

Oakwood, Ohio
January 4, 2017

The Planning Commission of the city of Oakwood, state of Ohio, met this date in the council chambers of the city of Oakwood, city building, 30 Park Ave., Oakwood, Ohio, 45419, at 4:30 p.m.

The Chair, Mr. Jeffrey Shulman, presided and the Clerk, Lori Stacel, recorded.

Upon call of the roll, the following members responded to their names:

MR. JEFFREY B. SHULMAN	PRESENT
MR. ANDREW AIDT	PRESENT
MRS. HARRISON GOWDY	PRESENT
MRS. E. HEALY JACKSON.....	PRESENT
MR. STEVE BYINGTON.....	ABSENT

Officers of the city present were the following:

Mr. Norbert S. Klopsch, City Manager
Mr. Robert F. Jacques, City Attorney
Mr. Jay A. Weiskircher, Assistant City Manager
Mr. Ethan M. Kroger, Code Enforcement Officer

The following visitors were present:

It was moved by Mr. Aidt and seconded by Mrs. Gowdy that the absence of Mr. Byington be excused.

Mr. Shulman called the meeting to order at 4:30 p.m., and then conducted a brief organizational meeting to select the chair and vice-chair for 2017. Mr. Aidt moved to retain Mr. Shulman as chair, seconded by Mrs. Gowdy. Mrs. Gowdy moved to retain Mr. Aidt as vice-chair, seconded by Mrs. Jackson. Upon a viva voce vote on the question both motions passed unanimously and it was so ordered.

Mr. Shulman asked if there were any questions or concerns with the minutes from the November 2, 2016 meeting. There being none it was moved by Mr. Aidt and seconded by Mrs. Jackson that the minutes of the Planning Commission meeting held November 2, 2016, be approved as submitted and the reading thereof be dispensed with at this session. Upon a viva voce vote on the question of the motion, the same passed unanimously and it was so ordered.

Mr. Shulman opened the public hearing for Application #17-1.

Mr. Jacques referenced a PowerPoint presentation and explained that this application is to consider a proposed Zoning Code text amendment to prohibit medical marijuana-related businesses and/or home occupations within all zoning districts in the city of Oakwood. Mr. Jacques explained that on June 8, 2016, Ohio signed into law H.B. 523, making Ohio the 25th state to enact medical marijuana legislation. The Department of Justice no longer attempts to prosecute medical marijuana distributors and also will not challenge state laws, but marijuana remains illegal under federal law and the DOJ may not continue to take a hands-off approach with the new presidential administration. In October 2015, 90% of Ohioans supported legalized medical marijuana, but only 53% supported legalizing small amounts of marijuana for personal/recreational use. Ohio Marijuana Legalization Initiative (Issue 3) was defeated in 2015 with over 63% voting down the Initiative, which would have legalized all forms and uses of marijuana. In March 2016, the Marijuana Policy Project proposed an amendment to the Ohio

Constitution to legalize medical marijuana. The Amendment would have permitted: home-grown medical marijuana; all products and methods of consuming products; additional qualifying conditions; recommendations (versus a prescription) by physician assistants and nurse practitioners, as well as physicians. Supporters needed 305,591 valid signatures by July 6, 2016 to put the Constitutional Amendment on the November 2016 ballot. H.B. 523 was introduced in April 2016 and passed on May 25, 2016 – the petition drive for the Constitutional Amendment was immediately suspended. This is an example of the Legislature trying to act before something was on the ballot, and it was a rushed effort.

H.B. 523 went into effect on September 8, 2016 and the general provisions are: permitted uses – vaporization, tinctures, edibles, patches, plant materials, and oils; smoking is not permitted; and an affirmative defense is now available for drug charges (under state law, not federal). The Ohio Department of Commerce and the State of Ohio Board of Pharmacy are required by law to take all actions necessary to ensure that Ohio's Medical Marijuana Control Program is fully operational no later than September 2018. At that time, there will be an established structure for: state licensure of cultivators, processors, retail dispensaries, and testing laboratories; registration and certification of physicians who may recommend treatment with medical marijuana; and reciprocity agreements between Ohio and other states which have legalized medical marijuana. The Ohio Medical Board has discouraged physicians from recommending marijuana until the physician has obtained a certificate to recommend from the Board, and the certificate is still in the process of being developed. Also, H.B. 597 was introduced in September 2016 which would amend the law to restrict reciprocity agreements to states with restrictions similar to Ohio's. So it is clear that much of the new law's operation is still unknown, and there are already legislative efforts to change it further.

