

# MANISTEE CITY PLANNING COMMISSION

Meeting of Thursday, September 2, 2010  
7:00 p.m. - Council Chambers, City Hall, 70 Maple Street,  
Manistee, Michigan

## AGENDA

### I Call to Order

### II Roll Call

### III Approval of Agenda

At this time the Planing Commission can take action to approve the September 2, 2010 Agenda.

### IV Approval of Minutes

At this time Planning Commission can take action to approve the August 5. 2010 meeting Minutes.

### V Public Hearing

None

### VI New Business

#### **Former Harbor Village Sales Office, 100 Marina Drive - Parcel Split**

A request has been received for a Parcel Split that would remove the former Harbor Village Sales Office, 100 Marina Drive from parcel 51-51-202-300-00 as shown on survey dated June 30, 2010 prepared by Abonmarche Job No. 10-0414.

At this time the Planning Commission could take action on the request to split the former Harbor Village Sales Office, 100 Maria Drive from Parcel 51-202-300-00 as shown on survey dated June 30, 2010 prepared by Abonmarche Job No. 10-0414.

#### **Vacant property located Lakeview Development Area of Harbor Village - Parcel Split**

A request has been received from for a Parcel Split that would remove a portion of Vacant Property within the Lakeview Development Area of Harbor Village as shown on drawing by Abonmarche (dated August 23, 2010 Job #10-0129) from Parcel 51-267-050-00.

At this time the Planning Commission could take action on the request to split a portion of vacant property within the Lakeview Development Area of Harbor Village as shown on drawing by Abonmarche (dated August 23, 2010 Job #10-0129) from Parcel 51-267-050-00.

**Ryan Kieszkowski, Oak Grove Cremation Center**

Mr. Kieszkowski was at the August Planning Commission and made an inquiry to the Planning Commission about relocating his facility. The two districts Mr. Kieszkowski inquired about do not provide for a Mortuary. The Planning Commission directed staff to review the two districts and report back to the Commission.

**Medical Marihuana - Zoning Amendment**

The Michigan Medical Marihuana Act was approved by Michigan voters on November 4, 2008. The Planning Commission will begin discussion on the development of ordinance as it relates to Medical Marihuana.

**VII Old Business**

**VIII Public Comments and Communications**

At this time the Chair will ask if there are any public comments.

**IX Correspondence**

At this time the Chair will ask if any correspondence has been received to be read into the record.

**X Staff/Sub-Committee Reports**

At this time the Chair will ask Staff for their report.

At this time the Chair will ask if any of the Sub-Committees have anything to report.

**XI Members Discussion**

At this time the Chair will ask members of the Planning Commission if they have any items they want to discuss.

**XII Adjournment**



PLANNING AND ZONING  
COMMUNITY DEVELOPMENT  
231.398.2805  
FAX 231.723-1546  
www.ci.manistee.mi.us

## MEMORANDUM

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TO: Planning Commissioners  
FROM: Denise Blakeslee   
DATE: August 25, 2010  
RE: September 2, 2010 Planning Commission Meeting

Commissioners, we have the following items on the September 2, 2010 Planning Commission Agenda:

**Former Harbor Village Sales Office, 100 Marina Drive - Parcel Split** - A request has been received for a Parcel Split that would remove the former Harbor Village Sales Office, 100 Marina Drive from parcel 51-51-202-300-00.

**Vacant property located Lakeview Development Area of Harbor Village - Parcel Split** - A request has been received from for a Parcel Split that would remove a portion of Vacant Property within the Lakeview Development Area of Harbor Village.

**Ryan Kieszkowski, Oak Grove Cremation Center** - Mr. Kieszkowski was at the August Planning Commission and made an inquiry to the Planning Commission about relocating his facility. The two districts Mr. Kieszkowski inquired about do not provide for a Mortuary. The Planning Commission directed staff to review the two districts and report back to the Commission.

**Medical Marihuana - Zoning Amendment** - The Michigan Medical Marihuana Act was approved by Michigan voters on November 4, 2008. The Planning Commission will begin discussion on the development of ordinance as it relates to Medical Marihuana.

If you are unable to make the meeting please call or leave a message 398-2805.

djb



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## MEMORANDUM

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TO: Planning Commission

FROM: Jon R. Rose   
Community Development Director

DATE: August 25, 2010

RE: DSLT, Inc. (Harbor Village) Parcel Splits

Commissioners, a request has been received from DSLT, Inc. (Harbor Village) for two parcel Splits. This property has been deeded to First Michigan Bank who is in the process of selling the properties. The background is as follows:

In June 2008 an Amended Special Use Permit for a Planned Unit Development (PUD) was recorded for DSLT, Inc. (commonly known as Harbor Village). This permit includes set-back/density requirements for the project (attached).

### **Former Sales Office, 100 Marina Drive:**

- ▶ DSLT has deeded the former sales office building at 100 Marina Drive (built circa 1990) to First Michigan Bank.
- ▶ The building is accessed by Marina Drive which is a private road within the PUD.
- ▶ Parking area is not included within the proposed split. Depending on the use of the building, parking requirements would be between 2 and 14 spaces.

*Review of the request shows that the set-back requirements of the PUD have been met, but the proposed split does not meet the requirements to provide ingress/egress and off street parking. It is staff recommendation that this request be denied or postponed until such time as these zoning requirements are met.*

**Vacant property located in the Lakeview Development Area:**

- ▶ Undeveloped parcel no set/back density concerns.
- ▶ Parcel fronts on Fifth Avenue, access from private street not necessary.
- ▶ Parking and Building set-backs would need to meet requirements of the PUD when developed.

*Review of the request shows that the requirements of the PUD/Zoning Ordinance have been met. Staff recommends the Planning Commission make a recommendation to City Council to approve the request.*



2008R004080

USE PERMIT

PENNY A. PEPERA - REGISTER OF DEEDS  
MANISTEE COUNTY, MICHIGAN  
RECORDED ON  
06/27/2008 02:59:16PM

REC FEE: 35.00  
PAGES: 8

SPECIAL USE PERMIT  
AS AMENDED

CITY OF MANISTEE  
70 Maple Street, P.O. Box 358  
Manistee, Michigan 49660

RECEIVED

JUN 27 2008

REGISTER OF DEEDS

This SPECIAL USE PERMIT, herein after referred to as the permit, is granted pursuant to the authority granted in Article 18: Standards and Requirements for Special Uses, of the Manistee City Zoning Ordinance, effective March 27, 2006.

Name of Property Owner/ Permit Holder: DSLT, Inc.  
Mailing Address: 100 Marina Drive  
Manistee, MI 49660

Description of Property affected by Special Use Permit: See Attachment A

Description of Special Use Granted, as Permitted in Article #8, Section #803.N Planned Unit Development  
Special Use Permit Application #PC2008-05- as Approved by the Planning Commission on May 1, 2008

PERMIT CONDITIONS AND REQUIREMENTS:

This permit is issued, subject to the following conditions and/or requirements:

This PUD encompasses the property of, and is based on and amends, the previous PUD known as Harbor Village at Manistee Beach, as amended through April 18, 1995.

As a condition of granting this Special Use Permit, all further development at this site and all future amendments to the PUD shall be subject to the Manistee City Zoning Ordinance of March 27, 2006 as amended. The issuance of this Special Use Permit and changing to the current Zoning Ordinance in no way changes, mitigates, or amends the contract between the developers and the City known as the Development Agreement.

This Special Use Permit is flexible by design. It is intended to give the developer some freedom to react to market and demographic changes. To the degree that this text and the attached plan titled Harbor Village at Manistee Beach - Master Site Plan dated 4/24/02 prepared by Abonmarche Consultants, Inc. Job No. M11094MP enable detailed approval, such approval is given. However, the nature of such flexibility requires that the Planning Commission retain the right for detailed plans of each Planning Area. Planning Area approval will be guided by the concepts approved herein, but the right to determine if a final plan coincides with these concepts is reserved by the Planning Commission exercising sound planning judgement which may not be arbitrary and capricious. [Annotation: Master Site Plan was approved by the Zoning Administrator reflecting actual Planning Areas with current names as a Minor Amendment on August 22, 2006]

As is the case for the remainder of the city, site plan review for the siting of an individual Single Family building shall be performed by the Zoning Administrator. The Zoning Administrator may choose to refer Single Family site plans to the Site Plan Review Committee or Planning Commission. The Planning Commission may at any time choose to assume the responsibility for Single Family site plan review.

Definitions:

APARTMENT

A residential unit in a complex of three or more units. Unit shall have less than 800 square feet of living area and be located in the Brookharbor or the Harborside East area.

CONDO

All residential units which are not Apartments or Single Family.

|               |  |
|---------------|--|
| HEIGHT        | The distance from the highest part of the building, excluding chimneys, vents, antennas, etc., to a point midway between the highest and lowest grade at the building. |
| PLANNING AREA | The eight distinct use areas identified on the attached drawing and referred to in sections one through eight.   |
| SINGLE FAMILY | A detached building containing only one dwelling unit or a building containing two units in Harbor Point Estates.  |

Planning Areas referenced herein are shown on the attached plan which is included solely for the purpose of identifying the Planning Areas and to show the general PUD concept. In general the Planned unit Development includes:

1. Marina. Total boat slips shall not exceed 223.
2. Harborside East Area. The maximum number of residential units in Harbor Side East shall not exceed 75. The maximum number of Condo units shall not exceed 75. The maximum number of Apartment units shall not exceed 75. The maximum number of buildings shall not exceed 30. The maximum number of units per building shall not exceed 25. Building height shall not exceed 35 feet.
3. Lakeview Area. The maximum number of residential units in Lakeview shall not exceed 110. The maximum number of residential buildings shall not exceed 14. The maximum number of units per building shall not exceed 12. Building height shall not exceed 39 feet. A greenbelt separation shall be required in this area where it adjoins property not owned by the developers. This greenbelt shall be a minimum of ten feet wide. Accessory buildings are allowed and may encroach into the setback and greenbelt.
4. Harbor Point Estates Area. The maximum number of residential units in Harbor Point Estates shall not exceed 10. The maximum number of buildings shall not exceed 10. The maximum number of units per bundling shall not exceed 2. The Aggregate square footage of all buildings area (not including decks) shall not exceed 25,000 square feet. Building height shall not exceed 30 feet. A greenbelt separation shall be required in this area where it adjoins property not owned by the developers. This greenbelt shall be a minimum of ten feet wide. A 63 foot setback shall be maintained from the extended centerline of Fourth Avenue. There shall be no Condos or Apartments. The southernmost two units shall be detached single family, and the balance shall be limited to single family detached to two attached single family.
5. The Cottages. The maximum number of residential units in The Cottages shall not exceed 34. The maximum number of buildings shall not exceed 35. The aggregate square footage of all first floor living areas shall not exceed 45,000 square feet. All residential units shall be detached Single Family. Building height shall not exceed 25 feet. A greenbelt separation shall be required in this area where it adjoins property not owned by the developers. This greenbelt shall be a minimum of ten feet wide.
6. Brookharbor. The maximum number of residential units in the Brookharbor area shall not exceed 72. The maximum number of residential buildings shall not exceed 16. The maximum number of units per building shall be 8. Building height shall not exceed 35 feet. Non residential buildings are subject to additional review during detailed Planning Area review.
7. Harborside West. The maximum number of residential units in the Harborside West area shall not exceed 28. The maximum number of buildings shall not exceed 13. The maximum number of units per building shall not exceed 8. Building height shall not exceed 35 feet. A minimum setback of 20 feet from the right-of-way of Lakeshore Drive shall be maintained.
8. Lakeshore. The maximum number of residential units in the Lakeshore area shall not exceed 44. The maximum number of buildings shall not exceed 20. The maximum number of units per building shall not exceed 8. Building height of the North three buildings shall not exceed 32 feet. Building height of the remaining buildings shall not exceed 39 feet. A minimum setback of 20 feet from the right-of-way of Lakeshore Drive shall be maintained.
9. Meadow Pond and Landscaping. As Built
10. Parking requirements shall be as approved in the Zoning Ordinance, except that one parking space shall be required for each Apartment unit.

11. Those parts of Section 804.4 of the zoning ordinance which address water front yard and slope restrictions contained else where in the ordinance are waived through prior rights under the existing PUD. This grandfathering of rights is granted in the interest of bringing the project under the current zoning ordinance.
12. Commercial Activity within the Harbor Village project shall be limited to the Brookharbor and, for Ship Store and Gas Dock only, Harborside East Area. Commercial Activity shall be limited to the following identified activities, each of which shall be limited to a maximum of 3,000 square feet of gross floor area
  - ▶ Restaurant
  - ▶ Retail
  - ▶ Lounge
  - ▶ Shop Store and Gas Dock

The total square footage of all commercial activities shall be limited to 10,000 square feet.

Administration, Property Management, and related activities and facilities (such as Clubhouse, Fish Cleaning, Exercise Room, etc.) are permitted, but are not considered Commercial Activities.

13. Unit sizes are not subject to the minimums established in Section 804.6 of the Zoning Ordinance.
14. Maximum densities provided for are limited by contractual maximum densities for the entire project. Gross project land area is 47.5 acres and net land area in the project is 41.8 acres. The following land requirements apply using net acreage: 1/3 acre per *Single Family* dwelling (detached or attached), 1/10 acre per *Condo* unit, and 1/16 acre per *Apartment*.
15. Foundation coverage is limited by the Development Agreement to 11.88 acres.
16. With the exceptions noted herein, a 25 foot setback shall be maintained from the right-of-way of all public roads.
17. No building shall be closer than 15 feet from another building, and there shall be at least 20 feet of separation on three sides of the building.
18. The Zoning Administrator is allowed to approve Deck Extensions in "Limited Common Elements" areas of Harbor Point Estates, Harborside West, Lakeshore, and Lakeshore II Condominium Associations. [Annotation Item 18 was added as approved by the City of Manistee Planning Commission after a Public Hearing Held on May 1, 2008]

[Annotation Various items throughout document were changed to reflect the City of Manistee Zoning Ordinance adopted March 27, 2006.]

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#### TRANSFER OF PERMIT

This permit is transferable only in accordance with Article 18, Section 1801.H of the ordinance.

#### EXPIRATION OF PERMIT (as per Article 18 Section 1801.I):

A Special Use permit shall be valid for as long as the approved use continues in accordance with the terms and conditions of the approved permit. The Special Use permit will expire on the occurrence of one or more of the following conditions:

1. If replaced or superseded by a subsequent permitted use or Special Use permit.
2. If the applicant requests the rescinding of the Special Use permit.
3. If a condition of approval included stipulation to expire the Special Use permit by a certain date.
4. If the use is abandoned, moved or vacated for a period of one year.

