

Agenda – Special Meeting

City of Kalamazoo - Planning Commission

April 15, 2020

Electronic Meeting at Zoom.us – (Webinar ID to be posted at kalamazoocity.org) 7:00 p.m.

- A. Call to Order:
- B. Roll Call:
- C. Adoption of Formal Agenda:
- D. Approval of Meeting Minutes from March 5, 2020:
- E. Communications and Announcements:
- F. New Business:
- G. Public Hearings:
 - 1. P.C. #2020.06:
 - 1) Text amendments to Section 4.1 Use Table and Section 4.2 Use-Specific Standards of Appendix A – Zoning Ordinance for the purpose of moving the regulations for medical marihuana facilities to Chapter 50.
 - 2) Text amendments to Chapter 50, Article 1: General Requirements and Article 4: Use Regulations for the purpose of adding adult use marihuana establishments to Chapter 50.
- H. Other Business:
- I. Citizens' Comments:
- J. City Commission Liaison Comments:
- K. City Planner's Report:
- L. Miscellaneous Comments by Planning Commissioners:
- M. Adjournment:

City of Kalamazoo
PLANNING COMMISSION
Minutes
March 5, 2020
DRAFT

Second Floor, City Hall
Commission Chambers
241W. South Street, Kalamazoo, MI 49007

Members Present: Gregory Milliken, Chair; Emily Greenman Wright, Vice Chair; Shardae Chambers; Derek Wissner; Coreen Ellis; Brian Pittelko

Members Excused: Alfonso Espinosa; Sakhi Vyas; James Pitts

City Staff: Clyde Robinson, City Attorney; Pete Eldridge, Assistant City Planner; Katie Reilly, Neighborhood Activator; Beth Cheeseman, Executive Administrative Assistant

A. CALL TO ORDER

Commissioner Milliken called the meeting to order at 7:01p.m.

B. ROLL CALL

Planner Eldridge proceeded with roll call and determined that the aforementioned members were present.

C. ADOPTION OF FORMAL AGENDA

Commissioner Greenman Wright, supported by Commissioner Chambers, moved approval of the March 5, 2020 Planning Commission agenda as presented. With a voice vote, the motion carried unanimously.

D. APPROVAL OF MINUTES

Commissioner Ellis, supported by Commissioner Greenman Wright, moved approval of the February 6, 2020 Planning Commission minutes. With a voice vote, the motion carried unanimously.

E. COMMUNICATIONS AND ANNOUNCEMENTS

None

F. NEW BUSINESS

None

G. PUBLIC HEARINGS

1. P.C. #2020.04: 416 Phelps Avenue. The Greater Open-Door Church of God in Christ is requesting a special use permit to allow the construction of a new church at this location. [**Recommendation: approve special use permit for the church**]

Planner Eldridge stepped forward to give the staff report. He said the old structure on the property has been removed and the property (.53 acres) is vacant at this time. Planner Eldridge stated the current zoning and future land use maps show the area as residential, and churches are commonly found in residential zoned areas. Planner Eldridge reviewed maps and pictures of the property and showed a proposed building layout. In 2019 there was a fire significant enough to need to demolish the rest of the church. They desire to rebuild the church on the same location with a similar footprint. The proposed church is approximately 4,926 square feet (previously 4,500 square feet) including a sanctuary, fellowship hall, kitchen and offices. The church conducts afterschool programs for children and a food pantry. The applicant has letters of support and was in contact with the Kalamazoo Eastside Neighborhood. Planner Eldridge stated that as far as review criteria, there's not much changing with this site. This project will require site plan review where they will look at the issues of stormwater collection, screening, landscaping, and curb cuts. He went over the following rationale for staff recommendation. Church and other religious assembly is allowed as a special use in the RS-5 zone; churches are a common use in residential neighborhoods and are a vital component of providing youth support services; the site was previously occupied and owned by this church entity; the church will begin offering outreach ministries again when they are able to rebuild.

Commissioner Milliken questioned the increase in parking for the new building. Planner Eldridge agreed the proposed layout shows more parking than code allows. He said there are also issues with impervious cover and stormwater collection. Those issues will be reviewed in the site plan process.

Mr. Jeff Brown, JRB Property Management, said the parking area is on a wish list to be discussed and dealt with later. They are keeping the building to the same footprint.

The applicant, Pastor McLain, confirmed there will not be a significant difference from what was there before. He clarified property lines.

Commissioner Milliken commented that the footprint, the size, and the building will mirror what was there before. He asked if the operation and size of the congregation would mirror what was there before? Pastor McLain confirmed that it would. They will still do their food pantry, afterschool programs, and an outreach for hat, gloves, and coats.

Commissioner Ellis asked the Pastor to talk about what happened, what they've gone through and the wish list mentioned. Pastor McLain shared that it was an 11-year-old boy who burned the church. He was skipping school and entered by breaking out a back window. The boy is in Detroit now and is under evaluation. He said they don't know what he used and how it burned. Pastor McLain said he was out of the country at that time and received pictures on his phone. They weren't given a lot of information because

the boy is a minor. Mr. Brown responded that the wish list referred to the extra parking on the proposed layout.

Commissioner Chambers asked if they will work on better security so something like this doesn't happen again. Pastor McLain said the intention is to have extra security, lighting, and cameras.

Pastor McLain stated they have letters from the Eastside Neighborhood Association, a resident of the community and St. Mary's church where they currently have services and do their food pantry ministry. Pastor McLain submitted those letters to Ms. Cheeseman.

Commissioner Milliken opened the public comment portion of the hearing.

No one came forward.

Commissioner Milliken closed the public comment portion of the hearing.

Commissioner Ellis, supported by Commissioner Wissner, moved to approve the special use permit request to allow the construction of a new church at 416 Phelps Avenue.

Commissioner Ellis thanked the Pastor for the ministry they have in the community and thought the proposed layout looked nice.

Commissioner Milliken stated agreement with the findings in the staff report. He said the request is consistent with review criteria in the zoning ordinance.

Roll call vote was taken, and the motion passed unanimously.