According to a study by Marijuana Business Daily, retail sales of medical marijuana in Ohio could reach \$400 million annually. There could be an estimated \$23 million in state sales tax revenue (marijuana is not considered a "drug," so the sale would not be tax exempt). There are currently no tax regulations in H.B. 523, so this is to be determined. Decades ago, Ohio municipalities used to impose and collect their own sales taxes, but this is now replaced by a state/county system and Local Government Fund in Ohio. In California, municipalities can impose a sales tax on medical marijuana, but for Ohio cities, the sale of medical marijuana would not provide a great tax benefit.

Ohio Revised Code Section 3796.30 states that facilities must be at least 500 feet from any church, public school, public library, public park, or public playground. Ohio Revised Code Section 3796.29 states, "The legislative authority of a municipal corporation may adopt an ordinance...to prohibit, or limit the number of, cultivators, processors, or retail dispensaries licensed under this chapter within the municipal corporation..." Municipalities can further regulate the location of facilities, can prohibit or limit the number of facilities and may entirely prohibit facilities from being located in the municipality. Currently, there have been three (3) general approaches on medical marijuana in Ohio. Cities can choose to permit medical marijuana uses, which has happened in Johnstown. They can also choose to prohibit these uses, as was done in Hamilton. Or they can adopt a temporary moratorium, which is probably the most common response right now. Locally, moratoriums have been adopted in Troy, Piqua, and Beavercreek.

Oakwood Zoning Code, Section 1003 states that the Planning Commission's role is to hold a public hearing (Sec. 1003.5(A)), issue a recommendation of approval or denial to City Council (Sec. 1003.5(B)), and submit written findings of fact to City Council along with Planning Commission's recommendation (Sec. 1003.6). The decision standard is that text amendments shall be reviewed for consistency with the purposes of the Zoning Code, the Comprehensive Plan, and the interests of the City of Oakwood as a whole.

Mr. Aidt shared that the city of Kettering is still exploring all available options.

Mr. Shulman asked if a pharmacy would be considered a dispensary.

Mr. Jacques stated that he was unsure, but he did not believe it was likely that medical marijuana will be sold in a pharmacy chain store such as a CVS. He believes it would possibly be in a strip mall or a store front.

Mr. Aidt asked how prohibition is possible with medical marijuana, when we can't ban adult uses.

Mr. Jacques explained that it depends on how the prohibition intersects with the first amendment law. The prohibition of medical marijuana does not involve a fundamental right in the same way that adult business regulations do, and there is express approval by statute.

Mr. Shulman asked if the dispensary would have to be licensed.

Mr. Jacques confirmed that the dispensary would have to be licensed and must go through an approval process, but the procedure and requirements are not known at this time.

Mr. Shulman asked if a recommendation for medical marijuana would need to be given before the product would be given.

Mr. Jacques said yes, and that the recommendation may only be written by a physician based on the law.

Mrs. Gowdy asked what could be the worst thing that could happen if a medical marijuana dispensary was located at Sugar Camp, or why it would be different from any other medical facility.

Mrs. Jackson added onto the question asking what the justification would be to not place a dispensary at Sugar Camp.

Mr. Jacques responded stating that the medical marijuana dispensary may not be any different than any other medical facility, but the law doesn't regulate aesthetics or other effects. Also, it is very close to the synagogue. Some places are operated as upscale establishments, but others are not.

Mr. Aidt shared concerns of people waiting outside the establishment looking for handouts, or wanting people with legitimate recommendations to buy for them.

Mr. Aidt inquired about a news story this past summer about growing facilities in West Carrollton and Moraine.

Mr. Jacques stated that he was not familiar with this specific story, but when Issue 3 was on the ballot, he heard that there were facilities that were being staked out for this reason. Companies were buying or optioning land in hopes that the amendment would pass.

Mr. Shulman asked what a recommendation is expected to look like.

Mr. Jacques said that it will likely be a piece of paper similar to a prescription, or a card like a handicap placard, hopefully with the individual's photo on it. But we do not know that for sure.