#### VIOLATIONS OF PERMIT (see Article 18 Section 1801.J):

Any violation of the terms, conditions or limitations of a Special Use permit shall be cause for revocation or suspension of the permit. The Planning Commission may either revoke or suspend, pending correction of the violation, any Special Use permit. The act to revoke or suspend the permit shall occur after giving notice to the permit holder, specifying the alleged violation(s) and disclosing when a hearing will be held on the matter. The notice shall be delivered by registered mail. Any interested party may appear in person or by attorney at the hearing. The act to revoke or suspend the permit shall occur after or at the hearing on the matter. Before revoking or suspending the permit, the Planning Commission shall make a finding that a material violation of the Special Use permit exists. The permit holder shall be given reasonable opportunity to correct the violation(s).

CERTIFICATION OF PERMIT

The above SPECIAL USE PERMIT was granted by the Manistee City Planning Commission pursuant to the requirements of the Manistee City Zoning Ordinance.

DATE OF APPROVAL: May 1, 2008

CITY OF MANISTEE

STATE OF MICHIGAN )
) SS.
COUNTY OF MANISTEE )

[Signature] 5/9/08
Jon R. Rose Dated
Zoning Administrator

On May 9, 2008, before me, a Notary Public in and for said County, personally appeared Jon R. Rose, to me known to be the same person described in and who executed the within instrument, who acknowledged the same to be his free act and deed.

Notary's Stamp
(Notary's name, county, acting in County, and Date Commission expires)

DENISE J. BLAKESLEE
NOTARY PUBLIC, STATE OF MI
COUNTY OF MANISTEE
MY COMMISSION EXPIRES Apr 2, 2013
ACTING IN COUNTY OF Manistee

[Signature]
Notary's Signature

ACKNOWLEDGMENT & RECEIPT OF PERMIT

I (we) the undersign do hereby certify that I am (we are) the person(s) listed above as the special use permit holders of their authorized legal representative. I (we) do further certify that I (we) have read, understand and agree to comply with all of the requirements and conditions of this permit, as listed above and in the Manistee City Zoning Ordinance.

DSLT, INC

STATE OF MICHIGAN )
) SS.
COUNTY OF MANISTEE )

[Signature] 6/3/2008
Cynthia A. Fuller, Vice President Date

On June 3, 2008, before me, a Notary Public in and for said County, personally appeared Cynthia A. Fuller, to me known to be the same person described in and who executed the within instrument, who acknowledged the same to be her free act and deed.

Notary's Stamp
(Notary's name, county, acting in County, and Date Commission expires)

MICHELLE WRIGHT
Notary Public - State of Michigan
County of Manistee
My Commission Expires 07-27-2013

[Signature]
Notary's Signature

Prepared by:
JON R. ROSE
COMMUNITY DEVELOPMENT DIRECTOR
CITY OF MANISTEE
70 Maple Street, P.O. Box 358
Manistee, MI 49660
231.398-2805

## ATTACHMENT A

The Cottages Condominium according to the Master Deed recorded in Liber 597 at Pages 001 through 068, inclusive, Manistee County Records; as amended

BrookHarbor Condominium according to the Master Deed recorded in Liber 602 at Pages 383 through 450, inclusive, Manistee County Records;

Harbor Village Marina Condominium according to the Master Deed recorded in Liber 564 at Page 299, Manistee County Records, as amended;

Harbor Point Estates Condominium according to the Master Deed recorded in Liber 0640 at Pages 532 through 598, inclusive, Manistee County Records;

HarborSide East Condominium according to the Master Deed recorded in Liber 649 at Pages 594 through 657, inclusive, Manistee County Records, as amended;

HarborSide Condominium according to the Master Deed recorded in Liber 564 at Pages 232 through 298, inclusive, Manistee County Records;

Lakeview Condominium according to the Master Deed recorded in Liber 671 at Pages 0001 through 0054, inclusive, Manistee County Records, as amended;

LakeShore Residential Condominium according to the Master Deed recorded in Liber 548 at Pages 0408 through 0467, inclusive, Manistee County Records;

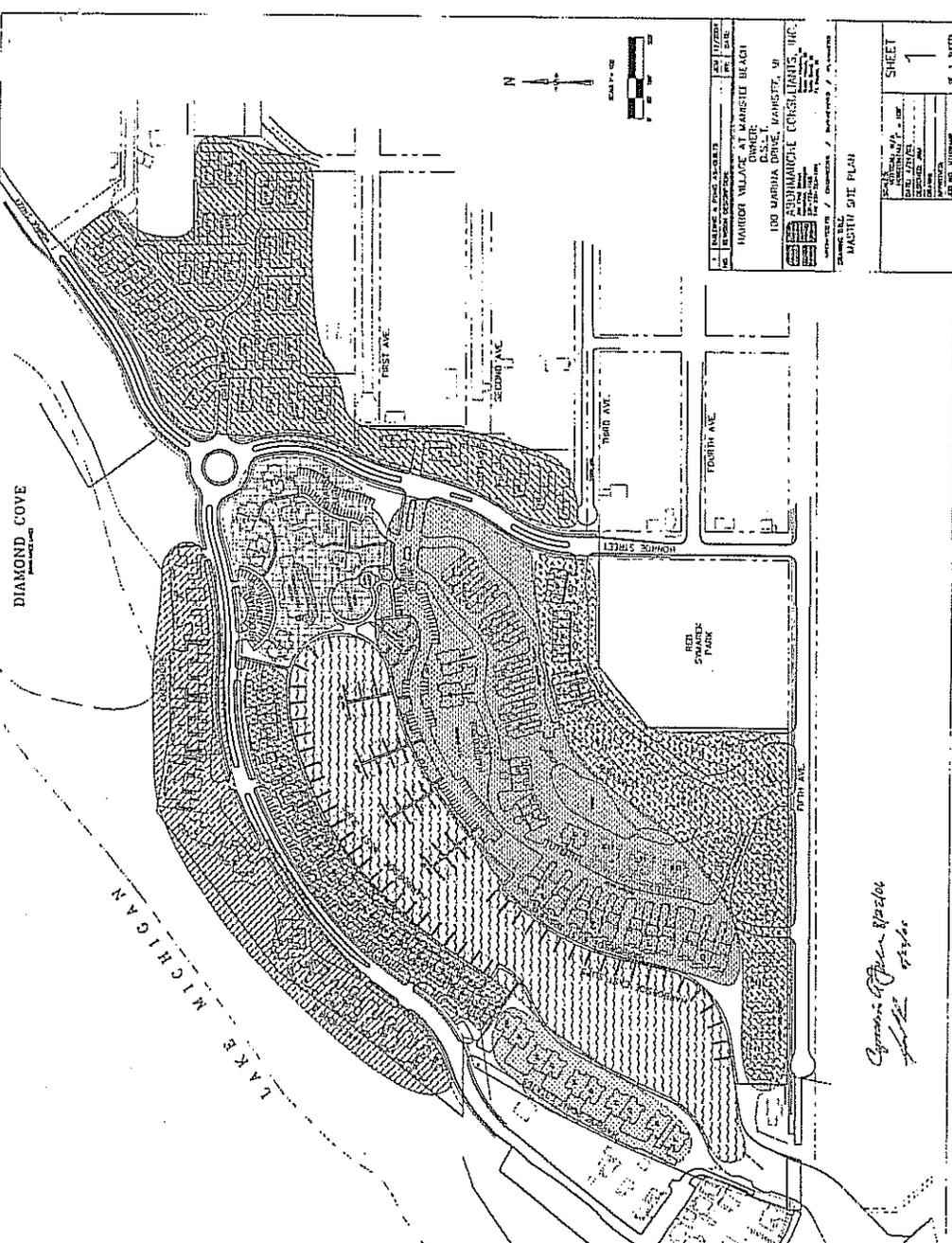
LakeShore II Condominium according to the Master Deed recorded in Liber 692, Page 606, re-recorded in Liber 696, Page 731, and amended in Liber 779, page 519, and as described in Act 59 of P.A. of 1978, as amended.

Harbor Village Storage Condominium according to the Master Deed recorded in Liber 743 at Pages 751 through 792, inclusive, Manistee County Records;

North Pier Condominium according to the Master Deed recorded in Liber 0985 at Pages 0255 through 0306, inclusive, Manistee County Records, as amended;

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- PLANNING AREAS**
- UNDEVELOPED
  - INDUSTRIAL
  - RESIDENTIAL
  - COMMERCIAL
  - OFFICE
  - RECREATION
  - OPEN SPACE
  - UTILITY
  - TRANSPORTATION
  - WATER
  - WETLANDS
  - WOODLAND
  - AGRICULTURE
  - FOREST
  - WATERWAY



PROJECT NO. 100-100-100-100  
 DATE 1/1/00  
 DRAWN BY J. J. J. J.  
 CHECKED BY J. J. J. J.  
 APPROVED BY J. J. J. J.  
 PROJECT TITLE  
 MANOR VILLAGE AT MANCHESTER BLVD  
 100 MANOR BLVD, MANCHESTER, NH  
 03103  
 PROJECT NO. 100-100-100-100  
 DATE 1/1/00  
 DRAWN BY J. J. J. J.  
 CHECKED BY J. J. J. J.  
 APPROVED BY J. J. J. J.  
 PROJECT TITLE  
 MANOR VILLAGE AT MANCHESTER BLVD  
 100 MANOR BLVD, MANCHESTER, NH  
 03103

SHEET  
 1  
 OF 1 SHEETS

*Charles J. J. J.*

MANCHESTER RIVER

City of Manistee  
Planning Commission Resolution to Amend  
Special Use Permit for a Planned Unit Development  
Case Number PC-2008-05  
Manistee Village Partners  
a.k.a. DSLT, Inc. For Harbor Village at Manistee Beach

At a regularly scheduled meeting of the City of Manistee Planning Commission held on May 1, 2008, the following resolution was adopted to approve amending a Special Use Permit for a Planned Unit Development for Manistee Village Partners a.k.a. DSLT, Inc. For Harbor Village at Manistee Beach as submitted with application/case number PC-2008-05 to allow the Zoning Administrator to approve Deck Extensions in "Limited Common Elements" areas of Harbor Point Estates, Harborside West, Lakeshore, and Lakeshore II Condominium Associations.

Planning Commissioner Ben Bifoss moved, supported by Planning Commissioner Eric Gustad, the adoption of the following resolution.

WHEREAS, a Special Use Permit for a Planned Unit Development (PUD) was issued to Manistee Village Partners on March 25, 1994 which amended the previous PUD known as Harbor Village at Manistee Beach, and

WHEREAS, an amendment was made to the PUD on April 18, 1995 for a minor change to the number of buildings in item #7 Harbor Side West from 8 to 13, and

WHEREAS, on March 11, 2008 an application was received requesting an amendment to said Special Use Permit for a Planned Unit Development, and

WHEREAS, on April 8, 2008 the Site Plan Review Committee reviewed the request as required under Section 1870.E of the City of Manistee Zoning Ordinance adopted March 17, 2006, and

WHEREAS, the Site Plan Review Committee reviewed the request and made a recommendation to the Planning Commission for their next regularly scheduled meeting on May 1, 2008, and

WHEREAS, the Planning Commission has provided proper notice and held a public hearing on the proposed Amendment to the PUD on May 1, 2008, and

WHEREAS, the Planning Commission has received written comment, reviewed the areas of "Limited Common Elements" in the Harbor Point Estates, Harborside West, Lakeshore, and Lakeshore II Condominium Associations, and has completed review of the application, input of the Applicant and the input received at said public hearing.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

That the Special Use Permit for a Planned Unit Development that was issued to Manistee Village Partners (a.k.a. DSLT, Inc. For Harbor Village at Manistee Beach) on March 25, 1994 as amended on April 18, 1995, be further amended by adding item #18 as follows:

18. The Zoning Administrator is allowed to approve Deck Extensions in "Limited Common Elements" areas of Harbor Point Estates, Harborside West, Lakeshore, and Lakeshore II Condominium Associations.

CITY OF MANISTEE PLANNING COMMISSION:

AYES: Bifoss, Slawinski, Crockett, Barry, Gustad, Fortier

ABSTAINING: Haines

NAYS: None

ABSENT: Albee, Yoder

MOTION: X CARRIED NOT CARRIED

CERTIFICATION:

I, Maureen Barry, Secretary of the City of Manistee Planning Commission certify that the foregoing is a true and complete record of action taken by the Planning Commission at their regular meeting of May 1, 2008

Maureen A Barry 6/6/08  
Maureen Barry, Secretary

## Request to Split a Parcel

Name and Address of Applicant: DSL, INC., 970 N  
RIVERSIDE AVENUE, ST. CLAIR, MI  
48079

Signature Fredrick J. Moore

Phone Numbers: Home 810-329-2464 Work (810) 329-<sup>3100</sup>~~4000~~

Name and Address of other parties who have an interest: FIRST  
MICHIGAN BANK, 525 WATER  
STREET, PORT HURON, MI

Signature  W. Kelly

Phone Numbers: Home \_\_\_\_\_ Work 810-990-1890

Parcel Identification Numbers for all parcels involved: 51-51-202-300-00  
51-51-267-050-00

Reason for request: PENDING SALES

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attach a sketch or site plan of all parcels involved in the request. The sketch must include the location of buildings and/or structures, building set-backs, streets, street names and lot dimensions.

Fee: \$100.00 for first split + \$50.00 for each additional split. Receipt # \_\_\_\_\_

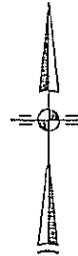
# CERTIFICATE OF SURVEY

I, PATRICK G. BENTLEY, LICENSED PROFESSIONAL SURVEYOR NO. 47944 IN MICHIGAN, CERTIFY THAT THIS DRAWING IS AN ACCURATE REPRESENTATION OF A BOUNDARY SURVEY PERFORMED UNDER MY DIRECTION FOR THE FOLLOWING DESCRIBED PARCEL OF LAND.

SEE SHEET 2 OF 2 FOR LEGAL DESCRIPTION.