2. P.C. #2020.05: 3635 E. Cork Street. HKH Properties, LLC is requesting a special use permit to allow a moving and storage business at this location. [**Recommendation: approve special use permit for the moving and storage business**]

Planner Eldridge stepped forward to give the staff report. Two Men and a Truck are requesting a moving and storage business to occupy this site. He said the property is 2.52 acres with an existing 12,100 square foot building. Planner Eldridge said the property's current zoning and future land use is listed as commercial. He then reviewed maps and pictures of the property. The property previously had a retail store front with storage in the back. He said that Two Men and a Truck is currently located down the street on a smaller property and in a smaller building. The proposed site allows for a larger building and more acreage for the parking needed for a growing business. They plan to have retail space, warehouse space and an office area in the building. They want to add an additional 12 parking spaces. On the side of the building there would be 18 additional spaces for truck parking. Planner Eldridge stated that Mr. John Hilliard, Millwood Neighborhood Watch, reached out to him. Mr. Hilliard said they discussed it at a meeting, and they have no issue with it. Mr. Jerry Andrews, owner at D&S Auto, sent an email and is in

support. Planner Eldridge said this use is very compatible with what is around it. They have no plans for additional curb openings, but they do plan on a landscaping buffer at the south side of the building. Other than additional parking and landscaping, there are no other changes planned. Planner Eldridge said there is a significant amount of green space remaining on the property, and this project is subject to site plan review. He shared the rationale for approval. A moving and storage business is permitted as a special use in zone CC. This would allow for the operation and expansion of an existing Kalamazoo business which follows the Strategic Plan of Economic Vitality and Business Retention. The existing building was used in a similar capacity, so there would be minimal site improvements required. Planner Eldridge added that the property directly adjacent is zoned M-1 which is used in a more intensive manner.

Commissioner Greenman Wright asked if the storage units will be inside the building with no additional storage/warehousing being built. Planner Eldridge confirmed that was the case.

The applicant, Mr. Kyle Norcutt, came forward. He agreed they have mobile storage containers they use for customers and then bring them back and store them inside the building.

Commissioner Greenman Wright commented she was surprised by the amount of open space. She encouraged the applicant to take advantage of planting native species that don't need to be mowed. She thought they could do a lot of incredible low-maintenance plantings there. Mr. Norcutt said he previously owned a landscaping business, and he is looking forward to cleaning up the building. The Parking for trucks will be set back with buffers for landscaping. He said there is parking for 18 Trucks, and they currently have between 12-14. As the employees come in during the day, the trucks go out and are gone most of the day. Mr. Norcutt said he plans to add lights and security cameras, new asphalt and clean/update the building.

Commissioner Milliken said his only comment was going to be on landscaping and that the request was straightforward.

Commissioner Greenman Wright thanked the applicant for using a vacant building. She thought it was a good use of the property and should fit right in. She believed they have some great improvements planned and it should make a big difference on that corridor.

Commissioner Ellis asked if there are other Two Men and a Truck in the area. Mr. Norcutt stated this location covers Kalamazoo and Battle Creek and has office staff. He has a franchise in Grand Rapids and another one in the Holland/Grand Haven area.

Commissioner Milliken opened the public hearing.

No one came forward.

Commissioner Milliken closed the public comment portion of the hearing.

Commissioner Greenman Wright, supported by Commissioner Pittelko, made a motion on P.C. #2020.05 to approve the special use permit to allow the moving and storage business at 3635 E. Cork Street.

Commissioner Greenman Wright said this request is within the scope of the Future Land Use plan and the Master Plan. She believes it is a good use of an existing building and the applicant has great plans to improve the property.

Commissioner Milliken stated that he supported the findings made in the staff report. He shared that the request is supported by the review criteria in the zoning ordinance. Commissioner Milliken appreciated the comments by the applicant about the landscaping and screening he will provide which will then be reviewed through the site plan process.

Roll call vote was taken, and the motion was approved.

H. OTHER BUSINESS

Planner Eldridge stated there is now an annual report required by neighborhoods which receive funding from the City of Kalamazoo. Representatives of the neighborhoods will give a brief overview of all the good things going on with which the City is able to help.

1. Neighborhood Association Report – Kalamazoo Eastside Neighborhood Association.

Ms. Pat Taylor came forward to give the neighborhood report. She brought conceptual boards of activities that were planned with the residents, and in partnership with the Land Bank, the E-net group and the City's Community Planning and Economic Development. Ms. Taylor said residents got together with a consultant and came up with a vision of what they want to have happen on the East Main corridor and in the neighborhood in general. They identified what the City can help with, what they can do together and what they can do collaboratively with other organizations. She said there is one item which will take a while to work on, and that is the Dairy Queen/laundromat area. Ms. Taylor said everything else is falling into place. They are getting assistance from a wide variety of organizations. Borgess is talking about coming on board, helping them and possibly getting employees in the housing area. She said Rockwell Park is being redone and looks gorgeous. Ms. Taylor reported that people are coming out and feeling better about being in the neighborhood. People coming through have given them positive feedback.

Ms. Katie Reilly, Neighborhood Activator, held up the boards as Ms. Taylor explained them. The first board was an artist's rendition of what the Eastside Square could look like. She said residents got together and said what housing and commercial businesses they would like to see there.

The second board was labeled the East Main Commercial Project and talked about phases they will go through. Phase 1 is the corner at Edwin Street and Phase 2 is across the street with small businesses and mixed-use area scenario. She said they are still working with owner of East Main Food and Beverage to figure out how they can work together to make this a positive area and improve his business too.

The third board was labeled 1616 E Main and showed what the building looked like before the project with the Land Bank and Eastside Neighborhood Association (Eastside Voices). After doing small homes on Foresman and doing the pocket park, they came up with the idea of capturing the historical aspects of Eastside. Mr. Buddy Hannah, resident, with the help of Mr. Sid Ellis, did interviews along with some youth and some artists who used to live on the Eastside. They recruited PMN to teach the youth film making and documenting. They came up with a book. Ms. Taylor said the book is at the library to be shown at the Art Hop along with the mural and the interviews. When Second wave media came, they did interviews of some notable residents. She explained that the board shows the vision residents thought would be appropriate on East Main. They would like to have another plaza type activity there, possibly food truck rallies. They want to bring activities into the neighborhood that people would enjoy.

Commission Milliken asked staff if the Eastside Neighborhood's vision was feasible as they work through zoning ordinance updates. Planner Eldridge confirmed they are feasible. He said the boards show a mixed- use development with lots of pedestrian space. This is similar to Live Work zones, and certain Commercial areas are being rezoned to Live Work zones.

Commissioner Milliken told Ms. Taylor that what they are doing is inspiring. He indicated the comradery and spirit this engagement has brought to the neighborhood has incredible value. Ms. Taylor shared that she is looking forward to working with residents, the City and anyone else who wants to come onboard.

Commissioner Greenman Wright shared that she was delighted to hear a WMUK report on Art Beat featuring stories from Eastside Voices. Ms. Taylor said they are looking to do more things like that. She believes that art adds to the vision of what they are trying to do.

