

**MINUTES  
CITY OF FARMINGTON HILLS  
PLANNING COMMISSION MEETING  
31555 W ELEVEN MILE ROAD  
FARMINGTON HILLS, MICHIGAN  
MARCH 25, 2021, 7:30 P.M.**

**CALL MEETING TO ORDER**

The Planning Commission Meeting was held electronically as authorized under the Open Meetings Act, MCL 15.261, *ET SEQ.*, as amended, and called to order by Chair Stimson at 7:30 p.m. Commission members were asked to state their name and location, as to where they were attending the electronic meeting.

**ROLL CALL**

Commissioners Present:

Brickner, City of Farmington Hills, Oakland County, Michigan  
Countegan, City of Farmington Hills, Oakland County, Michigan  
Mantey, City of Farmington Hills, Oakland County, Michigan  
Orr, City of Farmington Hills, Oakland County, Michigan  
Schwartz, City of Farmington Hills, Oakland County, Michigan  
Stimson, City of Farmington Hills, Oakland County, Michigan  
Traflet, City of Farmington Hills, Oakland County, Michigan  
Turner, City of Farmington Hills, Oakland County, Michigan  
Varga, City of Farmington Hills, Oakland County, Michigan

Commissioners Absent:           None

Others Present:                   City Planner Stec, City Attorney Joppich, Planning Consultant Arroyo

**APPROVAL OF AGENDA**

**MOTION by Countegan, support by Brickner, approve the agenda as published.**

Roll call vote:

Yeas:                   Brickner, Countegan, Mantey, Orr, Schwartz, Stimson, Traflet, Turner, Varga  
Nays:                   None  
Absent:                None  
Abstentions:         None

**MOTION carried 9-0.**

**PUBLIC HEARING**

**A.     ZONING TEXT AMENDMENT 1, 2021**

CHAPTER OF CODE:       34, Zoning Chapter  
REQUEST:                 Amend the Zoning Ordinance to add a new definition of  
                                  “Cannabis”; amend the definitions of “Medical Marijuana”,  
                                  “Primary Caregiver”, and “Medical Use”; and to amend use

standards and location requirements related to the cultivation of medical marihuana by primary caregivers

**ACTION REQUESTED:** Recommendation to City Council

**SECTIONS:** 34-2.2, 34-4.57.1, 34-3.1.29. B., 34-3.1.1. D, 34-3.1.2. D., 34-3.1.3. D., 34-3.1.4. D., 34-3.1.5. D., 34-3.1.6. D., 34-3.1.7. D.

Planning Consultant Arroyo overviewed the proposed text amendment and its purposes. The amendment changed the way primary caregivers can locate within the community. Right now primary caregivers are defined as a home occupation use that can be located within residential districts. Tonight's amendment would change the location of the use so that new primary caregiver operations would no longer be permitted in residential districts but instead would potentially be permitted in the Light Industrial districts.

Planning Consultant Arroyo reviewed the individual sections of the proposed changes, including:

**Chapter 34, "Zoning," Article 2, "Definitions":**

The first section amended definitions of *Medical cannabis*, *Medical use*, and *Primary Caregiver*.

**Section 3 of Ordinance. Ordinance Amendment**

**Section 34-4.57 Marihuana Uses:**

1. Regulating Primary Caregiver use:
  - A. Findings, purposes and intent
  - B. Ordinance has no effect on patient use
  - C. No defense against criminal prosecution
  - D. Use Standards

Item D., *Use Standards*, required that primary caregivers:

- 1) Shall only operate on a zoning lot located within the LI-1 District, as a principal permitted use, and be regulated as stated in the draft ordinance. If going into a new building, site plan approval by the Planning Commission is required; if going into an existing building, the Planning Director or their designee can approve the location administratively.
- 2) Comply with MMMA and the Administrative Rules of the MRA.
- 3) Must comply with a separation requirement: location must be outside a 1,000 foot radius from any school, nursery school, day nursery, day care center, and state-licensed day care home.

Additionally, subparagraph regulated the LI use as follows:

- 4) – 9) regulate how many – 5 – primary caregivers can operate on a single parcel or zoning lot, how many patients can be served by each caregiver, and how caregivers must be separated from each other in a locked, secure manner.
  - 10) – 12) regulate the permit process, including mechanical standards, prohibiting exterior visibility of the operation, odor control, etc. Appearance should look like an industrial building and fit in with the industrial district.
  - 13) – 15) prohibits sale or use of the cannabis, or alcohol consumption, on the premises.
2. Contains the opt-out provision under the Michigan Regulation and Taxation of Marihuana Act, prohibiting marihuana establishments in the City.