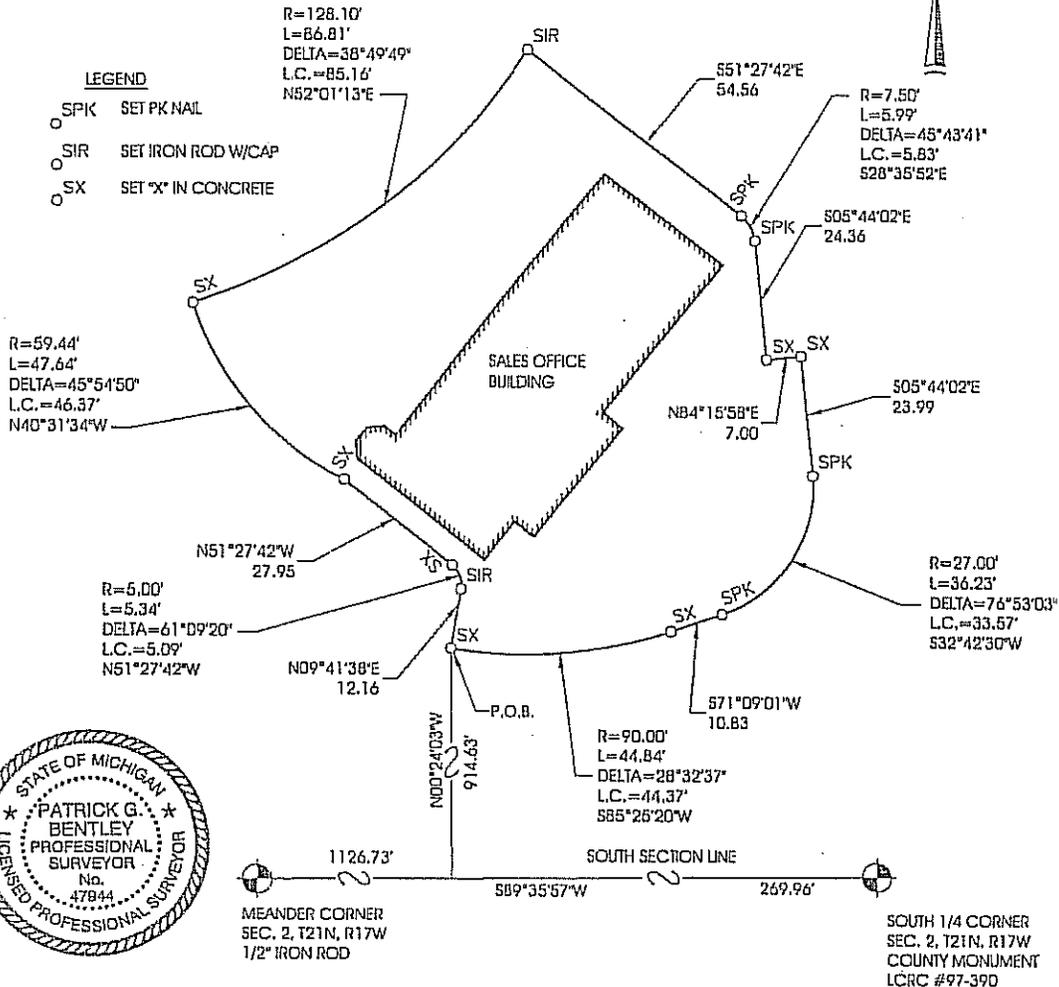


NOTE:  
THE BEARINGS ARE BASED ON THE SOUTH LINE OF SECTION 2 AS RECORDED IN THE DEED - DOCUMENT NUMBER: 2009R006463.



**LEGEND**

- SPK SET PK NAIL
- SIR SET IRON ROD W/CAP
- SX SET "X" IN CONCRETE



*Patrick G. Bentley*  
 PATRICK G. BENTLEY  
 LICENSED PROFESSIONAL SURVEYOR No. 47944  
 ABONMARCHÉ CONSULTANTS, INC.

7-2-10  
 DATE OF CERTIFICATE

THIS SURVEY WAS BASED ON THE INCLUDED LEGAL DESCRIPTION AS IT APPEARS ON A DEED OR TITLE INSURANCE POLICY PROVIDED TO US BY THE PERSON TO WHOM THE SURVEY IS CERTIFIED, AND SHOULD BE COMPARED WITH THE ABSTRACT OF TITLE OR TITLE INSURANCE POLICY FOR ACCURACY, EASEMENTS OR EXCEPTIONS. ANY WRITTEN OR UNWRITTEN RIGHTS OF ADJOINERS ARE UNKNOWN UNLESS SPECIFICALLY NOTED. THE SURVEYOR'S LIABILITY FOR ANY AND ALL CLAIMS, INCLUDING BUT NOT LIMITED TO THOSE ARISING OUT OF THE SURVEYOR'S PROFESSIONAL SERVICES, NEGLIGENCE, GROSS MISCONDUCT, WARRANTIES OR MISREPRESENTATIONS SHALL BE DEEMED LIMITED TO AN AMOUNT NO GREATER THAN THE SERVICE FEE.

|  |   |   |                     |                        |                 |  |
|--|---|---|---------------------|------------------------|-----------------|--|
| PREPARED FOR:<br><br>FIRST MICHIGAN BANK | 361 First Street<br>Monticello, MI 49760<br>T 231.723.1198<br>F 231.723.1194<br>www.abonmarche.com<br><b>ABONMARCHÉ</b><br>Confidence By Design | ENGINEERING<br>ARCHITECTURE<br>MARINA/WATERFRONT<br>SURVEYING<br>LANDSCAPE ARCHITECTURE<br>PLANNING | BENTON HARBOR, MI.  | SOUTH BEND, IN.        | FORT WAYNE, IN. |  |
|  |   |   | DATE: JUNE 30, 2010 | SCALE: 1" = 30'        |                 |  |
|  |   |   | DRAWN BY: PGB       | SEC. 2 T. 21N. R. 17W. |                 |  |
|  |   |   | APPROVED BY: -      | TWP: -                 |                 |  |

JOB NO. 10-0414

# CERTIFICATE OF SURVEY

I, PATRICK G. BENTLEY, LICENSED PROFESSIONAL SURVEYOR NO. 47944 IN MICHIGAN, CERTIFY THAT THIS DRAWING IS AN ACCURATE REPRESENTATION OF A BOUNDARY SURVEY PERFORMED UNDER MY DIRECTION FOR THE FOLLOWING DESCRIBED PARCEL OF LAND.

PARCEL 1: FROM DEED RECORDED IN DOCUMENT NUMBER 2009R006463, MANISTEE COUNTY RECORDS.

PART OF SECTION TWO (2), TOWNSHIP TWENTY-ONE (21) NORTH, RANGE SEVENTEEN (17) WEST DESCRIBED BELOW:

A PARCEL OF LAND LOCATED IN THE SOUTHWEST ONE-QUARTER OF SECTION 2, TOWNSHIP 21 NORTH, RANGE 17 WEST, CITY OF MANISTEE, MANISTEE COUNTY, MICHIGAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH ONE-QUARTER POST OF SECTION 2, TOWNSHIP 21 NORTH, RANGE 17 WEST, CITY OF MANISTEE, MANISTEE COUNTY, MICHIGAN; THENCE SOUTH 89°35'57" WEST 269.96 FEET; THENCE NORTH 00°24'03" WEST 914.63 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE NORTH 09°41'38" EAST, 12.16 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE, SAID CURVE HAVING A RADIUS OF 5.00 FEET AND A CENTRAL ANGLE OF 61°09'20"; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE TO THE LEFT, A DISTANCE OF 5.34 FEET, SAID ARC SUBTENDED BY A CHORD WHICH BEARS NORTH 20°53'02" WEST, A DISTANCE OF 5.09 FEET; THENCE NORTH 51°27'42" WEST, 27.95 FEET TO THE POINT OF CURVATURE OF A NON-TANGENT CURVE, SAID CURVE HAVING A RADIUS OF 69.44 FEET AND A CENTRAL ANGLE OF 45°54'50"; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT, A DISTANCE OF 47.64 FEET, SAID ARC SUBTENDED BY A CHORD WHICH BEARS NORTH 40°31'34" WEST, A DISTANCE OF 46.37 FEET TO THE POINT OF CURVATURE OF A NON-TANGENT CURVE, SAID CURVE HAVING A RADIUS OF 128.10 FEET AND A CENTRAL ANGLE OF 38°49'49"; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE TO THE LEFT, A DISTANCE OF 86.81 FEET; SAID ARC SUBTENDED BY A CHORD WHICH BEARS NORTH 52°01'13" EAST, A DISTANCE OF 85.16 FEET; THENCE SOUTH 51°27'42" EAST 54.56 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE, SAID CURVE HAVING A RADIUS OF 7.50 FEET AND A CENTRAL ANGLE OF 45°43'41"; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT, A DISTANCE OF 5.99 FEET, SAID ARC SUBTENDED BY A CHORD WHICH BEARS SOUTH 28°35'52" EAST, A DISTANCE OF 5.83 FEET; THENCE SOUTH 05°44'02" EAST, 24.36 FEET; THENCE NORTH 84°15'58" EAST, 7.00 FEET; THENCE SOUTH 05°44'02" EAST, 23.99 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE, SAID CURVE HAVING A RADIUS OF 27.00 FEET AND A CENTRAL ANGLE OF 76°53'03"; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT, A DISTANCE OF 36.23 FEET, SAID ARC SUBTENDED BY A CHORD WHICH BEARS SOUTH 32°42'30" WEST, A DISTANCE OF 33.57 FEET; THENCE SOUTH 71°09'01" WEST, 10.83 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE, SAID CURVE HAVING A RADIUS OF 90.00 FEET AND A CENTRAL ANGLE OF 28°32'37"; THENCE WESTERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT, A DISTANCE OF 44.84 FEET, SAID ARC SUBTENDED BY A CHORD WHICH BEARS SOUTH 85°25'20" WEST, A DISTANCE OF 44.37 FEET TO THE POINT OF BEGINNING.



*Patrick G. Bentley*

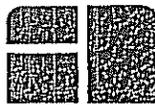
PATRICK G. BENTLEY  
LICENSED PROFESSIONAL SURVEYOR No. 47944  
ABONMARCHE CONSULTANTS, INC.

7-2-10  
DATE OF CERTIFICATE

THIS SURVEY WAS BASED ON THE INCLUDED LEGAL DESCRIPTION AS IT APPEARS ON A DEED OR TITLE INSURANCE POLICY PROVIDED TO US BY THE PERSON TO WHOM THE SURVEY IS CERTIFIED, AND SHOULD BE COMPARED WITH THE ABSTRACT OF TITLE OR TITLE INSURANCE POLICY FOR ACCURACY, EASEMENTS OR EXCEPTIONS. ANY WRITTEN OR UNWRITTEN RIGHTS OF ADJOINERS ARE UNKNOWN UNLESS SPECIFICALLY NOTED. THE SURVEYOR'S LIABILITY FOR ANY AND ALL CLAIMS, INCLUDING BUT NOT LIMITED TO THOSE ARISING OUT OF THE SURVEYOR'S PROFESSIONAL SERVICES, NEGLIGENCE, GROSS MISCONDUCT, WARRANTIES OR MISREPRESENTATIONS SHALL BE DEEMED LIMITED TO AN AMOUNT NO GREATER THAN THE SERVICE FEE.

PREPARED FOR:

FIRST  
MICHIGAN  
BANK



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BENTON HARBOR, MI. SOUTH BEND, IN. FORT WAYNE, IN.

DATE: JUNE 30, 2010

SCALE: N.A.

DRAWN BY: PGB

SEC. 2 T. 21N. R. 17W.

APPROVED BY: -

TWP: -

## Request to Split a Parcel

Name and Address of Applicant: DSLIT, INC., 970 N  
RIVERSIDE AVENUE, ST. CLAIR, MI  
48079

Signature Frederick J. Moore

Phone Numbers: Home 810-329-2464 Work (810) 329-<sup>3100</sup>~~9000~~

Name and Address of other parties who have an interest: FIRST  
MICHIGAN BANK, 525 WATER  
STREET, PORT HURON, MI

Signature  W. [Signature]

Phone Numbers: Home \_\_\_\_\_ Work 810-990-1990

Parcel Identification Numbers for all parcels involved: 51-51-202-300-00  
51-51-247-050-00

Reason for request: PENDING SALES

Attach a sketch or site plan of all parcels involved in the request. The sketch must include the location of buildings and/or structures, building set-backs, streets, street names and lot dimensions.

Fee: \$100.00 for first split + \$50.00 for each additional split. Receipt # \_\_\_\_\_

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 Landscape Architecture  
 311 Pine Street  
 Fort Wayne, IN 46802  
 Phone: 317.233.1111  
 Fax: 317.233.1111  
 www.abonmarche.com

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 FOR PLANNING, IN

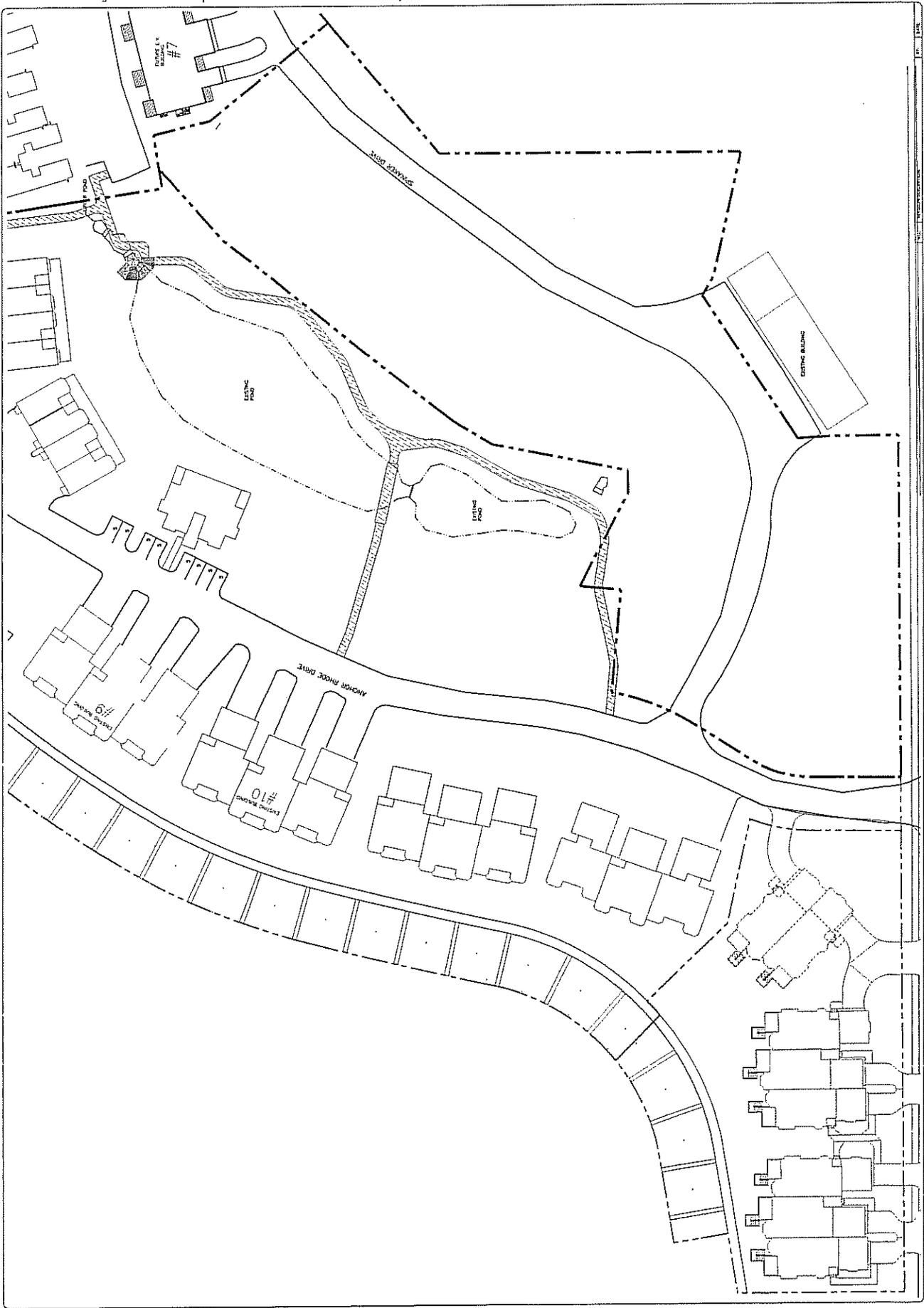
DSLT

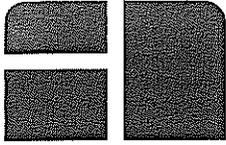
LakeView PFD

DATE: AUGUST 23, 2010  
 SCALE: 1" = 30'  
 SHEET NO. 10-0129

PROJECT NO.  
 SHEET NO.