Commissioner Chambers shared that she came to a couple of events when they were planning. She expressed excitement for them now that their plans are starting to come to pass. She believes the park is going to be amazing and food truck rallies will bring more life to the Eastside.

Commissioner Ellis encouraged Ms. Taylor to plan yearly events and make sure the City's Parks & Recreation Department knows about the park so they can possibly do fun things for kids during summer.

2. Neighborhood Association Report – Edison Neighborhood Association.

Ms. Venessa Collins-Smith, board member and resident of Edison, came forward to report on the neighborhood's accomplishments.

- Assisted 35 residents who received tax foreclosure notices. Partnered with KNHS services to promote home ownership and offer credit repair classes.
- Worked with Impact Kalamazoo in 2019 for home repairs. In 2019 KNHS increased Edison's housing stock with a new build on Stockbridge.
- Having monthly meetings with Washington Square businesses to work on streetscape issues and hosting multiple family events.
- City of Kalamazoo, Consumers Energy and others are replacing municipal utilities on Portage Street. Street replacement is scheduled to begin in 2021.

- Partnered with several youth organizations to host events addressing anti-bullying, celebrating rocket football and other youth activities at our center.
- Partnered with the City of Kalamazoo to host 8 crews for My City Youth employment. Going forward with the YMCA to create a 24-hour licensed daycare at the Creamery site on the corner of Portage and Lake Street.
- Looking into the logistics of making Edison a community wi-fi friendly neighborhood.
- Partnered with Washington Square Collective to increase the appearance of Portage Street's store fronts. Weekly scheduled trash cleanup on Portage.
- Helped in the establishment of new businesses, Layla's' Cool Pops and the Kpep Diner. A future endeavor is the opening of an authentic Mexican restaurant.
- Partnered with several organizations to make our Delaware court an artistic park-like eating area.
- Hosted speakers at the Community Connection meetings. Wrote articles in the Edison Voice newspaper.
- Working to identify streetlights that are not working and partner with Consumers Energy to make needed repairs.
- Reed park improvements are nearly completed. The completion of Mills Street resurfacing, ADA sidewalks, bike lanes within the Edison neighborhood.
- Looking forward to new bike trail extension in 2020 to follow Portage Creek and connect to the Kalamazoo Farmer's market.

Ms. Collins-Smith thanked the Planning Commissioners for letting her share the accomplishments of the Edison Neighborhood.

3. Neighborhood Association Report – Vine Neighborhood Association.

Mr. Steve Walsh, Executive Director, Vine Neighborhood Association, came forward to give a report. He said the residents wanted more ways to socialize and interact with each other. Mr. Walsh said Art Hops are scheduled for the rest of the year with events tacked on to the end of those. He shared that it is the 40th Anniversary of the Neighborhood Association. They will have several events scheduled for that. Their annual meeting will be hosted by O'Duffy's Pub which has agreed to open their back area. There will be live music with time to meet and mingle afterwards. He said they've received favorable feedback about their public art initiatives. They are working with agencies such as the Rotary and Lisc to put up more public art. They have planned concerts in Pioneer Park and in the Skate Park. Mr. Walsh said they have struggled with capacity and efficacy, pointing out that he is only one person with one part-time staff. He said they have a sidewalk survey which has languished for three years. They are struggling to make changes in lighting and speed within the neighborhood. They are working with Safeways to School program to increase safety around El Sol Elementary. They have partnerships for the summer with KPEP and My City, and they are working with KNHS Services on affordable housing in Vine. He said there is a strong feeling that if the affordable housing leaves, it will disrupt the community of the neighborhood. They have a very walkable neighborhood and if affordable housing goes away, then so will connectivity. He thanked Planning Commissioners for their time.

Commissioner Greenman Wright stated that affordable housing is an ongoing issue affecting core neighborhoods. She asked what the City could do to support neighborhood associations. Mr. Walsh said he hadn't thought of the City's role. He shared that the Neighborhood Association owns 11 residential units, and they have tried to embrace HUD standards. Mr. Walsh said as they've refinanced, they were told to raise those rents. He said their residents have a challenge in getting to the table and having the resources to compete with property management groups. He would love to partner with another non-profit. They need to buy the properties and put families in them.

Commissioner Greenman Wright asked Mr. Walsh how he sees the new development going on in the central business district affecting the Vine Neighborhood. Mr. Walsh said he is optimistic by nature. He is hoping there is a way for new residents and long-term residents to have an equitable process.

Commissioner Milliken thanked the neighborhood representatives for their reports.

I. CITIZENS' COMMENTS (Regarding non-agenda items)

Mr. Ken Larsen shared that his granddaughters stay with them quite often. He is concerned about the smell that comes with smoking marihuana. He said they have an individual living in the neighborhood next to someone who grows for medical reasons. There are times that person can't sit out on their back porch because the smell is so strong. He read an article where they talked about the effect on prices of homes where the smell is quite prevalent. He said it is a concern for them. Mr. Larsen said he was not saying his neighbors will smoke, but if they do, they will need to close windows and doors and use air conditioning.

J. CITY COMMISSION LIAISON COMMENTS

Commissioner Jack Urban came forward. He commended whoever had the idea of having neighborhood association leaders give information. When their information deals with planning and zoning issues, it is important to hear their point of view directly. Commissioner Urban encouraged them to remember the meeting is being televised. They need to make sure the visuals can be picked up by the cameras and the audience needs to see them too. He said it was good to know what is going on in neighborhoods. He commented that those neighborhoods that have associations get more attention than those which do not.

K. CITY PLANNER'S REPORT

Planner Eldridge touched base on the issue that came up of illegal posting of signs, primarily Shakespeare's Comedy Club. He said that is something staff is investigating how to address more adequately. Shakespeare's says it is not the managers there, but the promoters for various acts that perform at the comedy club. Planner Eldridge said they are addressing that.

Planner Eldridge said there are two big items on the site plan review list. Chick Fil-A has initiated demolition and pulled a building permit. The other, Graphic Packaging International, is still in the site plan review stage. They are doing a major facility upgrade with multiple buildings. He said they are building up, height wise, with one being approximately 80 feet in height. He said the project runs from Pitcher to Harrison Street.