**Sections 4 and 5** of the Ordinance Amendment adds Primary Caregivers as a permitted use in the LI-1 District, and deletes Primary Caregivers as a permitted use in residential districts.

**Sections 6 – 10** of the Ordinance Amendment are normal provisions for *Repealer, Savings, Severability, Effective Date, Date and Publication*.

Planning Consultant Arroyo concluded his summary of the proposed ordinance.

Discussion followed:

- Once a primary caregiving use was legally established in an LI district, a private school, church, etc., moving in would not force the primary caregiving use to relocate. The caregiver would become a legal nonconforming use. (Use Standard #3)
- Ozone generators were not permitted as an odor neutralization method (Use Standard #12) because research had found that ozone generators were not effective as odor control. Active carbon filters seemed to be the best method.
- It was noted that other businesses also had strong odors that were not prohibited by ordinance (curry, pizza, etc.).
- Existing legally established primary caregiver operations in residential districts can continue to operate.
- Currently most LI districts had no conflict with the uses that required the 1000 foot separation. The exceptions were along 8 Mile Road.
- There were some B-3 districts, mostly at intersections, in the LI district areas. The caregiver use would not be allowed in those B-3 areas.

Commissioner Schwartz made the following points:

- Notice regarding this proposed amendment should be given to LI property owners for the City Council public hearing.
- The definition for *Medical use* might be broken up into multiple sentences, so as to be clear as to what individual clauses were modifying.
- Under the definition of *Primary Caregiver*, does the prohibition against a caregiver *never been convicted of a felony involving illegal drugs* include a conviction involving marijuana?
- *A. Findings, Purpose and Intent*, states: *The City finds that the average residence in the City is not aptly suited to the safe and favorable cultivation of 72 cannabis plants that a primary caregiver is permitted to grow under the MMMA*. Perhaps an estimated square footage and necessary height for growing 72 plants could be included to justify how this finding was reached.
- Under *Use Standards*,
  - If Primary Caregiver is a principal permitted use, could there be another use also on the property? (#1)
  - How can the limitation to 5 primary caregivers be enforced? (#5)
  - Can an RV or other large vehicle used to transport the cannabis be stored on site yet claimed to be temporary? (#6)
  - Could legally separate operations (separate LLC's, for instance) with the same ownership, with 5 caregivers each, be located in the same building? (#7)
  - While a patient is prohibited from coming to the site, is a middleman prohibited? (#13)
  - Does the prohibition against *any controlled substance* include a definition of controlled substance? Marijuana is still illegal under federal law; is Marijuana considered a controlled substance? (#15)
- How are *marijuana establishments* defined as used in the opt out provision?

Commissioner Schwartz concluded by saying he did not understand how this zoning amendment removed primary caregiver operations from neighborhoods. Existing legal operations could remain, and unregistered operations were difficult to enforce against. Registered operations that had more than the legally allowed number of plants were also difficult to enforce against.

Commissioner Brickner asked if the vehicle used to transport cannabis to a patient was limited as to the amount being transported.

City Attorney Joppich agreed that when uses were established in homes that were not known to the City or to neighbors, enforcement was very difficult. Like other zoning ordinance violations, if the City did not know the violation was occurring, enforcement would likely not take place. The City did get complaints from residents and neighborhoods that triggered enforcement activity. There was effort to identify illegal operations through other visible markers. The City will continue to do the best it can. Enforcement difficulty was certainly part of the reality of the situation.

City Attorney Joppich made the following additional points:

- The opt out language for marijuana establishments was a carry-over from the ordinance under the MRTMA. *Marihuana establishments* was the language used by the MRTMA, and is also used in the master ordinance that accomplished the opt-out.
- Under standards:
  - Regarding the possibility of a middleman picking up product (#13), the primary caregiver is responsible for delivering the product to their 5 patients. They are only authorized to deliver to the patient, and no middleman should be involved. Involving a middleman could be a possible violation of the MMMA.
  - Regarding legally separate entities established by a single individual using the same industrial building (#7), City Attorney Joppich would double check that the primary caregivers are individuals and not LLC's, for instance. The building could be owned by a corporation, allowing 5 separate individuals to locate as primary caregivers in the building.
  - Regarding types of vehicles used (#6), the language was similar to that in the MMMA statute, in terms of temporarily being able to use a vehicle for purposes of transporting marijuana to a patient. The statute does not distinguish the type of vehicle allowed. In terms of defining *temporary*, hopefully the ordinance and statute is clear that the temporary nature of the vehicle is in the actual transporting from one location to another, and nowhere else.
  - City Attorney Joppich said he would find out if the amount of cannabis in a vehicle being used to transport product from a caregiver to a patient is limited.
  - 5 primary caregivers per zoning lot (#5) could be enforced via the site plan approval process. Follow-up enforcement would involve regular inspections, as was common for other uses.
  - Regarding whether another use that was not a principal permitted use could also be located in the building (#1), this could depend on the building and its configuration. City Planner Stec agreed, noting that buildings in a Light Industrial district often had more than one use. Planning Consultant Arroyo added that while another use in the same building could happen, it was unlikely. Caregivers typically did not want to share the building with other non-related uses due to the more intense security required for this product.
- Regarding the definition of *caregiver*, and whether the prohibition against a caregiver *never been convicted of a felony involving illegal drugs* would include a conviction involving marijuana, this language was consistent with the MMMA.
- Regarding the definition of *Medical use*, again the language was consistent with the MMMA.

- It would be a policy decision as to whether or not notice should be sent to all LI-1 property owners regarding this proposed amendment. The City had met legal notice requirements for tonight's public hearing, in accordance with the Michigan Zoning Enabling Act.

Commissioner Schwartz reiterated his suggestion that A. *Findings, Purpose and Intent* include factual reasons why the average residence is not suited to the safe and favorable cultivation of 72 cannabis plants. For instance, the ordinance could reference the space and height needed for 72 plants.

Commissioner Mantey referred to the Medical Marijuana Facilities Licensing Act, which had 3 classes: Class A at 500 plants, Class B at 1000 plants, and Class C at 1500 plants. The building or zoning lot under discussion tonight would be limited to fewer plants than any of those classes. A commercial activity under the MMMA Caregiver Act was unlikely to happen. If a grower wanted to grow plants for medical reasons and make a profit, they would use the Medical Marijuana Facilities Licensing Act.

Commissioner Trafelet asked who would verify whether a primary caregiver had a felony in their background. Would that happen under a licensing process at the City? Planning Consultant Arroyo explained that this was a requirement under the State statute. In order to be a registered caregiver, the caregiver would have to prove to the State that they had been free of felony arrests as listed in the definition of *Primary Caregiver*.

Commissioner Brickner noted that the ordinance did not restrict a single individual from growing in their own home the legally allowed number of plants for an individual.

Commissioner Brickner said there was a difference between a caregiver and a licensed medical marijuana grower. Primary caregivers were registered, but not licensed. The state also listed requirements for caregivers regarding transportation of product. Primary caregivers were theoretically not making a profit, although some did. He thought this proposed solution to primary caregiving operations might be a limited solution that would have a diminished impact after the City made a decision regarding allowing licensed grow operations in the City. It was important to make sure the proposed amendment language did not contradict other State law, as caregiver operations could not be banned. The zoning map did show that there was plenty of room left in the LI-1 district to allow for this use, without violating the 1000-foot separation requirement from certain uses as stated.

For the purposes of the public present, City Attorney Joppich reviewed the most recent changes in the ordinance amendment, which included the most recent changes in State statute and State organizations and eliminated unnecessary language. These changes are reflected in the motion below.

Chair Stimson opened the public hearing. Seeing that no public indicated they wished to speak, Chair Stimson closed the public hearing and brought the matter back to the Commission for discussion and/or a motion.

**MOTION by ORR, support by Brickner**, to recommend approval to City Council of Zoning Text Amendment 1, 2021, which proposes to amend the Zoning Ordinance to add a new definition of "Cannabis"; amend the definitions of "Medical Marijuana", "Primary Caregiver", and "Medical Use"; and to amend use standards and location requirements related to the cultivation of medical marijuana by primary caregivers, amended as follows:

- Section 3.C, line 5ff, change: . . . not in strict compliance with the MMMA and the Administrative General Rules of the Michigan Department of Community Health (MDCH) Marijuana Regulatory Agency (MRA). Also, since federal law is not affected by the MMMA or

the ~~MDCH's General~~ MRA's Administrative Rules, nothing in this Ordinance is intended to grant,  
...