1 of 1





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MANISTEE, MI  
SOUTH BEND, IN  
FORT WAYNE, IN

# MEMORANDUM

DATE: June 16, 2010  
TO: Cyndy  
FROM: Pat / Gary  
RE: Legal descriptions for PFD1 & the pond

## PDF AREA 1

DESCRIPTION OF A PARCEL OF LAND LOCATED IN SECTION 2, TOWNSHIP 21 NORTH, RANGE 17 WEST, CITY OF MANISTEE, MANISTEE COUNTY, MICHIGAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH QUARTER CORNER OF SECTION 2, TOWNSHIP 21 NORTH, RANGE 17 WEST, THENCE SOUTH 89°35'57" WEST, ALONG THE SOUTH LINE OF SECTION 2, 486.97 FEET; THENCE NORTH 00°24'03" WEST, PERPENDICULAR TO THE SOUTH SECTION LINE, 577.96 FEET TO THE POINT OF BEGINNING; THENCE NORTH 80°23'49" EAST 40.49 FEET; THENCE SOUTH 14°00'19" EAST 44.07 FEET; THENCE SOUTH 39°58'53" EAST 113.82 FEET; THENCE SOUTH 50°01'07" WEST 128.86 FEET; THENCE SOUTH 00°00'39" WEST 223.52 FEET; THENCE NORTH 77°41'16" WEST 95.00 FEET; THENCE NORTH 59°03'30" WEST 16.29 FEET; THENCE SOUTH 56°46'21" WEST 128.46 FEET; THENCE SOUTH 03°38'13" EAST 24.05 FEET; THENCE SOUTH 00°24'37" EAST 51.02 FEET TO THE NORTH RIGHT-OF-WAY LINE OF FIFTH AVENUE; THENCE SOUTH 89°35'23" WEST, ALONG SAID RIGHT-OF-WAY LINE, 254.31 FEET; THENCE NORTH 00°38'27" EAST 68.82 FEET TO A POINT OF INTERSECTION WITH A TANGENT CURVE, SAID CURVE HAVING A RADIUS OF 80.00 FEET, AND A CENTRAL ANGLE OF 32°34'23"; THENCE ALONG THE ARC OF SAID CURVE TO THE RIGHT, A DISTANCE OF 45.48 FEET, SAID ARC SUBTENDED BY A CHORD WHICH BEARS NORTH 16°55'38" EAST 44.87 FEET; THENCE NORTH 33°12'50" EAST 48.92 FEET TO A POINT OF INTERSECTION WITH A TANGENT CURVE, SAID CURVE HAVING A RADIUS OF 170.00 FEET, AND A CENTRAL ANGLE OF 22°44'35"; THENCE ALONG THE ARC OF SAID CURVE TO THE LEFT, A DISTANCE OF 67.48 FEET, SAID ARC SUBTENDED BY A CHORD WHICH BEARS NORTH 21°50'32" EAST 67.04 FEET; THENCE SOUTH 84°34'57" EAST 75.53 FEET; THENCE NORTH 05°25'03" EAST 50.22 FEET; THENCE NORTH 12°51'20" EAST 102.97 FEET; THENCE NORTH 19°20'39" EAST 55.71 FEET; THENCE NORTH 21°05'18" EAST 181.79 FEET; THENCE NORTH 56°23'36" EAST 56.94 FEET; THENCE NORTH 83°59'57" EAST 130.86 FEET; THENCE SOUTH 08°42'51" EAST 78.31 FEET TO THE POINT OF BEGINNING. CONTAINING: 4.28 ACRES, MORE OR LESS.

Name  
Company  
Subject  
Date  
Page

EXCEPT

THE POND

MORE ACCURATELY DESCRIBED AS: A PARCEL OF LAND LOCATED IN FRACTIONAL SECTION 2, TOWNSHIP 21 NORTH, RANGE 17 WEST, CITY OF MANISTEE, MANISTEE COUNTY, MICHIGAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION; THENCE SOUTH 89°35'04" WEST, 702.01 FEET ALONG THE SOUTH LINE OF SAID SECTION; THENCE NORTH 00°24'56" WEST, 233.90 FEET BEING PERPENDICULAR TO SAID SOUTH SECTION LINE TO THE POINT OF BEGINNING; THENCE SOUTH 89°13'09" WEST, 16.65 FEET; THENCE NORTH 62°29'09" WEST, 77.77 FEET TO A POINT ON THE EASTERLY BOUNDARY OF HARBOR SIDE EAST CONDOMINIUM; THENCE ALONG THE EASTERLY BOUNDARY THE FOLLOWING SIX COURSES: THENCE NORTH 05°25'03" EAST, 19.73 FEET; THENCE NORTH 12°51'20" EAST, 102.97 FEET; THENCE NORTH 19°20'39" EAST, 55.71 FEET; THENCE NORTH 21°05'18" EAST, 181.79 FEET; THENCE NORTH 56°23'36" EAST, 56.94 FEET; THENCE NORTH 83°59'57" EAST, 130.86 FEET TO A POINT ON THE WESTERLY BOUNDARY OF LAKEVIEW CONDOMINIUM; THENCE ALONG THE EASTERLY BOUNDARY THE FOLLOWING TWO COURSES: THENCE SOUTH 08°42'51" EAST, 78.31 FEET; THENCE NORTH 80°23'49" EAST, 13.58 FEET; THENCE SOUTH 19°36'28" WEST, 1.71 FEET; THENCE SOUTH 48°29'06" WEST, 69.09 FEET; THENCE SOUTH 38°31'46" WEST, 216.85 FEET; THENCE SOUTH 31°25'27" WEST, 35.18 FEET; THENCE SOUTH 11°05'03" WEST, 53.90 FEET; THENCE SOUTH 11°27'41" WEST, 48.98 FEET TO THE POINT OF BEGINNING; CONTAINING 1.30 ACRES OF LAND, MORE OR LESS.



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## MEMORANDUM

---

TO: Planning Commissioners  
FROM: Denise Blakeslee   
DATE: August 23, 2010  
RE: Staff Review - Mortuary

Good Morning!

Ryan Kieszkowski, Oak Grove Cremation Center was at the August Planning Commission meeting discussing his desire to relocate his facility to either the C-3 or L-I Zoning District.

The Planning Commission asked staff to review the request so they could discuss it at the September 2, 2010 Planning Commission Meeting. The Review is attached.

This item has been placed on the agenda under new business for discussion.

:djb

cc: Ryan Kieszkowski, Oak Grove Cremation Center



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## STAFF REVIEW

---

DATE: August 11, 2010

RE: Mortuary - Zoning Amendment C-3 & L-I Districts

Ryan Kieszkowski - Oak Grove Cremation Center was at the July Planning Commission inquiring about the possibility of amending the Zoning Ordinance to allow a Mortuary in either the C-3 Central Business District or in the L-I Light Industrial Zoning District. Mr. Kieszkowski indicated that he was looking at the building at 129 Washington Street (former Grounds Deli & Café) or building a new structure on a vacant lot (3 acres) in the Light Industrial District.

Mr. Kieszkowski spoke of his desire to re-use an existing building -vs- building a new building. He also indicated that he wanted to discuss the options with the commission prior to spending the money for a Zoning Amendment and Special Use Permit.

While this review will be lengthy there are several elements that need to be covered for the Commission to give Mr. Kieszkowski feedback for his request.

### PROCESS:

Mr. Kieszkowski indicated that the process would be about three months. It needs to be noted that the Zoning Amendment Process will most likely take longer than three months. Currently there are seven amendments that are pending review from the Council Ordinance Review Committee (some have been in process since early spring). After review by the Council Ordinance Review Committee they require discussion at two Council Meetings, and if adopted, take place 10 days later (another two months minimum)

This is a very complex process and it would be advisable for Mr. Kieszkowski to hire a Planning Consultant to assist with the Zoning Amendment Language. In addition to amending the ordinance to allow a Mortuary as a Special Use in either the C-3 or L-I District there are requirements in *Section 1859 Mortuary* that would need to be reviewed and possibly be amended.

In the event that a Zoning Amendment were to be approved by Planning Commission and adopted by City Council after two readings, the Ordinance would be amended. At that point Mr. Kieszkowski could to make application for a Special Use Permit. This would require a Site Plan to be prepared. The Special Use Process could take another two to three months.

A more realistic time frame would be between six to ten months for a Zoning Amendment and Special Use Permit.

**COST:**

Mr. Kieszkowski indicated that he would like some kind of assurance before spending \$1,000 for a Zoning Amendment Request and \$750 for a Special Use Permit. Those fees are only related to the up front costs. Other costs for consultants and engineers would be in addition to the fees. If the City's Planner of Record were to be involved Mr. Kieszkowski would be required to escrow the cost to pay for the service.

As with any request there can be no assurance that the Planning Commission will grant in favor of the applicant. The Commission must take into consideration the impact to the community, neighborhood and public concerns. With Zoning Amendments City Council has final approval.

**REVIEW OF SECTION 1859 MORTUARY:**

The building at 129 Washington Street does not meet several of the Special Use Permit requirements for a Mortuary. While Mr. Kieszkowski has a desire to amend the ordinance to allow a Mortuary at 129 Washington Street, the Commission has the responsibility of determining the impact the Amendment would have on the entire C-3 Zoning District.

**Section 1859 Mortuary (ORDINANCE LANGUAGE APPEARS IN BLUE)**

**A. Definition.** A facility for the preparation of the deceased for burial or cremation and for visitation and for the conduct of memorial and funeral services.

**B. Regulations and Conditions.**

- 1. A proposed Mortuary shall be located on a parcel of **land with a minimum area of one-half (1/2) acre**. Provided, however, that such facility shall not exceed the maximum lot coverage requirements of this ordinance.

***C-3: There are six properties in the C-3 District with key street frontage that meet the current property size requirement of ½ acre in the Special Use Requirements for a Mortuary. Those properties are:***

|   |  |
|---|--|
| <b><i>Huntington Bank</i></b>                     | <b><i>332 First Street</i></b>                     |
| <b><i>Methodist Church,</i></b>                   | <b><i>387 First Street</i></b>                     |
| <b><i>Seng's Vacant Property</i></b>              | <b><i>Corner Pine &amp; First Street</i></b>       |
| <b><i>Oleson's</i></b>                            | <b><i>160 Memorial Drive</i></b>                   |
| <b><i>Vacant Lot, across from The Grounds</i></b> | <b><i>Corner Washington &amp; Third Avenue</i></b> |
| <b><i>Choices</i></b>                             | <b><i>124 Washington Street</i></b>                |

***129 Washington Street - If the size requirement for a Special Use Permit for a Mortuary were reduced to the size of the Grounds Café (7, 200 sq. ft.), a majority of the properties with key street frontage in the C-3 District would be eligible to apply for a Special Use Permit for a Mortuary. Key Street Segments in the C-3 District are:***

|                                 |                                    |                                      |                            |
|---------------------------------|------------------------------------|--------------------------------------|----------------------------|
| <b><i>First Street</i></b>      | <b><i>Maple Street</i></b>         | <b><i>Water Street</i></b>           | <b><i>Fifth Avenue</i></b> |
| <b><i>Washington Street</i></b> | <b><i>Cypress Street/US 31</i></b> | <b><i>Cleveland Street/US 31</i></b> |                            |

*Mr. Kieszkowski spoke of acquiring the vacant parcel across the street for parking. A property on the opposite side of the street could not be combined into "one parcel". To further complicate matters for 129 Washington Street is that the building and vacant property are in different subdivisions. This property would require a Special Use Permit to construct a "Parking Facility".*

*Mr. Kieszkowski indicated that he would like to try to obtain an option on adjoining properties to acquire enough property for parking. Review of all the properties located in the block are as follows:*

|                                  |  |                               |
|----------------------------------|--|-------------------------------|
| <i>51-146-733-01 Dima</i>        | <i>119 Washington Street</i>             | <i>3,600 sq. ft.</i>          |
| <i>51-146-733-02 Cromer</i>      | <i>121 Washington Street</i>             | <i>3,660 sq. ft.</i>          |
| <i>51-146-733-03 Cromer</i>      | <i>125 &amp; 125 ½ Washington Street</i> | <i>7,200 sq. ft./ 2 units</i> |
| <i>51-146-733-05 Carlson</i>     | <i>127 Washington Street</i>             | <i>7,200 sq. ft.</i>          |
| <i>51-146-733-07 The Grounds</i> | <i>129 Washington Street</i>             | <i>7,200 sq. ft.</i>          |

*In the same block but zoned R-2; if combined would require Amending the Zoning Map:*

|                                  |   |                              |
|----------------------------------|---|------------------------------|
| <i>51-146-733-09 Kelley</i>      | <i>185 Taylor Street</i>                    | <i>3,900 sq. ft.</i>         |
| <i>51-146-733-10 Bay Phoenix</i> | <i>183 &amp; 183 ½ Taylor/110 Jefferson</i> | <i>8,520 sq. ft/ 3 units</i> |
| <i>51-146-733-13 Staffeld</i>    | <i>106 Jefferson Street</i>                 | <i>7,200 sq. ft.</i>         |
| <i>51-146-733-15 Kasmowski</i>   | <i>188 Filmore</i>                          | <i>7,200 sq. ft.</i>         |

*These parcels do not front on Washington Street and do not meet the requirement of having "Key Street Frontage". This would result in the need to amend the Parking Facility Standards in the Ordinance.*

*To meet the requirement of a minimum parcel area of one-half (1/2) acre (21,780 square feet), a minimum of three parcels in this block would need to be assembled. An amendment to the Zoning Map may be necessary.*

*If the properties were not contiguous they could not be combined. If the parcels cannot be combined with 129 Washington Street, a Special Use Permit for a "Parking Facility" would be required.*

*L-1: Existing Vacant Lots in the L-1 District are larger than ½ acre in size.*

2. A proposed Mortuary with a total combined seating capacity of one hundred (100) or more shall be regarded as a Large Place of Public Assembly and shall meet the standards of **Section 1868**.
  - a. The use shall be so arranged that adequate assembly area is provided off-street for vehicles to be used in a funeral procession. This assembly area shall be provided in addition to any required off-street parking area.

