that violates federal law?
No. The municipalities are following the zoning laws of the State of Michigan. The municipalities may disagree with the original decision for approval, but the voters have spoken. Municipalities are more likely to be sued by the medical marihuana industry for an exclusionary zoning claim than by the federal government.
- Could the municipalities be considered to be "aiding and abetting" a federal crime?
The Attorney doesn't think that is a realistic possibility.
- The Dispersed approach would require plants to be within a dwelling or accessory building; the Concentrated approach would require plants/product in a commercial building. Plants must be in an enclosed, locked facility; they can not be grown outdoors.
- Under the dispersed approach, would the police be aware of the locations for patrols?
No. The police department would not be privy to who has medical marihuana permits. It would be a criminal violation to release that information. Zoning would issue the permits and have the information locked in their office.
- There is possibility, because it is a small community, knowledge of facilities would become known. The plants themselves have a distinct odor, and if there are more than a couple of plants in the City, the neighbors will probably become aware of it. Any complaints regarding odor would need to be addressed through the nuisance ordinance.
- If the caregiver is required to deliver product, this would prevent increased traffic in the residential neighborhood. Municipalities can limit the number of caregivers per residence but may want to consider whether they would want to allow both a husband and wife to be caregivers, or a similar situation. The more restrictive the municipality makes their regulations, the more likely they will face a lawsuit.
- In an attempt to prevent a facility in a neighborhood, could a person pull a permit to be a caregiver and not provide the service, thus preventing any facilities in a certain zone around their home?
It would depend on the state requirements for obtaining a caregiver card. The zoning administrator would be the only one who knows who has the facility permit. If someone would want to open another operation within that spacing distance (assuming a spacing distance is established), the zoning administrator would say it violates the spacing requirement. The spacing requirement can not be challenged. The spacing requirement is a local option; there does not need to be a spacing requirement. One thousand feet could be considered a reasonable spacing requirement, as that is the already established state statute for a Drug-Free School Zone: anything more than that would probably be challenged. The City may need to consider a smaller radius, such as 500 feet, in order to avoid being exclusionary. If the radius of any of the space restriction buffer touches a piece of property, the whole parcel would need to be excluded.
- Any ordinance will always be affected by any new state legislation or case law. However, because the MMHA is a voter-approved law, it takes a super-majority at the state level to be able to change it.
- Dispensing cannot take place in a public location, such as a street.
- What happens if a facility is legally established, and later someone applies to open a daycare center within the 500 foot zone?
The facility would be grandfathered.
- Appropriate electrical permits can be required for fire prevention reasons.
- Apartments and condominiums would be off limits under the Dispersed approach.

The members discussed various scenarios and the pros and cons of the various operation options. Mr. Graham stated that most of the communities he is working with are taking the Dispersed approach and are requiring the caregivers to deliver the product, not dispense from their homes. Mr. Spencer stated that the contents of the MMHA legalized use in a private setting, not a commercial or public setting; the Dispersed approach is the best match for the intent of the state law. The MMHA was never designed to create an industry; it was created to assist suffering patients.

5. Discussion/Consensus on Which Course of Action to Take

The legislative bodies generally agreed for their Planning Commissions to work on drafting regulations based on a Dispersed approach. The Planning Commissions may meet jointly to discuss their ideas.

V. **Adjourn**

The Mayor stated if there were no objections, the meeting would adjourn.

There were no objections.

Meeting adjourned at 8:35 p.m.

Carol A. Ochs

City Clerk

Norman L. Carlson, Jr.

Mayor