Planner Eldridge gave an overview on where they are with the adult use marijuana ordinance. He announced that he had fliers available for upcoming neighborhood meetings. Planner Eldridge pointed out that Attorney Clyde Robinson is on the team to help form the Adult Use Marijuana Ordinance, Social Equity Policy and the local licensing component. There are three pieces coming together. Planner Eldridge shared that information is available on the City's website: the draft ordinance, dates and times of upcoming neighborhood meetings and other background information. Planner Eldridge said they are working toward the stated goal of ordinance completion by June 1. They had two meetings in February to collect a variety of feedback.

Planner Eldridge showed a list of medical marijuana license types and adult use license types. City staff received approval from the City Commission for additional time to draft the Adult Use Marijuana Ordinance. That extra time was, in part, to give them time to investigate the social equity part. He said they are working diligently on that. Planner Eldridge said for the first two years, an applicant must have a medical marijuana license to apply for the equivalent adult use license. As far as social equity, there are only certain licenses available to them if they are not already in the business. The citizen initiative was crafted with some protections in place for those already in the business. He shared the City of Kalamazoo has 21 medical marijuana facilities: 3 grow, 3 grow/processors, 2 processors, 2 safety compliance, and 11 provisioning centers. Provisioning centers already open in the community or opening soon will apply for Adult Use license once the ordinance is adopted. Planner Eldridge believed that is a clear and logical path. For adult use licenses, they are focusing on providing 1,000 feet from any K-12 schools and 5,000 foot separations from daycare. This provides equivalent protections based on drug-free zones established around schools and some separation from child-care centers. Planner Eldridge explained individual licenses and that maps of where the licenses are allowed will be coming later.

- Class A grow is allowed in Manufacturing and the CC Commercial zone but is limited to 100 plants.
- Processors are allowed in M-1 and M-2.
- Safety compliance (lab facilities and offices) are allowed in the CC zone district. That will be expanded to Live Work 1 & 2 zones, the BTR Park, M-1 and M-2.
- Secure transport allowed in the CC zone with some limitations and it is also allowed in M-1 and M-2.
- Retailers are allowed in the CC zone district, expanding to Live Work 1 zone. There will be a 1,000-foot distance between retailers or provisioning centers. Also included is a component of social equity. If 51% or more of a business' ownership is local (living in the City for 3+ years) and they live in certain areas of the City, they would qualify for reduction of 1,000-foot separation distance to 500 feet. It would open land for those individuals that wasn't available for someone applying for out of town.
- Micro businesses are allowed in the CC, Live Work 2, M-1 and M-2. For the Live Work 1 or CC zone district, the 500-foot separation distance would be reduced to 250 feet if the applicant qualifies under the social equity policy.
- Excess growers remain in M-2. These are individuals or entities with multiple class C licenses.
- Designated consumption establishments will be allowed in CC and CCBD zone districts.

Planner Eldridge said there will be more discussion during upcoming meetings. The framework is fluid right now and they need to solidify the social equity policy.

Attorney Clyde Robinson said the Social Equity piece is very important. He shared that the statute talks about disproportionately impacted communities – those communities having a higher than average rate of

marihuana prosecutions where 30% or more are living at poverty level. Attorney Robinson said that for Kalamazoo, that meant Kalamazoo City. The state has put into effect the following: those who have lived in the City of Kalamazoo with residency for 5 years will qualify for a 25% discount in fees from the State; those with a previous marihuana conviction, will get another 25% discount; if you prove you are a caregiver for at least two years between 2008-2017, then you get another 10% discount. Attorney Robinson spoke about disproportionate arrests for possession of marijuana between African Americans and white people, though the level of use for both races was about the same. He reported that the law in Michigan says we cannot give preferences based on race. Also, the 14th amendment requires equal protection and must be race neutral. Attorney Robinson said the City is trying to determine how they can assist those who have been disproportionately impacted by marihuana enforcement. Attorney Robinson said they are having internal and public meetings. They are looking into an incubator or mentoring program for people to get started in the business and grow from there. Another idea is micro business, get started on the low end and grow your business. If you are a resident and impacted, possibly provide more spaces for you to locate that business. They hope to have something in place by June 1. He also informed Planning Commissioners that there is a lawsuit which was noted in the newspaper.

Commissioner Greenman Wright asked what percentage of licensees are located from outside of Michigan. Attorney Robinson said he didn't have that information. That would need to come from the City Clerk's office.

Commissioner Greenman Wright said she remembered when passing the ordinance with medical marihuana, there were concerns of paving the way for outside people to come in. She wondered if that is the case and if the adult use protocol could be the remedy. Attorney Robinson stated that for most large operations you must have the medical in place for two years. The statute was written to benefit those already in the market.

Planner Eldridge reminded Planning Commissioners, there is an April 2nd meeting and a Special Meeting on April 15th. This board will be revisiting adult use marihuana next month.

Commissioner Milliken noted there are several things they are still working on and there is less than a month before the meetings. He wondered how the timing would work for that. Planner Eldridge said having that second meeting in April will give a little extra time. He said some of the elements of the Social Equity policy has been drafted on paper and is being diligently worked on. He believed they have the framework because there are a lot of direct crossovers or close to direct crossovers from medical marihuana. Planner Eldridge said some license types need to be looked at, and they need to get feedback from the public. He said the City can chose to opt out of some license types.

Commissioner Milliken confirmed with Planner Eldridge that if they have comments, questions, or thoughts on this, City staff would welcome those any time during the next couple weeks. Planner Eldridge said they are looking for all feedback at this time. They have the June 1st date to have a finished product done, and it is imperative to stay on track with ordinance development.

L. MISCELLANEOUS COMMENTS BY PLANNING COMMISSIONERS

Commissioner Greenman Wright shared that in reference to the larger meetings they've had recently, she believed people are coming to understand the role of the Planning Commission. Citizens are interfacing with City staff and City government. Despite the long meeting, there was a positive outcome with citizens of the City. Well done, Commissioners.

Planning Commission

March 5, 2020

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Commissioner Chambers reminded them to vote on Tuesday.

M. ADJOURNMENT

Commissioner Milliken adjourned the meeting at 8:41pm.



Planning Commission Staff Report

City of Kalamazoo

Project Address: N/A

Case #: P.C. #2020.06

Meeting Date: April 15, 2020

Applicant: Community Planning & Economic Development,
City of Kalamazoo

Owner: N/A

Public Hearing: Yes

Date Legal Ad Published: Tuesday, March 31, 2020

Project Summary:

1. Text amendments to Section 4.1 Use Table and Section 4.2 Use-Specific Standards of Appendix A – Zoning Ordinance for the purpose of moving the regulations for medical marihuana facilities to Chapter 50.
2. Texts amendments to Chapter 50, Article 1: General Requirements and Article 4: Use Regulations for the purpose of adding adult use marihuana establishments to Chapter 50.