*C-3: Mr. Kieszkowski indicated a facility with a seating capacity of more than 100. Place of Public Assembly Large is allowed in the C-3 District on Key Streets. C-3 Does not require off Street Parking except for Hotels & Motels.*

*129 Washington Street - does not have room for an assembly area or any off street parking spaces outside the building.*

*L-1: Place of Public Assembly Large is allowed in the L-1 District on Key Streets*

3. A mortuary shall front on and be accessed from a key street segment, as defined herein.

***C-3: Key Streets: First Street, Maple Street, Washington Street, Water Street, U.S. 31/Cypress Street, U.S. 31/Cleveland Street***

***129 Washington Street - fronts on a Key Street Segment***

***L-I: Key Streets: Washington Street & Glocheski Drive. Mr. Kieszkowski would need to verify if the vacant property he spoke of fronts on a Key Street. In the event that it does not than a requirement could be put in the amendment that does not require Key Street Frontage in the L-I District or amend the Key Street Segment and Zoning Map to reflect the change.***

4. Points of ingress and egress for the site shall be designed so as to minimize possible conflicts between traffic on adjacent major thoroughfares and funeral processions or visitors entering or leaving the site.

***129 Washington Street - If the vacant property across the street were acquired for parking, people attending the funeral would have to cross Washington Street to get to the facility. The Planning Commission would need to determine if that would be appropriate.***

***The property across the street cannot be combined with the property at 129 Washington Street because it is located in a different sub-division. To develop the parcel for parking would require a Special Use Permit for a Parking Facility and must meet the standards of Section 1865 Parking Facility.***

***Applicant would need to demonstrate this on the Site Plan included with the Special Use Permit Application.***

5. No building shall be located closer than fifty (50) feet from a property line that abuts any residentially used or zoned property.

***Applicant would need to demonstrate on the Site Plan included with the Special Use Permit Application.***

***129 Washington Street - is adjacent to a residence (127 Washington Street) and does not meet this requirement.***

6. Loading and unloading areas used by ambulances, hearses, or other such service vehicles shall be obscured from all residential view with a wall six (6) feet in height. Evergreen landscaping may also be required by the Planning Commission.
  - a. All required federal, state and local licensing and permits shall be maintained at all times.

***Applicant would need to demonstrate this on the Site Plan/Special Use Permit Application.***

7. A mortuary that includes a crematorium shall not be located in R-2, R-3 or C-2 districts.

***C-3: Would want to consider if a Zoning Amendment were approved that C-3 be included in this requirement.***

***L-I: Would want to consider if a Zoning Amendment were approved that L-I be included in this requirement.***

8. All exterior lighting shall be in accordance with Section 525 hereof.

***Applicant would need to demonstrate this on the Special Use Permit Application.***

9. All signs shall be in compliance with the provisions of Article 21 of this Ordinance.

***Use Type 3, Commercial and Office includes Signage for Mortuary's***

10. All off-street parking shall be in compliance with Section 514 of this Ordinance.

***C-3: Would need determine if parking should be required in C-3; if so then amend Section 514 to include parking as a requirement in C-3.***

***129 Washington Street - Mr. Kieszkowski indicated that the Building at 129 Washington could seat more than people. Places of Public Assembly require 1 space for each 4 seats of legal capacity. As an example: 38 spaces would be required in addition to the assembly area for a facility with 150 seats of legal capacity.***

***Applicant would need to demonstrate this, as it pertains the to the proposed Site, on the Site Plan included with the Special Use Permit Application.***

11. Landscaping and Buffering shall be provided in accordance with Section 531 of this Zoning Ordinance.

***Applicant would need to demonstrate this, as it pertains the to the proposed Site, on the Site Plan included with the Special Use Permit Application***

### **RE-CAP:**

***As with any request for a Zoning Amendment the Planning Commission would need to determine if the proposed use is appropriate for the district. Does the ordinance currently/adequately provide for the use? Is the Amendment consistent with the Purpose and intent of the C-3 Central Business District or the L-I Light Industrial District?***

Converting the Building at 129 Washington Street located in the **C-3 Central Business District** would require a minimum of the following amendments:

- ▶ Amend Article 15 C-3 Central Business District  
Section 1500 Purpose and Intent - Special Uses; ADD Mortuary  
Section 1502 Uses Permitted by Special Land Use Permit; ADD Mortuary
- ▶ Amend Article 7 Districts, Dimensional Standards, Uses Table and Zoning Map  
Table 7-2 Users Permitted by Right and Special Land Use Permit  
ADD Mortuary to table as a SLU\* - Key Street Frontage in C-3
- ▶ Amend Article 18 Standards and Requirements for Special Land Uses  
AMEND various sub-sections - Applicant would need to develop the necessary language

*Staff has noted the following areas of concern:*

*Should a Mortuary with a crematorium be allowed in the C-3 district?*

*Should parking requirements be applied to Mortuary's in the C-3 district? Article 5 General Provisions, Section 514 Vehicular Parking Space, Access and Lighting, Sub-Section F "For all permitted uses and special uses in the C-3 District, except hotels and motels, the parking provisions of this Section shall not apply."*

*While options to purchase may be useful to the developer, there is no way to insure they are exercised. Therefore they should not be considered for future parcel area or parking.*

*There are numerous conflicts with the ordinance created by the proposed Mortuary at 129 Washington Street.*

To Add Mortuary as a Special Use in the **L-I Industrial District** would require at a minimum:

- ▶ Amend Article 16 L-I Light Industrial District
  - Section 1600 Purpose and Intent - Special Uses; ADD Mortuary
  - Section 1602 Uses Permitted by Special Land Use Permit; ADD Mortuary
- ▶ Amend Article 7 Districts, Dimensional Standards, Uses Table and Zoning Map
  - Table 7-2 Users Permitted by Right and Special Land Use Permit
  - ADD Mortuary to table as a SLU\* - Key Street Frontage in L-I

*Staff has noted the following:*

*If Mr. Kieszkowski is looking at a parcel that does not front on a key street the request for a Zoning Amendment would need to incorporate language to allow a Mortuary and Place of Public Assembly in the L-I District without fronting on a key street segment.*

*Should a Mortuary with a crematorium be allowed in the L-I District?*

*The L-I Light Industrial District already allows "Cemetery" as a Special Use. Adding a Mortuary as a Special Use seems appropriate.*

Effective March 27, 2006, as Amended thru December 11, 2008

| USES  | R-1<br>Low Density |      | R-2<br>Med. Density |      | R-3<br>Hi. Density |  | R-4<br>Mfg. Hsing |  | WF<br>Waterfront |  | C-1<br>Reg'l Com. |  | C-2<br>Neigh. Bus. |  | C-3<br>Central Bus. |  | L1<br>Light Industrial |   | G-1<br>Gen'l Industrial |      |
|---|--------------------|------|---------------------|------|--------------------|--|-------------------|--|------------------|--|-------------------|--|--------------------|--|---------------------|--|------------------------|---|-------------------------|------|
|   |                    |      |                     |      |                    |  |                   |  |                  |  |                   |  |                    |  |                     |  |                        |   |                         |      |
| Mortuary  |                    | SLU* |                     |      |                    |  |                   |  | SLU*             |  | SLU*              |  |                    |  |                     |  |                        |   |                         |      |
| Motel   |                    |      |                     |      |                    |  |                   |  | SLU*             |  |                   |  |                    |  |                     |  |                        |   |                         |      |
| Nursing Home or Convalescent Home               |                    |      | SLU*                |      | SLU*               |  |                   |  |                  |  | SLU               |  | SLU                |  |                     |  |                        |   |                         |      |
| Outdoor Recreation, Park                        | R                  |      | R                   |      | R                  |  |                   |  | R                |  | R                 |  | R                  |  |                     |  |                        | R |                         | R    |
| Outdoor Sales Facility                          |                    |      |                     |      |                    |  |                   |  |                  |  | SLU*              |  | SLU*               |  |                     |  |                        |   |                         |      |
| Parking Facility                                |                    | SLU* |                     | SLU* |                    |  |                   |  | SLU              |  | SLU               |  | SLU                |  |                     |  |                        |   |                         | SLU  |
| Personal Service Establishment                  |                    | SLU  |                     | SLU  |                    |  |                   |  | R                |  | R                 |  | R                  |  |                     |  |                        |   |                         |      |
| Place of Public Assembly - Large                |                    | SLU* |                     | SLU* |                    |  |                   |  | SLU*             |  | SLU*              |  | SLU*               |  |                     |  |                        |   |                         | SLU* |
| Place of Public Assembly - Small                | SLU                |      | SLU*                |      | SLU*               |  |                   |  | R                |  | R                 |  | R                  |  |                     |  |                        |   |                         |      |
| Planned Unit Development                        |                    | SLU  |                     | SLU  |                    |  |                   |  | SLU              |  | SLU               |  | SLU                |  |                     |  |                        |   |                         | SLU  |
| Power Generating Facility                       |                    |      |                     |      |                    |  |                   |  |                  |  |                   |  |                    |  |                     |  |                        |   |                         | SLU  |
| Processing and Manufacturing                    |                    |      |                     |      |                    |  |                   |  |                  |  |                   |  |                    |  |                     |  |                        |   |                         | SLU  |
| Professional Office                             |                    |      | SLU*                |      | SLU*               |  |                   |  | R                |  | R                 |  | R                  |  |                     |  |                        |   |                         | R    |
| Professional Service Establishment              |                    |      | SLU*                |      | SLU*               |  |                   |  | R                |  | R                 |  | R                  |  |                     |  |                        |   |                         | R    |
| Research, Testing and Laboratory                |                    |      |                     |      |                    |  |                   |  |                  |  |                   |  |                    |  |                     |  |                        |   |                         | R    |
| Retail Business                                 |                    |      | SLU*                |      | SLU*               |  |                   |  | R                |  | R                 |  | R                  |  |                     |  |                        |   |                         |      |
| Sexually Oriented Business                      |                    |      |                     |      |                    |  |                   |  |                  |  | SLU               |  |                    |  |                     |  |                        |   |                         |      |
| Shipping Facility                               |                    |      |                     |      |                    |  |                   |  | R                |  |                   |  |                    |  |                     |  |                        |   |                         | R    |
| Sports and Recreation Club                      |                    | SLU  |                     |      |                    |  |                   |  | SLU*             |  | R                 |  | SLU*               |  |                     |  |                        |   |                         | SLU* |
| Studio for Performing and Graphic Arts          |                    |      | SLU*                |      | SLU*               |  |                   |  | SLU              |  | R                 |  | R                  |  |                     |  |                        |   |                         |      |
| Subdivision, Plat or Condo. (of permitted uses) | R                  |      | R                   |      | R                  |  |                   |  | R                |  | R                 |  | R                  |  |                     |  |                        |   |                         | R    |
| Tattoo Parlor                                   |                    |      |                     |      |                    |  |                   |  |                  |  | SLU               |  |                    |  |                     |  |                        |   |                         |      |
| Theater   |                    |      |                     |      |                    |  |                   |  | SLU*             |  | R                 |  | SLU*               |  |                     |  |                        |   |                         | SLU* |
| Urgent Care Facility                            |                    |      |                     |      |                    |  |                   |  |                  |  | R                 |  |                    |  |                     |  |                        |   |                         |      |

4. The applicant shall demonstrate that the proposed mixing of uses will not constitute a nuisance to future inhabitants or users of the development, or the City in general.
5. Off-street parking facilities for such mixed uses may be provided collectively, provided that the total number of spaces so located together shall not be less than the sum of the separate requirements for each use, unless the Planning Commission finds that such requirements are may be modified due to varying hours of operation or other factors.
6. A proposed Mixed-Use Development shall be designed in such a manner that will lead to compatible, efficient, and attractive uses of property in the City of Manistee, and shall:
  - a. Encourage unique retail, office and residential use alternatives.
  - b. Continue and augment the City's traditional neighborhood patterns.
  - c. Establish neighborhood places that will define and strengthen the community character and supplement the identity of the City.
  - d. Provide for the redevelopment of underutilized sites.
  - e. Facilitate pedestrian oriented development using design options such as sidewalk cafes, rear parking, residential condominiums above small-scale service uses, and enhanced landscape open spaces, squares, and parks.
7. Vehicular and pedestrian circulation within the development and access to the development shall be safe, convenient, non-congested and well defined. Shared access to parking areas will be required, where appropriate.
8. A Mixed-Use Development shall not infringe unreasonably on any neighboring uses.
9. All signs shall be in compliance with the provisions of Article 21 of this Ordinance.
10. Landscaping and Buffering shall be provided in accordance with Section 531 of this Zoning Ordinance.

## **SECTION 1859 MORTUARY**

A. **Definition.** A facility for the preparation of the deceased for burial or cremation and for visitation and for the conduct of memorial and funeral services.

### **B. Regulations and Conditions.**

1. A proposed Mortuary shall be located on a parcel of land with a minimum area of one-half (1/2) acre. Provided, however, that such facility shall not exceed the maximum lot coverage requirements of this ordinance.
2. A proposed Mortuary with a total combined seating capacity of one hundred (100) or more shall be regarded as a Large Place of Public Assembly and shall meet the standards of Section 1868.