- Section D.2), line 3ff, change: . . . with the MMMA and the ~~General~~ Administrative Rules of the ~~MDCH-MRA~~, . . .
- Section D.3),line 3ff, change: and state-licensed day care home, ~~to ensure community compliance with Federal "Drug-Free School Zone" requirements.~~ This distance shall be measured from the nearest point of the building containing the Primary caregiver use to the property line of the ~~school~~ uses noted above;

Motion discussion included:

Commissioner Schwartz said that while he appreciated the good work done on this proposed ordinance amendment, he would not support the motion because he thought it was bad policy to allow more than one primary caregiver as a permitted use in a single building.

Commissioner Brickner said he favored allowing multiple primary caregiver uses in a single building, in order to help cover the cost of rent and other expenses. While reiterating that primary caregiver operations are not supposed to be profit producing, patients in the City needed to have a place to obtain their medicine, and he wanted to support these operations as a convenience to the residents.

Noting that City Council is investigating whether to opt in to commercial uses, Commissioner Varga asked if community meetings would be held regarding this issue. City Attorney Joppich said that was a possibility.

Several Commissioners spoke to the possibility that primary caretaker operations may eventually be rendered irrelevant as more commercial grow operations become licensed in the State.

Roll call vote:

Yeas:	Brickner, Countegan, Mantey, Orr, Stimson, Trafelet, Turner, Varga
Nays:	Schwartz
Absent:	None
Abstentions:	None

**MOTION carried 8-1.**

**REGULAR MEETING**

**A. PRESENTATION OF 2020 PLANNING COMMISSION ANNUAL REPORT**

ACTION REQUESTED: Approval of report

City Planner Stec presented the 2020 Planning Commission Annual Report, which after review and adoption by the Planning Commission would be forwarded to City Council.

The Annual Report summarized major initiatives, including the assisted senior living center to be located behind the Costick Center and the redevelopment of the Piemontese Swim Club as a 28-unit detached single family cluster option development.

A five-year comparison report showed various types of developments and applications heard by the Planning Commission during 2020, with charts showing different types of activity from 2016-2020. The majority of new projects took one month for approval from application to completion.

2020 showed a decrease in activity, due to the COVID-19 pandemic.

The Commission pointed out minor corrections that needed to be made to the report: 1) lot split and rezoning totals need to be corrected, and 2) show #8 and #9 as being adjacent parcels on the map.

Commissioner Turner asked that future reports show which projects were ultimately approved or denied by City Council, and which projects only needed Planning Commission approval.

Commissioner Trafelet asked if a running total of project progress and completion could be posted to the City website.

**MOTION by Brickner, support by Trafelet**, that the Planning Commission adopt the Planning Commission 2020 annual report as presented, with corrections as noted.

Roll call vote:

Yeas:	Brickner, Countegan, Mantey, Orr, Stimson, Schwartz, Trafelet, Turner, Varga
Nays:	None
Absent:	None
Abstentions:	None

**MOTION carried 9-0.**

**APPROVAL OF MINUTES** None

**PUBLIC COMMENT** None

**COMMISSIONERS' COMMENTS**

Commissioner Orr asked that Enforcement look at the temporary signs (flopping open signs and flag signs) at the Bonaventure skating rink on Halsted Road.

Referring to a previous presentation by Planning Consultant Arroyo, Commissioner Schwartz addressed the need for small houses for entry level homeowners. Commissioner Schwartz had recently walked the area of Grand River that intersected Waldron, Shiawassee, and Wheeler Streets, between Middlebelt and Inkster. The area appeared to support small homes of 1000 square feet or smaller, with a significant number of empty lots that could support new small homes that would not be out of character in the neighborhood. Commissioner Schwartz asked that this issue of small homes be explored at a study session in May or June, including but not limited to the geographic area just described. Also, there did not appear to be any major house renovation in that area; encouraging renovation could be part of the study session discussion.

Chair Stimson asked that the non-compliant lot sizes in that area be part of the study session focus; perhaps a change of zoning to encourage renovation might be appropriate.

Commissioner Mantey noted that the Commission was going to look at smaller homes as part of the Master Plan update, including perhaps small accessory structures on single family lots.

**ADJOURNMENT:**

**MOTION by Trafelet, support by Brickner**, to adjourn the meeting at 9:00 pm.

Roll call vote:

Yeas:	Brickner, Countegan, Mantey, Orr, Schwartz, Stimson, Trafelet, Turner, Varga
Nays:	None
Absent:	None
Abstentions:	None

**MOTION carried 9-0**

Respectfully submitted,  
John Trafelet  
Planning Commission Secretary

/cem