Recommendation:

Planning staff recommends that the Planning Commission recommend approval of these text amendments to the City Commission for their review and approval.

ANALYSIS

***Community Planning & Economic Development
Department***

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Peter Eldridge, AICP, Assistant City Planner

2025 Master Plan & Imagine Kalamazoo 2025 Alignment:

The Zoning Ordinance is intended to support the vision of the 2025 Master Plan. The Master Plan aligns with the Strategic Vision Goals established by the City Commission. The proposed ordinance amendments touch on the following goals:

Shared Prosperity: The adoption of the Adult Use Marihuana Ordinance will allow the implementation of the City's Social Equity Policy. First, the proposed text amendments were developed to allow a wide range of Marihuana business uses in a wide variety of locations. The intent of this is to increase the opportunities for Kalamazoo residents to start or participate in a marihuana business. The second element of the social equity policy expressed in the proposed text amendments is the potential relief in the required separation for Retailers and Microbusinesses. Relief of the required separation distance can be granted when the majority of the business is owned by a City resident who either lives in a designated SPK Census Tract or was convicted of a crime involving a controlled substance. This is designed to open up opportunities for local entrepreneurs. The City's Social Equity Policy includes other elements beyond the zoning code that focus on licensing and community impact. The City Commission will review and approve the Social Equity Policy when they review the proposed zoning text amendments.

Economic Vitality: As mentioned in Shared Prosperity, these text amendments were created with desire to support business opportunities for both local entrepreneurs and those who may already be in the industry. This meets with the economic vitality goals, specific economic assistance and business opportunities.

Request Description:

On October 7, 2019, the City Commission adopted Ordinance 2000 to delay the City's opt-in of permitting commercial adult-use marihuana establishments in the City until June 1, 2020. Adoption of this ordinance permitted City staff to bring proposed zoning and licensing ordinances to the City Commission in conformance with the Michigan Regulation and Taxation of Marihuana Act.

Timeline of Events and Actions:

- November 2, 2019 - Marihuana panel discussion at Millwood Neighborhood Watch Meeting
- January 2020 - Staff assembled public participation plan and timeline for completion of ordinance amendments.
- February 5, 2020 - Public feedback meeting was held at City Hall
- February 11, 2020 – Second public feedback meeting was held at City Hall
- February 26, 2020 - Marihuana panel discussion held by Commissioner Cunningham at the Douglass Community Center
- February 28, 2020 - Draft ordinance released and posted on the website for public comment
- March 23, 2020 – Draft of social equity policy released and posted on the website for public comment. PowerPoint presentation summarizing the proposed zoning, social equity, and licensing posted in English and Spanish, and with audio.

- April 9, 2020 – Virtual town hall meeting with City Commissioners and staff to allow opportunities for questions and answers in real time

The text amendments proposed include amendments to Section 4.1 Use Table and Section 4.2 Use-Specific Standards of Appendix A – Zoning Ordinance. These regulations pertaining to Medical Marihuana are being removed and combined with the Adult Use Marihuana regulations in Chapter 50.

One specific item to note is the Michigan Regulation and Taxation of Marihuana Act permits Retailer businesses to be located in industrial or manufacturing zone districts when operated as part of a single establishment engaged in Grower and Processor operations.

Review Criteria:

The Planning Commission's role is to make a recommendation to the City Commission regarding the proposed zoning changes. When considering the request, the following should be considered per Chapter 8 of the Zoning Ordinance:

- 1) **Consistency with the 2025 Master Plan.** The proposed amendments are in alignment with the 2025 Master Plan and support several of the Strategic Goals.
- 2) **Change of Conditions that Require an Amendment.** The citizens of Michigan approved the Michigan Regulation And Taxation of Marihuana Act in November of 2018. The majority of Kalamazoo residence supported this initiative. The City Commission directed staff to prepare ordinance amendments to allow Adult Use Marihuana businesses.
- 3) **The Extent to Which the Proposed Amendment Addresses a Demonstrated Community Need.** The proposed amendments further the City Commission's directive to adopt ordinances creating a regulatory framework for Adult Use Marihuana business.
- 4) **Compatibility with Surrounding Uses.** Research into buffering and separation distances has been completed to establish a visual understanding of eligible and ineligible parcels for Adult Use Marihuana businesses. Separation distances are proposed for K-12 schools and State licensed day cares. In addition, separation distances between Retailers/Dispensaries (a.k.a. Provisioning Centers for Medical Marihuana facilities) will remain at 1000 feet to limit concentration of these uses (except for those qualifying for the Social Equity Policy which reduces this to 500 feet). Microbusinesses located in commercial zone districts must meet 500-foot separation distance. (except for those qualifying for the Social Equity Policy which reduces this to 500 feet). These proposed amendments do not impact the Zoning Map but are changes to the text only.
- 5) **The Extent to Which the Proposed Amendments Result in a Logical and Orderly Development Pattern.** The process of developing ordinance regulations for Medical

Marihuana in 2017 has aided in drafting these amendments. Orderly dispersal of marihuana facilities resulted from the regulatory framework approved in April of 2018 for Medical Marihuana businesses. Many license types for Medical Marihuana and Adult Use Marihuana are the same which streamlined alignment. The new license types did have to be researched and potential land area maps developed to confirm a logical and orderly development patterns would result for these new license types. These ordinance amendments coupled with the new Social Equity Policy will provide a new roadmap for an orderly development pattern.

RECOMMENDED ACTION

Staff recommends that the Planning Commission recommend approval of these amendments to the City Commission.

Attachments:

1. DRAFT Chapter 50 Ordinance
2. Potential Land Area Map – Grower
3. Potential Land Area Map – Safety Compliance
4. Potential Land Area Map – Retailer
5. Potential Land Area Map – Microbusiness
6. Potential Land Area Map – Consumption Lounge

CITY OF KALAMAZOO, MICHIGAN

**DRAFT ORDINANCE FOR THE INCLUSION OF MEDICAL AND ADULT USE
MARIHUANA ESTABLISHMENTS INTO CHAPTER 50 ZONING CODE**

The following terms will be added to 50-1.3 Definitions.

ADULT-USE STATE LICENSE. The license issued by the Michigan Marihuana Regulatory Agency that allows a person to operate an adult use marihuana establishment.