- a. The use shall be so arranged that adequate assembly area is provided off-street for vehicles to be used in a funeral procession. This assembly area shall be provided in addition to any required off-street parking area.
3. A mortuary shall front on and be accessed from a key street segment, as defined herein.
4. Points of ingress and egress for the site shall be designed so as to minimize possible conflicts between traffic on adjacent major thoroughfares and funeral processions or visitors entering or leaving the site.
5. No building shall be located closer than fifty (50) feet from a property line that abuts any residentially used or zoned property.
6. Loading and unloading areas used by ambulances, hearses, or other such service vehicles shall be obscured from all residential view with a wall six (6) feet in height. Evergreen landscaping may also be required by the Planning Commission.
  - a. All required federal, state and local licensing and permits shall be maintained at all times.
7. A mortuary that includes a crematorium shall not be located in R-2, R-3 or C-2 districts.
8. All exterior lighting shall be in accordance with Section 525 hereof.
9. All signs shall be in compliance with the provisions of Article 21 of this Ordinance.
10. All off-street parking shall be in compliance with Section 514 of this Ordinance.
11. Landscaping and Buffering shall be provided in accordance with Section 531 of this Zoning Ordinance.

**SECTION 1860      RESERVED**

**SECTION 1861      MOTEL**

- A. **Definition.** An establishment providing sleeping accommodations to the general public with a majority of all rooms having direct access to the outside without the necessity of passing through the main lobby of the building, as distinguished from a boarding house, hotel, lodging house, or an apartment.
- B. **Regulations and Conditions.**
  1. The property shall be suitable for transient lodging facilities with overnight lodgers staying typically not longer than seven (7) nights.
  2. A Motel that includes auditorium or public meeting space shall be further regulated under the provisions of Places of Public Assembly, per Section 1868, and a Motel that includes an Eating and Drinking Establishment shall be further regulated by the provisions of

## **SECTION 1865      PARKING FACILITY**

A. **Definition.** A parking area used to temporarily store motor vehicles.

B. **Regulations and Conditions.**

1. A Public Parking Facility shall be designed in accord with the standards of Section 514 of this Ordinance.
2. Landscaping and Buffering shall be provided pursuant to standards set forth in of Section 531 of this Zoning Ordinance; provided, that landscaping and buffering shall be provided to screen any Parking Facility from an adjacent residentially zoned or used parcel.
3. All exterior lighting shall be in accordance with Section 525 hereof.
4. The applicant shall demonstrate to the Planning Commission the need for the proposed parking facility, and also the sufficiency of the spaces provided to meet the needs of adjacent land uses.
5. A site plan shall be submitted illustrating clearly marked circulation patterns. The City shall retain the right to approve or deny locations of curb cuts, spaces, and drive aisles.
6. Within the R-2, R-3 districts, a Parking Facility shall front on a key street segment, as defined herein.

[Annotation: Definition was changed deleting Language "available to the public, with or without fee", Item #2 had Language "Public" deleted, Item #6 was added by amendment 08-02, effective 2/29/08]

## **SECTION 1866      RESERVED**

## **SECTION 1867      PERSONAL SERVICE ESTABLISHMENT**

A. **Definition.** An establishment engaged in providing services involving the care of a person or his or her personal goods or apparel, including linen supply, beauty shops, barbershops, shoe repair, health clubs and similar facilities.

B. **Regulations and Conditions.**

1. Such facilities shall be located, designed or incorporate measures satisfactory to the Planning Commission such that no objectionable noise, odor or fumes shall be carried onto adjoining property located within the R-1, R-2, R-3 or R-4 districts.
2. Any dumpsters on site shall be enclosed on four (4) sides with an opaque fence equipped with a lockable gate, and shall not be visible from any lot line.
3. As a condition of approval, the Planning Commission establish hours of operation for a Personal Service Establishment, if in the judgment of the Planning Commission such restrictions are needed to assure the compatibility of the facility with neighboring uses.
4. The exterior of the building shall be compatible with, and similar to, neighboring uses.
5. All exterior lighting shall be in accordance with Section 525 hereof.

**SECTION 514 VEHICULAR PARKING SPACE, ACCESS AND LIGHTING**

A. For each principal building or establishment hereafter erected or altered and located in any Zoning District, including buildings and structures used principally as places of public assembly, there shall be provided and maintained suitable space off the public right-of-way which is adequate for the parking or loading of motor vehicles in the proportions shown below. The parking spaces called for hereunder shall be considered minimum requirements under this Ordinance. Where more than one use exists or is proposed on a parcel, the minimum shall be the sum of the required parking for each use, except where it is demonstrated to the Commission that such provisions would be excessive, in which case shared parking may be permitted.

| <u>Use</u>   | <u>Number of Parking Spaces Per Unit of Measure</u>   |
|--|---|
| 1. Dwellings   | Two (2) spaces for each dwelling unit for single family, duplex units and mobile homes, 2 per dwelling unit for multiple family |
| 2. Hotels, Motels, Inns and Transient Lodging Places | One (1) space for each unit.  |
| 3. Hospitals, Nursing and Personal Care Facilities   | One (1) space for each four beds, and one (1) space for each employee.  |
| 4. Places of public assembly                         | One (1) space for each four seats of legal capacity.  |
| 5. Medical clinics and medical and dental offices    | Three and one half (3.5) spaces for each 1,000 square feet of office space.   |
| 6. Offices, other than medical or dental clinics     | One (1) space for each 250 square feet of office space.   |
| 7. Eating and drinking establishments                | One (1) space for each three seats of legal seating capacity.   |
| 8. Retail establishments                             | One (1) space for each 450 square feet of floor area dedicated to retail activity, exclusive of storage areas.                  |
| 9. Industrial and warehouse uses                     | The greater of one (1) space for each 1,000 square feet of floor area, or one space for each employee in the largest shift.     |

B. In the case of uses or businesses not addressed in paragraph A hereof the required parking shall be determined by the Zoning Administrator, subject to Planning Commission

concurrency. The latest edition of the Institute of Traffic Engineers *Parking Generation* shall be consulted in determining a parking requirement for any such use or business.

C. The minimum dimensional standards for parking spaces and aisles shall be as follows.

**Minimum Parking Space and Maneuvering Lane Standards**

| Parking Pattern | Lane Width   |              | Parking Space             |                            | Total Width of Two Tiers Plus Lane |              |
|-----------------|--------------|--------------|---------------------------|----------------------------|------------------------------------|--------------|
|                 | One-way (ft) | Two-way (ft) | Width <sup>(1)</sup> (ft) | Length <sup>(2)</sup> (ft) | One-way (ft)                       | Two-way (ft) |
| Parallel        | 11           | 18           | 9                         | 23                         | 40                                 | 36           |
| 30°-53°         | 12           | 18           | 9                         | 19                         | 50                                 | 56           |
| 54°-74°         | 13           | 19           | 9                         | 19                         | 51                                 | 57           |
| 75°-90°         | 15           | 20           | 9                         | 18                         | 51                                 | 56           |

(1) Measured Perpendicular to the space centerline.

(2) Measured along the space centerline.

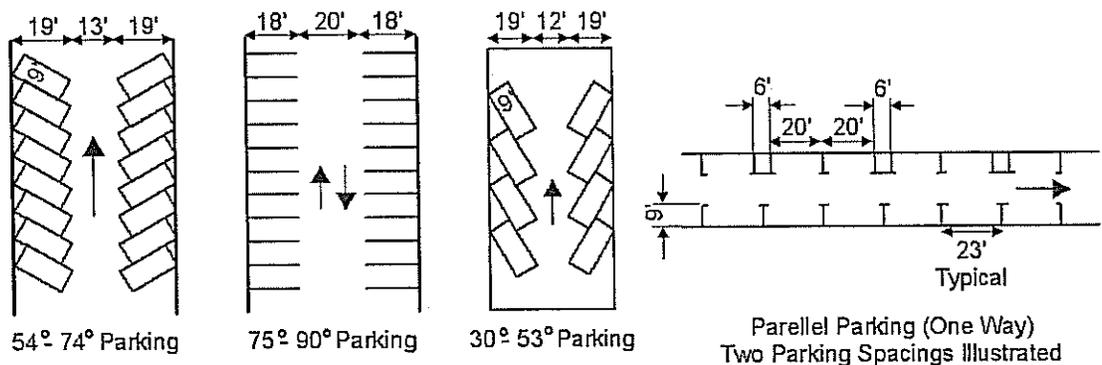


Figure 514

**Parking Area Dimensions  
(for standard-size vehicles)**

- D. The approval of the City Engineer shall be obtained for the location of exits and entrances to parking areas and for the design and construction thereof.
- E. Off-street parking areas for all uses requiring City approval shall be paved with concrete or bituminous material with approved curbing and painted parking lines. Parking areas with ten (10) or more spaces shall include landscaped planting islands and perimeter buffers in accordance with Section 531, in all instances where sufficient space is available.
- F. For all permitted uses and special uses in the C-3 District, except hotels and motels, the parking provisions of this Section shall not apply.

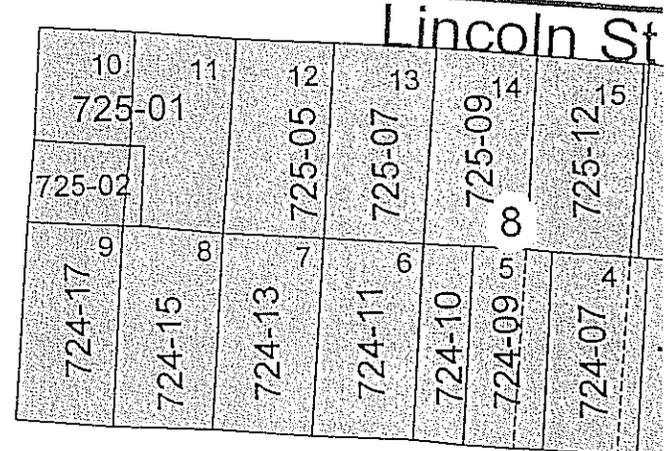
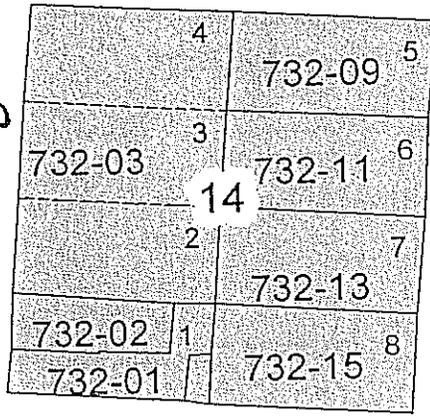
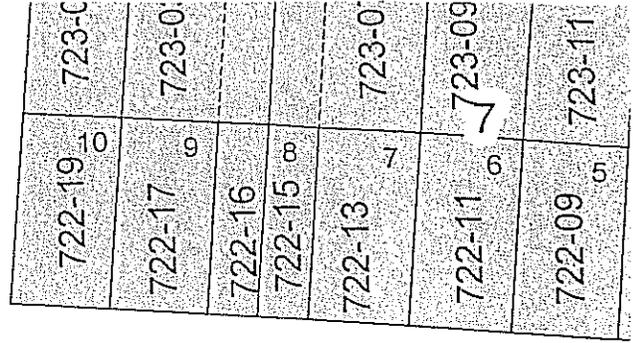
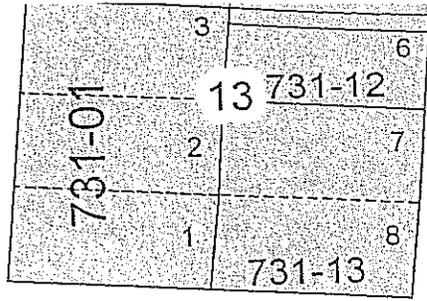
- G. Parking areas required under this Section, and city-owned parking lots, shall not be used for the storage of, camping within, or continuous parking or storage of recreational vehicles, trailers, motor vehicles and junk for more than a twenty-four (24) hour period.
- H. Within the C-1, C-2 and C-3 Districts, the Planning Commission may approve shared parking arrangements among various uses when it can be demonstrated that parking in sufficient quantities for all such uses as set forth in this Section shall be available at all times.

## **SECTION 515      ACCESSORY BUILDINGS AND STRUCTURES**

- A. All accessory buildings and structures shall be located in the side yard or rear yard, except when built attached to the principal building (for example radio or television antennas, or upper story accessory dwellings).
- B. Accessory buildings shall be located in compliance with the setback requirements of this Ordinance.
- C. An accessory building attached to the principal building of a parcel shall be made structurally a part thereof, and shall comply in all respects with the requirements applicable to the principal building. A detached accessory building shall not be located closer than ten (10) feet to the principal structure.
- D. An accessory building and structure in the R-1, R-2, R-3 and R-4 Districts shall not be higher than eighteen (18) feet and side walls shall not be higher than twelve (12) feet, unless a higher structure is approved by the Planning Commission and the Historic District Commission (if applicable) to achieve architectural compatibility with the principal building.
- E. In all Districts except L-1 and G-1 accessory buildings shall not be taller than the principal building. In all Districts except C-1, L-1 and G-1, the building area of all accessory buildings shall not exceed the building area of the principal building, except in accord with Section 1804, hereof.
- F. No accessory building shall be used as a dwelling or for temporary or permanent residential or lodging purposes or as sleeping quarters for human beings, except as permitted pursuant to Section 1831, pertaining to Accessory Dwellings.
- G. Accessory Windmills
  - 1. Accessory Windmills shall not be constructed to a height higher than fifty (50) feet, as measured from the finished median grade elevation of the site.
  - 2. Accessory Windmills shall be located in compliance with the front yard setback requirements of the district in which it is located or the height of the accessory structure, whichever is greater.
  - 3. Accessory Windmills shall not be located closer to an adjoining parcel than the height of the accessory structure or setback requirements, whichever is greater.
  - 4. Accessory Windmills shall not be located closer than ten (10) feet to the principal structure on the property which it is located.
  - 5. The application shall provide for measures acceptable to the Planning Commission to prevent any noise in excess of 60 decibels at any property line.