Mr. Klopsch shared that City Council took a lot of time to discuss this. At the end of the day, City Council does not want to render judgement on medical marijuana. Council proposed this ordinance because Oakwood is only 2.2 square miles and nearly 98% of the population is residential. Medical marijuana facilities are probably incompatible with the residential character of Oakwood.

Mrs. Jackson shared that a medical marijuana facility does not fit with the community values.

Mr. Aidt agreed that it also doesn't fit with the residential character.

Mrs. Gowdy stated that we have a vapor store that doesn't fit with the residential character of Oakwood, but we had to allow it.

Mrs. Gowdy shared concerns that this is a public meeting and no one is attending. She wished more people had come to provide community input. She asked when the legal ad was placed.

Mr. Weiskircher confirmed a few weeks ago.

Mr. Shulman reminded the Planning Commission that its options are to recommend approval, denial, or table the issue.

Mrs. Gowdy asked for an explanation of a moratorium.

Mrs. Jacques explained that a moratorium is temporary prohibition of 6 months or a year. It allows time for further information to be given from the state before taking local action.

Mr. Klopsch shared his concern that the city could be at risk if nothing is done at this point. He explained that someone can submit an application for a medical marijuana facility and the city legally may not be able to reject the application.

Mrs. Gowdy shared that she is leaning to prohibition, but she would have liked businesses in the Business District to have come to the meeting to share their opinion.

Mr. Weiskircher said that if you ask people in the Business District, he doesn't feel that anyone would agree that a medical marijuana dispensary is compatible with that district.

Mr. Aidt noted that the majority of the time the Planning Commission makes decisions when no one shows up to the meetings voicing their opinions.

Mr. Klopsch added that City Council also considered that marijuana is still considered illegal under federal law.

Mr. Aidt asked if there are places in Oakwood that fit the requirements for medical marijuana dispensaries.

Mr. Weiskircher confirmed that there are locations along Far Hills Avenue.

Mr. Shulman asked what the effect of a moratorium is.

Mr. Jacques shared that it would be a freeze. He added that he is not sure how effective they are because once the moratorium is lifted, if someone has already received a zoning certificate for a retail use, the business could shift to medical marijuana sales and the city couldn't prohibit that. That was further discussion on this point.

Mrs. Jackson asked what percentage of the population is in favor of medical marijuana.

Mr. Jacques responded that 90% of Ohioans supported medical marijuana according to a 2015 poll.

Mrs. Jackson asked if City Council took this into consideration.

Mr. Klopsch stated that he didn't recall anyone on City Council having an opinion on medical marijuana itself; their concern was whether dispensaries or other marijuana facilities would be compatible in this community.

Mr. Jacques explained that he prepared a form for Planning Commission to submit their written findings of fact to City Council along with their recommendation. He prepared it as a fill-in-the-blank form so they could decide either way and write in their specific factual findings.

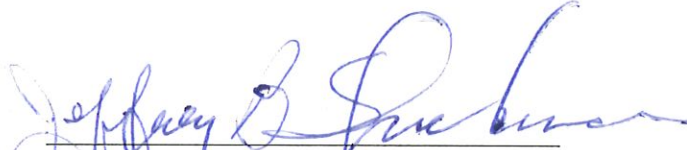
It was then moved by Mr. Aidt and seconded by Mr. Shulman that application #17-1, for a Zoning Code text amendment to prohibit medical marijuana-related businesses and/or home occupations within all zoning districts in the city of Oakwood be recommended for approval to Oakwood City Council. The Planning Commission has considered the evidence and has reviewed the proposal for consistency with the purposes of the Zoning Code, the 2004 Comprehensive Plan, and the interests of the city of Oakwood as a whole, and finds that that same is consistent therewith for the following reasons: 1.) Medical marijuana facilities are incompatible with residential character of Oakwood; 2.) Medical marijuana facilities are not in the interest of the city due to lack of state regulations and safeguards; 3.) Security concerns and possible negative side effects; and, 4.) Medical marijuana remains illegal under federal law.

Upon call of the roll on the question of the motion, the following vote was recorded:

- MR. JEFFREY B. SHULMAN YEA
- MR. ANDREW AIDT YEA
- MRS. HARRISON GOWDY YEA
- MRS. E. HEALY JACKSON..... YEA

There being four (4) YEA votes, thereon, said motion carried.

There being no further business, the Planning Commission adjourned. The public meeting concluded at 5:50 p.m.



 CHAIR

ATTEST:



 CLERK