CAREGIVER, PRIMARY. Also known as Caregiver. A person who is at least 21 years old who has agreed to assist with a patient's medical use of marihuana, who has not been convicted of any felony within the past 10 years, and has never been convicted of a felony involving illegal drugs or a felony that is an assaultive crime as defined by Public Act 175 of 1927, MCL 770.9a.

CULTIVATE. To propagate, breed, grow, harvest, dry, cure, or separate parts of the marihuana plant by manual or mechanical means.

EQUIVALENT LICENSE. Any of the following when held by a single licensee:

- (1) grower license of any class under both the MRTMA and MMFLA
- (2) processor licenses under both the MRTMA and MMFLA
- (3) secure transporter licenses under both the MRTMA and MMFLA
- (4) safety compliance facility licenses under both the MRTMA and MMFLA
- (5) a retailer license under the MRTMA and a provisioning center license under the MMFLA

MARIHUANA or MARIJUANA. The term as defined in the Public Health Code, MCL 333.1101 et seq.; the Michigan Medical Marihuana Act, MCL 333.26421 et seq.; the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq.; the Marihuana Tracking Act, MCL 333.27901 and the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951 et seq.

MARIHUANA ESTABLISHMENT, ADULT USE. Refers to an adult use marihuana grower, safety compliance operation, processor, microbusiness, retailer, secure transporter, or any other type of adult-use marihuana-related business licensed pursuant to the MRTMA.

MARIHUANA FACILITY. MEDICAL. Refers to a medical marihuana grower, processor, provisioning center, secure transporter, or safety compliance facility licensed pursuant to the MMFLA. The term does not include or apply to a "primary caregiver" or "caregiver" as that term is defined in the Michigan Marihuana Act, MCL 333.26421 et seq.

MARIHUANA -INFUSED PRODUCTS. A topical formulation, tincture, beverage, edible substance, or similar product containing marihuana and other ingredients and that is intended for human consumption.

MARIHUANA, MEDICAL USE OF. The acquisition, possession, cultivation, manufacture, extraction, use, internal possession, delivery, transfer, or transportation of marihuana, marihuana-infused products, or paraphernalia relating to the use of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition or symptoms associated with a debilitating condition.

MRTMA. The acronym for the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, MCL 333.27051 et seq.

PROCESS or PROCESSING. The activity to separate or otherwise prepare parts of the marihuana plant and to compound, blend, extract, infuse, or otherwise make or prepare marihuana concentrate or marihuana-infused products.

QUALIFYING PATIENT. A person who has been diagnosed by a physician as having a debilitating medical condition, including a person who has obtained a physician's professional opinion, made in the course of a bona fide physician patient relationship, that the person is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms of the person's serious or debilitating medical condition.

USABLE MARIHUANA—The dried leaves, flowers, plant resin, or extract of the marihuana plant, but does not include the seeds, stalks, and roots of the plant.

The following will be added to 50-4 Uses, including into 4.1-1 Use Table and 50-4.4 Use Definitions and Standards and the Use Table Appendix A

E. Adult-Use Marihuana. A category of uses permitting adult use establishments.

(1) General Provisions. The following apply to all adult use marihuana establishments, unless otherwise noted.

(a) General Requirements.

- 1) All location criteria and required separation distances apply to both new marihuana establishments and to any proposed change in the location of an existing marihuana establishment.
- 2) All location criteria and required separation distances apply to both marihuana establishments and similar protected uses located in adjacent governmental jurisdictions.
- 3) A marihuana establishment is prohibited from operating in any residential zoning district or in a residential unit.
- 4) A licensee may not operate a marihuana establishment at any place in the City other than the address provided in the application on file with the City Clerk.
- 5) A licensee must operate the licensed establishment in compliance with all applicable State and City regulations for that type of establishment.

(b) Location Criteria. All marihuana establishment types must meet the following location criteria, except Safety Compliance Operations.

1) Required Distance.

- a) A marihuana establishment must not operate within one thousand (1,000) feet of a pre-existing private or public school, providing education in kindergarten or any grades 1 through 12.
- b) A marihuana establishment must not operate within five hundred (500) feet of a pre-existing State-licensed childcare center.

2) Measuring the Required Distance. The required distance is measured in a straight line from the nearest property line of a protected use to the nearest portion of the building or unit in which the marihuana establishment is located.

(c) Marihuana establishments may operate from a location shared with an equivalent licensed marihuana facility.

(2) Grower Establishments. Growers are licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments. The three (3) grower license types are Class A (authorized to grow up to 100 plants); Class B (authorized to grow up to 500 plants); and Class C (authorized to grow up to 2000 plants). An

Excess Grower holds five (5) Class C Adult Use Marihuana Grower & at least two (2) Class C Medical Marihuana Grower licenses. In the zoning districts where a Grower Establishment is Permitted with Development Standards, the following standards apply.

- a) Class A Grower Establishments are permitted as follows:
 - 1) In Zones Community Commercial (CC), Limited Manufacturing (M-1), and General Manufacturing (M-2).
 - 2) In Zone CC, all grow operations must be conducted within an enclosed building.
 - b) Class B and Class C Grower Establishments are permitted in in Zones Limited Manufacturing (M-1), and General Manufacturing (M-2).
 - c) Excess Grower Establishments are permitted in Zone General Manufacturing (M-2).
- (3) Processor Establishments. Processors are licensed to obtain marihuana from marihuana establishments; process and package marihuana; and sell or otherwise transfer marihuana to marihuana establishments. In the zoning districts where a Processor Establishment is Permitted with Development Standards, the following standards apply:
- (a) Permitted in Limited Manufacturing (M-1), and General Manufacturing (M-2).
 - (b) All processing operations must be conducted within an enclosed building.
- (4) Safety Compliance Operations Establishment. Safety Compliance Establishments are licensed to test marihuana, including certification for potency and the presence of contaminants. Safety Compliance Operations are permitted in in Zones Community Commercial (CC), Live Work 1 (LW-1), Live Work 2 (LW-2), Business Technology, and Research (BTR), Limited Manufacturing (M-1), and General Manufacturing (M-2).
- (5) Secure Transporter Establishment. Secure Transporter Establishments are licensed to obtain marihuana from marihuana establishments in order to transport marihuana to marihuana establishments. In the zoning districts where Secure Transporter Establishment is Permitted with Development Standards, the following standards apply:
- (a) Permitted in Zones Community Commercial (CC), Limited Manufacturing (M-1), and General Manufacturing (M-2).
 - (b) In Zone CC warehousing activity is only permitted as an accessory use to the principal permitted Secure Transporter use.
- (6) Retailer Establishment. Retailer Establishments are licensed to obtain

marihuana from marihuana establishments and to sell or otherwise transfer marihuana to marihuana establishments and to individuals who are 21 years of age or older. In the zoning districts where a Retailer Establishment is Permitted with Development Standards, the following standards apply:

- (a) Permitted in Zones Live Work 1 (LW-1), Community Commercial (CC), and Commercial Central Business District (CCBD).
- (b) Permitted in Zones Limited Manufacturing (M-1) and General Manufacturing (M-2) when operated as part of a single establishment engaged in Grower and Processor operations.
- (c) All Retailer activities must be conducted within an enclosed building.
- (d) A Retailer is not permitted on the same property or parcel or within the same building where any of the following are located: a package liquor store, a convenience store that sells alcoholic beverages, or a fueling station that sells alcoholic beverages.
- (e) A separation distance of one thousand (1000) feet is required from any other Retailer or Provisioning Center with the following exceptions:
 - 1) A separation distance of five hundred (500) feet is permitted when an applicant or a group of applicant-owners with 51% or more ownership in the Retailer Establishment has or have been a City resident living within Census Tracts 1, 2.02, 3, 9, and 10 for the past three (3) years or is a City of Kalamazoo resident with a marihuana conviction that does not involve distribution of a controlled substance to a minor.
 - 2) At a location shared with a licensed Provisioning Center

(7) Microbusiness Establishment. Microbusiness Establishments are licensed to cultivate not more than one hundred and fifty (150) marihuana plants; process and package marihuana; and sell or otherwise transfer marihuana to individuals who are 21 years of age or older or to a marihuana safety compliance establishment, but not to other marihuana establishments. In the zoning districts where a Microbusiness Establishment is Permitted with Development Standards, the following standards apply:

- (a) Permitted in Zones Community Commercial (CC), Live Work 2 (LW-2), Limited Manufacturing (M-1), and General Manufacturing (M-2).
- (b) In Zones CC and LW-2 the following requirements apply:
 - 1) All business activities must be conducted within an enclosed building.
 - 2) The use of any substances with a flashpoint below one hundred (100) degrees Fahrenheit for processing is prohibited.

- 3) A separation distance of five hundred (500) feet is required from another Microbusiness Establishment with the following exception:
 - a) Exception. A separation distance of two hundred and fifty (250) feet is permitted when an applicant or a group of applicant-owners with 51% or more ownership in the Microbusiness Establishment has or have been a City resident living within Census Tracts 1, 2.02, 3, 9, and 10 for the past three (3) years or is a City of Kalamazoo resident with a marihuana conviction that does not involve distribution of a controlled substance to a minor.

Designated Consumption Establishment. A designated Consumption Establishment is a commercial space that is licensed for the consumption of marihuana products by persons 21 and older. Designated Consumption Establishments are permitted in Zones Community Commercial (CC) and Commercial Central Business District (CCBD).

F. Medical Marihuana. A category of uses permitting medical marihuana facilities.

(1) General Provisions. The following apply to all medical marihuana facilities, unless otherwise noted.

(a) General Requirements.

- 1) All location criteria and required separation distances apply to both new medical marihuana facilities and to any proposed change in the location of an existing medical marihuana facility.
- 2) All location criteria and required separation distances apply to both medical marihuana facilities and similar protected uses located in adjacent governmental jurisdictions.
- 3) A medical marihuana facility must not operate in any residential zoning district or in a residential unit.

(b) Location Criteria. All marihuana facility types must meet the following location criteria from protected uses.

1) Required Distance.

- (a) A marihuana facility must not operate within one thousand (1,000) feet of the following:

- 1) A pre-existing private or public preschool, elementary, secondary, vocational or trade school, college or university.
 - 2) A public library.
 - 3) A housing facility owned by a public housing authority.
- (b) A marihuana facility must not operate within five hundred (500) feet of the following.
- 1) A state-licensed childcare center.
 - 2) Religious assembly.
 - 3) A public pool, recreation facility, park or playground.
 - 4) A public or private youth center.
 - 5) A transitional residence, correctional facility or substance abuse rehabilitation or treatment center.
- 2) Measuring the Required Distance. The required distance is measured in a straight line from the nearest property line of a protected use to the nearest portion of the building or unit in which the marihuana facility is located.

(2) **Grower Facility.** A licensee that is a commercial entity located in this state that cultivates, dries, trims or cures and packages marijuana for sale to a processor or provisioning center. The three (3) grower license types are Class A (authorized to grow up to 500 plants); Class B (authorized to grow up to 1,000 plants); and Class C (authorized to grow up to 1,500 plants). In the Districts where Grower Facility is Permitted with Development Standards, the following standards apply.

- (a) Grower Facility Classes A and B are permitted in Limited Manufacturing (M-1) and General Manufacturing (M-2). Class C is permitted in General Manufacturing (M-2).
- (b) Except as permitted by State regulatory rules for Class C growers, only one (1) Medical Marihuana Grower facility license is allowed per parcel or lot.
- (c) All Grower facilities and operations must be within an enclosed building, except cultivation may occur in an outdoor area provided that the area is contiguous with the facility building, fully enclosed by fences or barriers that block outside visibility of the marijuana plants from public view, with no marijuana plants growing above the height of the fence or barrier, and the fence is secured and only accessible to authorize persons and emergency personnel.
- (d) Licensees may occupy the same premises if holding separate Grower and Processor licenses for the premises.
- (e) Any building or unit housing medical marihuana operations and any

outdoor cultivation area shall be located at least five hundred (500) feet from a residential zone district.

(3) Processor Facility. A licensee that is a commercial entity located in this state that purchases marijuana from a grower and that extracts resin from the marijuana or creates a marijuana-infused product for sale and transfer in packaged form to a provisioning center. In the Districts where Processor Facility is Permitted with Development Standards, the following standards apply.

- (a) Processor Facility is permitted in Limited Manufacturing (M-1) and General Manufacturing (M-2)
- (b) Only one Medical Marijuana Processor facility license permitted per parcel or lot
- (c) All Processing operations must be conducted within an enclosed building
- (d) Licensees may occupy the same premises if holding a separate Grower and Processor licenses for the premises.
- (e) Any building or unit housing medical marijuana operations shall be located at least five hundred (500) feet from a residential zone district.

(4) Secure Transporter Facilities. A licensee that is a commercial entity located in this state that stores marijuana and transports marijuana between marijuana facilities for a fee. In the Districts where Secure Transporter Facility is Permitted with Development Standards, the following standards apply.