↑  
North

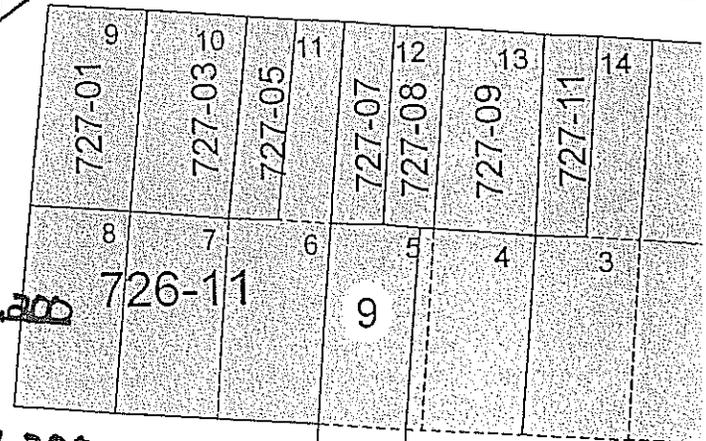
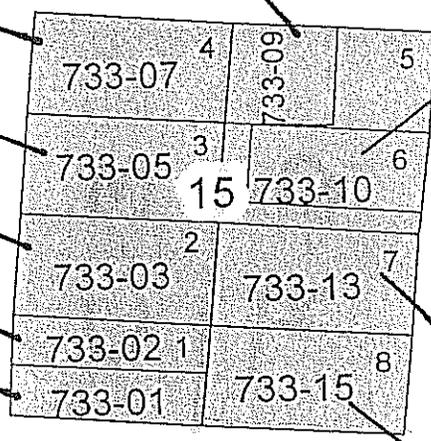
Washington Street



7,200  
7,200  
4,200  
3,600  
3,600

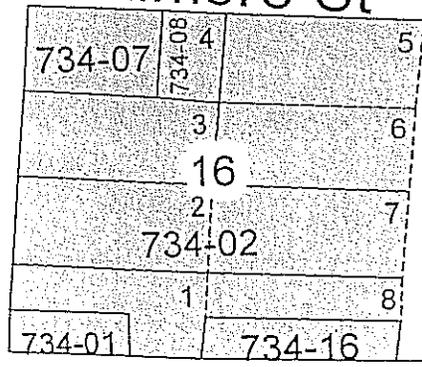
3,900

8,520

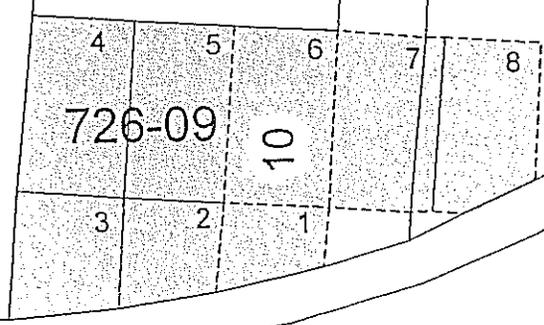


Taylor St

Filmore St



7,200



726-01

1/2 Acre = 21,780 sq ft.

Subdivisions

Image/Sketch for Parcel: 51-270-714-01

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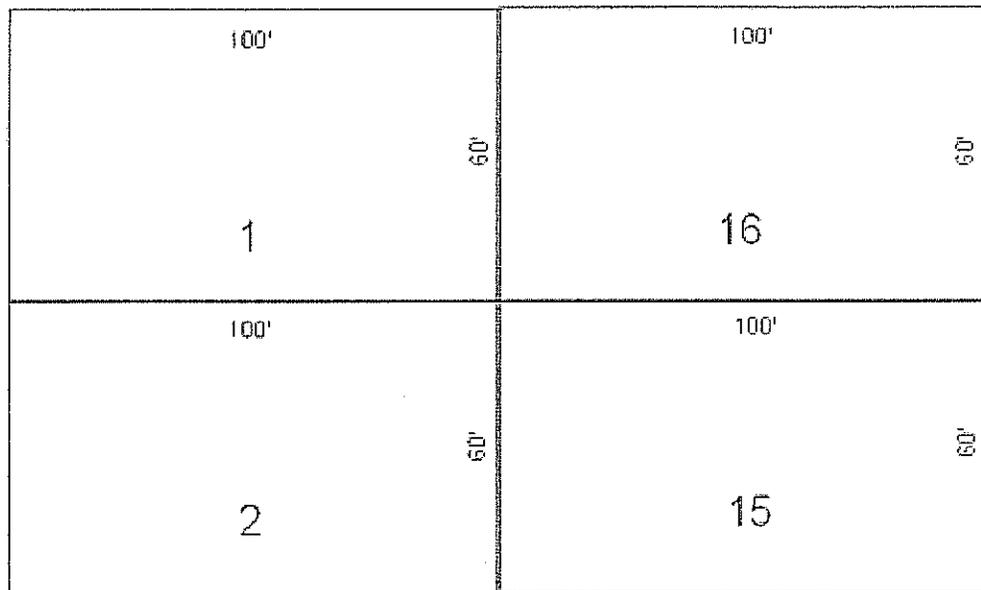
Caption: L001

24,000 sq ft

↑  
North

3RD AVENUE

SHORT STREET



WASHINGTON STREET

Vacant Lot across Street

Sketch by Apex Media™

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PLANNING AND ZONING  
COMMUNITY DEVELOPMENT  
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## MEMORANDUM

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TO: Planning Commissioners  
FROM: Denise Blakeslee   
DATE: August 23, 2010  
RE: Michigan Medical Marihuana Act

Commissioners, The Michigan Medical Marihuana Act was approved by Michigan voters on November 4, 2008. (Why an "h" rather than a "j" - one of two acceptable spellings in the dictionary and is consistent with the spelling in the Michigan Public Health Code...)

There have been inquires as to how a medical marihuana dispensing business could be opened in Manistee. This is an issue that we will need to look into.

We have researched and found information for you to review so we can begin discussion at our next meeting. Attachments are:

- Michigan Medical Marihuana Act
- Michigan Medical Marihuana Program Information
- Challenges Surrounding Local Regulation of Medical Marihuana - P&Z News July 2010
- Traverse City Record Eagle - Forum articles July 27, 2010 & August 3, 2010
- Medical Marijuana ordinance moves to City Council - Grand Haven Tribune 8/11/10

:djb

**MICHIGAN MEDICAL MARIHUANA ACT**  
**Initiated Law 1 of 2008**

AN INITIATION of Legislation to allow under state law the medical use of marihuana; to provide protections for the medical use of marihuana; to provide for a system of registry identification cards for qualifying patients and primary caregivers; to impose a fee for registry application and renewal; to provide for the promulgation of rules; to provide for the administration of this act; to provide for enforcement of this act; to provide for affirmative defenses; and to provide for penalties for violations of this act.

**History:** 2008, Initiated Law 1, Eff. Dec. 4, 2008.

*The People of the State of Michigan enact:*

**333.26421 Short title.**

**1. Short Title.**

Sec. 1. This act shall be known and may be cited as the Michigan Medical Marihuana Act.

**History:** 2008, Initiated Law 1, Eff. Dec. 4, 2008.

**Compiler's note:** MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

**333.26422 Findings, declaration.**

**2. Findings.**

Sec. 2. The people of the State of Michigan find and declare that:

(a) Modern medical research, including as found by the National Academy of Sciences' Institute of Medicine in a March 1999 report, has discovered beneficial uses for marihuana in treating or alleviating the pain, nausea, and other symptoms associated with a variety of debilitating medical conditions.

(b) Data from the Federal Bureau of Investigation Uniform Crime Reports and the Compendium of Federal Justice Statistics show that approximately 99 out of every 100 marihuana arrests in the United States are made under state law, rather than under federal law. Consequently, changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use marihuana.

(c) Although federal law currently prohibits any use of marihuana except under very limited circumstances, states are not required to enforce federal law or prosecute people for engaging in activities prohibited by federal law. The laws of Alaska, California, Colorado, Hawaii, Maine, Montana, Nevada, New Mexico, Oregon, Vermont, Rhode Island, and Washington do not penalize the medical use and cultivation of marihuana. Michigan joins in this effort for the health and welfare of its citizens.

**History:** 2008, Initiated Law 1, Eff. Dec. 4, 2008.

**Compiler's note:** MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

**333.26423 Definitions.**

**3. Definitions.**

Sec. 3. As used in this act:

(a) "Debilitating medical condition" means 1 or more of the following:

(1) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, agitation of Alzheimer's disease, nail patella, or the treatment of these conditions.

(2) A chronic or debilitating disease or medical condition or its treatment that produces 1 or more of the following: cachexia or wasting syndrome; severe and chronic pain; severe nausea; seizures, including but not limited to those characteristic of epilepsy; or severe and persistent muscle spasms, including but not limited to those characteristic of multiple sclerosis.

(3) Any other medical condition or its treatment approved by the department, as provided for in section 5(a).

(b) "Department" means the state department of community health.

(c) "Enclosed, locked facility" means a closet, room, or other enclosed area equipped with locks or other security devices that permit access only by a registered primary caregiver or registered qualifying patient.

(d) "Marihuana" means that term as defined in section 7106 of the public health code, 1978 PA 368, MCL

333.7106.

(e) "Medical use" means the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition.

(f) "Physician" means an individual licensed as a physician under Part 170 of the public health code, 1978 PA 368, MCL 333.17001 to 333.17084, or an osteopathic physician under Part 175 of the public health code, 1978 PA 368, MCL 333.17501 to 333.17556.

(g) "Primary caregiver" means a person who is at least 21 years old and who has agreed to assist with a patient's medical use of marihuana and who has never been convicted of a felony involving illegal drugs.

(h) "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.

(i) "Registry identification card" means a document issued by the department that identifies a person as a registered qualifying patient or registered primary caregiver.

(j) "Usable marihuana" means the dried leaves and flowers of the marihuana plant, and any mixture or preparation thereof, but does not include the seeds, stalks, and roots of the plant.

(k) "Visiting qualifying patient" means a patient who is not a resident of this state or who has been a resident of this state for less than 30 days.

(l) "Written certification" means a document signed by a physician, stating the patient's debilitating medical condition and stating that, in the physician's professional opinion, the patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition.

**History:** 2008, Initiated Law 1, Eff. Dec. 4, 2008.

**Compiler's note:** MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

**333.26424 Qualifying patient or primary caregiver; arrest, prosecution, or penalty prohibited; conditions; presumption; compensation; physician subject to arrest, prosecution, or penalty prohibited; marihuana paraphernalia; person in presence or vicinity to medical use of marihuana; registry identification issued outside of department; sale of marihuana as felony; penalty.**

**4. Protections for the Medical Use of Marihuana.**

**4. Protections for the Medical Use of Marihuana.**

Sec. 4. (a) A qualifying patient who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the medical use of marihuana in accordance with this act, provided that the qualifying patient possesses an amount of marihuana that does not exceed 2.5 ounces of usable marihuana, and, if the qualifying patient has not specified that a primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked facility. Any incidental amount of seeds, stalks, and unusable roots shall also be allowed under state law and shall not be included in this amount.

(b) A primary caregiver who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for assisting a qualifying patient to whom he or she is connected through the department's registration process with the medical use of marihuana in accordance with this act, provided that the primary caregiver possesses an amount of marihuana that does not exceed:

(1) 2.5 ounces of usable marihuana for each qualifying patient to whom he or she is connected through the department's registration process; and

(2) for each registered qualifying patient who has specified that the primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked facility; and

(3) any incidental amount of seeds, stalks, and unusable roots.

(c) A person shall not be denied custody or visitation of a minor for acting in accordance with this act, unless the person's behavior is such that it creates an unreasonable danger to the minor that can be clearly

articulated and substantiated.

(d) There shall be a presumption that a qualifying patient or primary caregiver is engaged in the medical use of marihuana in accordance with this act if the qualifying patient or primary caregiver:

(1) is in possession of a registry identification card; and

(2) is in possession of an amount of marihuana that does not exceed the amount allowed under this act. The presumption may be rebutted by evidence that conduct related to marihuana was not for the purpose of alleviating the qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition, in accordance with this act.

(e) A registered primary caregiver may receive compensation for costs associated with assisting a registered qualifying patient in the medical use of marihuana. Any such compensation shall not constitute the sale of controlled substances.

(f) A physician shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by the Michigan board of medicine, the Michigan board of osteopathic medicine and surgery, or any other business or occupational or professional licensing board or bureau, solely for providing written certifications, in the course of a bona fide physician-patient relationship and after the physician has completed a full assessment of the qualifying patient's medical history, or for otherwise stating that, in the physician's professional opinion, a patient 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 associated with the serious or debilitating medical condition, provided that nothing shall prevent a professional licensing board from sanctioning a physician for failing to properly evaluate a patient's medical condition or otherwise violating the standard of care for evaluating medical conditions.

(g) A person shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for providing a registered qualifying patient or a registered primary caregiver with marihuana paraphernalia for purposes of a qualifying patient's medical use of marihuana.

(h) Any marihuana, marihuana paraphernalia, or licit property that is possessed, owned, or used in connection with the medical use of marihuana, as allowed under this act, or acts incidental to such use, shall not be seized or forfeited.

(i) A person shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, solely for being in the presence or vicinity of the medical use of marihuana in accordance with this act, or for assisting a registered qualifying patient with using or administering marihuana.

(j) A registry identification card, or its equivalent, that is issued under the laws of another state, district, territory, commonwealth, or insular possession of the United States that allows the medical use of marihuana by a visiting qualifying patient, or to allow a person to assist with a visiting qualifying patient's medical use of marihuana, shall have the same force and effect as a registry identification card issued by the department.

(k) Any registered qualifying patient or registered primary caregiver who sells marihuana to someone who is not allowed to use marihuana for medical purposes under this act shall have his or her registry identification card revoked and is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both, in addition to any other penalties for the distribution of marihuana.

**History:** 2008, Initiated Law 1, Eff. Dec. 4, 2008.

**Compiler's note:** MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

### **333.26425 Rules.**

#### **5. Department to Promulgate Rules.**

Sec. 5. (a) Not later than 120 days after the effective date of this act, the department shall promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, that govern the manner in which the department shall consider the addition of medical conditions or treatments to the list of debilitating medical conditions set forth in section 3(a) of this act. In promulgating rules, the department shall allow for petition by the public to include additional medical conditions and treatments. In considering such petitions, the department shall include public notice of, and an opportunity to comment in a public hearing upon, such petitions. The department shall, after hearing, approve or deny such petitions within 180 days of the submission of the petition. The approval or denial of such a petition shall be considered a final department

action, subject to judicial review pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Jurisdiction and venue for judicial review are vested in the circuit court for the county of Ingham.

(b) Not later than 120 days after the effective date of this act, the department shall promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, that govern the manner in which it shall consider applications for and renewals of registry identification cards for qualifying patients and primary caregivers. The department's rules shall establish application and renewal fees that generate revenues sufficient to offset all expenses of implementing and administering this act. The department may establish a sliding scale of application and renewal fees based upon a qualifying patient's family income. The department may accept gifts, grants, and other donations from private sources in order to reduce the application and renewal fees.