- (a) Secure Transporter Facility is permitted in Community Commercial (CC), Limited Manufacturing (M-1), and General Manufacturing (M-2).
- (b) Secure Transporter facilities located in Zone CC are limited to a gross floor area of less than 3,500 square feet.
- (c) Secure Transporter facilities located in Zone CC are only permitted warehousing activity as an accessory to the principal permitted Secure Transporter use.
- (d) Secure Transporter facilities located in Zone CC shall be located at least five hundred (500) feet from all other licensed marijuana facilities in any zoning district.

(5) Safety Compliance Facility. A licensee that is a commercial entity that receives marijuana from a marijuana facility or registered primary caregiver, tests it for contaminants and for tetrahydrocannabinol and other cannabinoids, returns the test results, and may return the marijuana to the marijuana facility. In the Districts where Safety Compliance Facility is Permitted with Development Standards, the following standards apply.

- (a) Safety Compliance Facility is permitted in Community Commercial (CC), Limited Manufacturing (M-1), and General Manufacturing (M-2).
- (b) Safety Compliance facilities located in Zone CC are limited to a gross floor area of less than 3,500 square feet.
- (c) All testing must be conducted within an enclosed building.
- (d) Safety Compliance facilities located in Zone CC shall be located at least five hundred (500) feet from all other licensed marihuana facilities in any zoning district.

(6) Provisioning Center. A licensee that is a commercial entity located in this state that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualifying patients, directly or through the patients' registered primary caregivers. Provisioning Center includes any commercial property where marihuana is sold at retail to registered qualifying patients or registered primary caregivers. A noncommercial location used by a primary caregiver to assist a qualifying patient connected to the caregiver in accordance with the Michigan Medical Marihuana Act, MCL 333.26421 et seq., is not a provisioning center for purposes of this article. In the Districts where Provisioning Center Facility is Permitted with Development Standards, the following standards apply.

- (a) Provisioning Center Facility is permitted in the Community Commercial District.
- (b) Only one Provisioning Center license is permitted per parcel or lot.
- (c) All Provision Center activities must be conducted within an enclosed building.
- (d) A Provisioning Center is not allowed within six hundred sixty (660) feet of the following designated nodes: The intersection of E. Cork St. and S. Burdick St., the intersection of E. Cork St. and Portage St., and the intersection of W. Ransom St. and N. Westnedge Ave.
- (e) A separation distance of one thousand (1000) feet is required from any other Provisioning Center or Retailer, except when operating from a shared location, and five hundred (500) feet from any other licensed marijuana facility or marihuana establishment in any zoning district.
- (f) A Provisioning Center is not permitted on the same property or parcel or within the same building where any of the following are located: a package liquor store, a convenience store that sells alcoholic beverages, or a fueling station that sells alcoholic beverages.
- (g) The sale, consumption, or serving of food to visitors is prohibited on Provisioning Center premises.

The following will be added to 50-4.5 Accessory Uses and Structures, including into 4.5-1 Accessory Use Structures & Table

(1) Medical Marihuana. Medical Marihuana is a home occupation when a primary caregiver who has agreed and is registered with the State of Michigan to assist with a qualifying patient's use of medical marihuana. In the districts where medical marihuana is Permitted with Development Standards, the following standards apply:

(a) Michigan Medical Marihuana Act Compliance. The medical use of marihuana and marihuana-infused products shall comply at all times and in all circumstances with the Michigan Medical Marihuana Act, 2008 Initiated Law #1, MCL 333.26421 et seq. ("Act") and the Administrative Rules promulgated by the State of Michigan ("Administrative Rules") pursuant to the Act, as they may be amended from time to time.

(b) Location Criteria. Medical Marihuana as a home occupation must comply with the following location criteria.

1) A primary caregiver must be located 1000' from an existing public or private elementary, vocational, or secondary school; public or private college, junior college, or university; playground; housing facility owned by a public housing authority; or public library or private library open to the public.

2) A primary caregiver must be 100' from an existing public or private youth center, public swimming pool, or video arcade facility to ensure community compliance with State and Federal "Drug-Free School Zone" requirements.

(c) Number of Caregivers. One primary caregiver is permitted within a dwelling unit to service qualifying patients, who do not reside with the primary caregiver.

(d) Number of Patients Permitted. A primary caregiver is permitted up to five qualifying patients.

(e) Consent of the Property Owner. If the primary caregiver is not the owner of the property in which they live and operate from, written consent must be obtained from the property owner to ensure the owner's knowledge of the use of the premises as permitted and the primary caregiver shall maintain written proof that the use of the property as a home occupation under this section is not prohibited by the property owner.

(f) Growing. All medical marijuana plants shall be secured in one of the following ways.

1) Contained within a structure that is an enclosed, locked facility inaccessible on all sides and equipped with locks or other security devices that permit access only by the primary caregiver or qualifying patient.

2) Plants cultivated outdoors must be fully enclosed by fences or barriers that blocks the plants from public view, with no plants visibly growing above the fence or barrier, and the fence or barrier is locked or otherwise secured to limit access only to the primary caregiver or qualifying patient engaged in cultivating the plants.

g) Processing. The separation of plant resin from a marijuana plant using any substances with a flashpoint below one hundred (100) degrees Fahrenheit for processing is prohibited.

(h) Lighting. If a room with windows is utilized as a marijuana-growing location, any lighting methods that exceed usual residential use between the hours of 11:00 p.m. and 6:00 a.m. shall employ shielding methods, without alteration to the exterior of the residence, to prevent ambient light spillage that causes or creates a distraction or nuisance to adjacent residential properties

(i) Required Permits. All necessary building, electrical, plumbing and mechanical permits shall be obtained for any portion of the residential structure in which electrical wiring lighting, and/or watering devices are located, installed or modified that support the cultivation, growing or harvesting of marijuana.

(j) Nothing in this subsection, or in any companion regulatory provision adopted in any other provision of this Code, is intended to grant, nor shall they be construed as granting, immunity from criminal prosecution for growing, sale, consumption, use, distribution, or possession of marijuana not in strict compliance with that Act and the Administrative Rules and this subsection. Also, since federal law is not affected by that Act or the Administrative Rules, nothing in this chapter, or in any companion regulatory provision adopted in any other provision of this Code, is intended to grant, nor shall they be construed as granting, immunity from criminal prosecution under federal law. Neither this ordinance nor the Michigan Medical Marijuana Act protects users, caregivers or the owners of properties on which the medical use of marijuana is occurring from federal prosecution, or from having their property seized by federal authorities under the Federal Controlled Substances Act.