**History:** 2008, Initiated Law 1, Eff. Dec. 4, 2008.

**Compiler's note:** MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

### **333.26426 Administration and enforcement of rules by department.**

#### **6. Administering the Department's Rules.**

Sec. 6. (a) The department shall issue registry identification cards to qualifying patients who submit the following, in accordance with the department's rules:

- (1) A written certification;
- (2) Application or renewal fee;
- (3) Name, address, and date of birth of the qualifying patient, except that if the applicant is homeless, no address is required;
- (4) Name, address, and telephone number of the qualifying patient's physician;
- (5) Name, address, and date of birth of the qualifying patient's primary caregiver, if any; and
- (6) If the qualifying patient designates a primary caregiver, a designation as to whether the qualifying patient or primary caregiver will be allowed under state law to possess marihuana plants for the qualifying patient's medical use.

(b) The department shall not issue a registry identification card to a qualifying patient who is under the age of 18 unless:

- (1) The qualifying patient's physician has explained the potential risks and benefits of the medical use of marihuana to the qualifying patient and to his or her parent or legal guardian;
- (2) The qualifying patient's parent or legal guardian submits a written certification from 2 physicians; and
- (3) The qualifying patient's parent or legal guardian consents in writing to:
  - (A) Allow the qualifying patient's medical use of marihuana;
  - (B) Serve as the qualifying patient's primary caregiver; and
  - (C) Control the acquisition of the marihuana, the dosage, and the frequency of the medical use of marihuana by the qualifying patient.

(c) The department shall verify the information contained in an application or renewal submitted pursuant to this section, and shall approve or deny an application or renewal within 15 days of receiving it. The department may deny an application or renewal only if the applicant did not provide the information required pursuant to this section, or if the department determines that the information provided was falsified. Rejection of an application or renewal is considered a final department action, subject to judicial review. Jurisdiction and venue for judicial review are vested in the circuit court for the county of Ingham.

(d) The department shall issue a registry identification card to the primary caregiver, if any, who is named in a qualifying patient's approved application; provided that each qualifying patient can have no more than 1 primary caregiver, and a primary caregiver may assist no more than 5 qualifying patients with their medical use of marihuana.

(e) The department shall issue registry identification cards within 5 days of approving an application or renewal, which shall expire 1 year after the date of issuance. Registry identification cards shall contain all of the following:

- (1) Name, address, and date of birth of the qualifying patient.
- (2) Name, address, and date of birth of the primary caregiver, if any, of the qualifying patient.
- (3) The date of issuance and expiration date of the registry identification card.
- (4) A random identification number.
- (5) A photograph, if the department requires 1 by rule.

(6) A clear designation showing whether the primary caregiver or the qualifying patient will be allowed under state law to possess the marihuana plants for the qualifying patient's medical use, which shall be determined based solely on the qualifying patient's preference.

(f) If a registered qualifying patient's certifying physician notifies the department in writing that the patient has ceased to suffer from a debilitating medical condition, the card shall become null and void upon notification by the department to the patient.

(g) Possession of, or application for, a registry identification card shall not constitute probable cause or reasonable suspicion, nor shall it be used to support the search of the person or property of the person possessing or applying for the registry identification card, or otherwise subject the person or property of the person to inspection by any local, county or state governmental agency.

(h) The following confidentiality rules shall apply:

(1) Applications and supporting information submitted by qualifying patients, including information regarding their primary caregivers and physicians, are confidential.

(2) The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Individual names and other identifying information on the list is confidential and is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(3) The department shall verify to law enforcement personnel whether a registry identification card is valid, without disclosing more information than is reasonably necessary to verify the authenticity of the registry identification card.

(4) A person, including an employee or official of the department or another state agency or local unit of government, who discloses confidential information in violation of this act is guilty of a misdemeanor, punishable by imprisonment for not more than 6 months, or a fine of not more than \$1, 000.00, or both. Notwithstanding this provision, department employees may notify law enforcement about falsified or fraudulent information submitted to the department.

(i) The department shall submit to the legislature an annual report that does not disclose any identifying information about qualifying patients, primary caregivers, or physicians, but does contain, at a minimum, all of the following information:

(1) The number of applications filed for registry identification cards.

(2) The number of qualifying patients and primary caregivers approved in each county.

(3) The nature of the debilitating medical conditions of the qualifying patients.

(4) The number of registry identification cards revoked.

(5) The number of physicians providing written certifications for qualifying patients.

**History:** 2008, Initiated Law 1, Eff. Dec. 4, 2008.

**Compiler's note:** MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

In subsection (h)(4), the dollar amount "\$1, 000.00" contains a space between the comma and first zero, and evidently should read "\$1,000.00".

### **333.26427 Scope of act; limitations.**

#### **7. Scope of Act.**

Sec. 7. (a) The medical use of marihuana is allowed under state law to the extent that it is carried out in accordance with the provisions of this act.

(b) This act shall not permit any person to do any of the following:

(1) Undertake any task under the influence of marihuana, when doing so would constitute negligence or professional malpractice.

(2) Possess marihuana, or otherwise engage in the medical use of marihuana:

(A) in a school bus;

(B) on the grounds of any preschool or primary or secondary school; or

(C) in any correctional facility.

(3) Smoke marihuana:

(A) on any form of public transportation; or

(B) in any public place.

(4) Operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marihuana.

(5) Use marihuana if that person does not have a serious or debilitating medical condition.

(c) Nothing in this act shall be construed to require:

(1) A government medical assistance program or commercial or non-profit health insurer to reimburse a

person for costs associated with the medical use of marihuana.

(2) An employer to accommodate the ingestion of marihuana in any workplace or any employee working while under the influence of marihuana.

(d) Fraudulent representation to a law enforcement official of any fact or circumstance relating to the medical use of marihuana to avoid arrest or prosecution shall be punishable by a fine of \$500.00, which shall be in addition to any other penalties that may apply for making a false statement or for the use of marihuana other than use undertaken pursuant to this act.

(e) All other acts and parts of acts inconsistent with this act do not apply to the medical use of marihuana as provided for by this act.

**History:** 2008, Initiated Law 1, Eff. Dec. 4, 2008.

**Compiler's note:** MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

### **333.26428 Defenses.**

#### **8. Affirmative Defense and Dismissal for Medical Marihuana.**

Sec. 8. (a) Except as provided in section 7, a patient and a patient's primary caregiver, if any, may assert the medical purpose for using marihuana as a defense to any prosecution involving marihuana, and this defense shall be presumed valid where the evidence shows that:

(1) A physician has stated that, in the physician's professional opinion, after having completed a full assessment of the patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the patient 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 patient's serious or debilitating medical condition;

(2) The patient and the patient's primary caregiver, if any, were collectively in possession of a quantity of marihuana that was not more than was reasonably necessary to ensure the uninterrupted availability of marihuana for the purpose of treating or alleviating the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition; and

(3) The patient and the patient's primary caregiver, if any, were engaged in the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marihuana or paraphernalia relating to the use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition.

(b) A person may assert the medical purpose for using marihuana in a motion to dismiss, and the charges shall be dismissed following an evidentiary hearing where the person shows the elements listed in subsection (a).

(c) If a patient or a patient's primary caregiver demonstrates the patient's medical purpose for using marihuana pursuant to this section, the patient and the patient's primary caregiver shall not be subject to the following for the patient's medical use of marihuana:

(1) disciplinary action by a business or occupational or professional licensing board or bureau; or

(2) forfeiture of any interest in or right to property.

**History:** 2008, Initiated Law 1, Eff. Dec. 4, 2008.

**Compiler's note:** MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

### **333.26429 Failure of department to adopt rules or issue valid registry identification card.**

#### **9. Enforcement of this Act.**

Sec. 9. (a) If the department fails to adopt rules to implement this act within 120 days of the effective date of this act, a qualifying patient may commence an action in the circuit court for the county of Ingham to compel the department to perform the actions mandated pursuant to the provisions of this act.

(b) If the department fails to issue a valid registry identification card in response to a valid application or renewal submitted pursuant to this act within 20 days of its submission, the registry identification card shall be deemed granted, and a copy of the registry identification application or renewal shall be deemed a valid registry identification card.

(c) If at any time after the 140 days following the effective date of this act the department is not accepting applications, including if it has not created rules allowing qualifying patients to submit applications, a notarized statement by a qualifying patient containing the information required in an application, pursuant to

section 6(a)(3)-(6) together with a written certification, shall be deemed a valid registry identification card.

**History:** 2008, Initiated Law 1, Eff. Dec. 4, 2008.

**Compiler's note:** MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

### **333.26430 Severability.**

#### **10. Severability.**

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

**History:** 2008, Initiated Law 1, Eff. Dec. 4, 2008.

**Compiler's note:** MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.



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**Michigan Medical Marihuana Program**

The Michigan Medical Marihuana Program (MMMP) is a state registry program within the Bureau of Health Professions at the Michigan Department of Community Health. The program will administer the Michigan Medical Marihuana Act as approved by Michigan voters on November 4, 2008. The program will implement the statutory tenants of this act in such a manner that protects the public and assures the confidentiality of its participants.

**RENEWAL APPLICATION INFORMATION**

**Program Status Update (7/30/2010):** Application Forms and Instructions are available for printing from this website.

**Program Statistics:**

- 45,756 original and renewal applications received since April 6, 2009.
- 22,290 patient registrations issued.
- The number of caregivers will be posted as soon as an accurate number can be obtained.
- 5,830 applications denied – most due to incomplete application or missing documentation.
- Applications are reviewed within 15 days of receipt. Incomplete applications are denied and applicants are then notified of denial by certified and regular mail.
- Complete applications, change forms and reapplications for previous denials are then processed in the date order in which they are received. If a denial letter is not received, then the application is deemed valid. The statute currently allows for a copy of the application submitted to serve as a valid registry identification if the card is not issued within 20 days of its submission to the department. At this time, we are unable to issue valid registry identification cards within the statutory time frame with the resources available to us. **Currently staff is issuing registry identification cards for valid applications received mid-April.** We continue to review and revise our processing methods in order to more efficiently process and issue the valid registry cards.
- The staff is diligently working to process the applications and is having difficulty responding to all the voicemails left on the Medical Marihuana Registry phone line. **We appreciate your patience and ask that applicants refrain from calling to inquire about the status of the application unless your application was submitted prior to the end of March.**

**About the Medical Marihuana Program**

[Click here for:](#) information about the administration of the Medical Marihuana program

**Law and Rules**

[Click here for:](#) information about the laws and rules that govern the Michigan Medical Marihuana program

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### General Information about the Program

- You must be a Michigan resident to be a registered patient in the Michigan Medical Marihuana Program (MMMP).
- There is an application fee to register for the MMMP. The fee cannot be waived, although it can be reduced under certain circumstances.
- You must have a qualifying debilitating medical condition as listed on the Attending Physician's Statement.
- The MMMP cannot supply you with seeds or starter plants, or give you advice on how to grow medical marihuana.
- Your physician must be a Medical Doctor (MD) or Doctor of Osteopathic Medicine (DO) licensed to practice in Michigan. You must have an established patient/physician relationship with your "attending physician." Other licensed health professionals such as Chiropractors, physician assistants and nurse practitioners cannot sign the documentation.
- The MMMP cannot refer you to a physician. The MMMP does not have a physician referral list.
- You, or your designated primary caregiver, may grow your marihuana. There is no place in the state of Michigan to legally purchase medical marihuana.
- The MMMP cannot find a designated primary caregiver for you. The MMMP does not keep a referral list of persons who want to be caregivers for patients. (You are not required to list a caregiver unless you are less than 18 years old.) Your caregiver cannot be your physician.
- If you decide to change your caregiver, it is your responsibility to notify him or her that he or she is no longer protected under the law. The MMMP does not communicate directly with caregivers.
- The MMMP will only speak directly with the patient. All written requests to release information must be signed and dated by the patient. The MMMP will not accept written or verbal requests for information from your caregiver or any other person without your permission.
- The Act neither protects marihuana plants from seizure nor individuals from prosecution if the federal government chooses to take action against patients or caregivers under the federal Controlled Substances Act.

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DEPARTMENT OF COMMUNITY HEALTH

DIRECTOR'S OFFICE

MICHIGAN MEDICAL MARIHUANA

(By authority conferred on the director of the department of community health by section 5 of initiated law 1 of 2008, MCL 333.26421 and executive reorganization order numbers 1996-1, 1996-2 and 2003-1, MCL 330.3101, MCL 445.2001 and MCL 445.2011)

R 333.101 Definitions.

Rule 1. As used in these rules:

(1) "Act" means the Michigan medical marihuana act, Initiated Law 1 of 2008, MCL 333.26421.

(2) "Applicant" means a qualifying patient applying for a medical marihuana registry identification card on a form provided by the department of community health.

(3) "Code" means 1978 PA 368, MCL 333.1101.

(4) "Conviction" or "convicted" means a criminal conviction of an offense by a guilty verdict from a judge or jury, plea of guilty, or plea of no contest.

(5) "Debilitating medical condition" means 1 or more of the following:

(a) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, agitation of Alzheimer's disease, nail patella, or the treatment of these conditions.

(b) A chronic or debilitating disease or medical condition or its treatment that produces, for a specific patient, 1 or more of the following: cachexia or wasting syndrome; severe and chronic pain; severe nausea; seizures, including but not limited to those characteristic of epilepsy; or severe and persistent muscle spasms, including but not limited to those characteristic of multiple sclerosis.

(c) Any other medical condition or treatment for a medical condition approved by the department pursuant to a petition submitted under R 333.133.

(6) "Department" means the department of community health.

(7) "Enclosed, locked facility" means a closet, room, or other enclosed area equipped with locks or other security devices that permit access only by a registered primary caregiver or registered qualifying patient.

(8) "Marihuana" means that term as defined in section 7106 of the code.

(9) "Medicaid health plan" means the medical assistance program managed by the department.

(10) "Medical use" means the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition.

(11) "Paraphernalia" means any item defined as "drug paraphernalia" pursuant to section 7451 of the code.

(12) "Parent or legal guardian" means the custodial parent or legal guardian with responsibility for health care decisions for a qualifying patient who is under 18 years of age.

(13) "Petition" means a written request for the department to add new medical conditions or treatments to the list of debilitating medical conditions under R 333.101(5).

(14) "Physician" means an individual licensed as a physician under part 170 or 175 of the code. For purposes of the act, neither a physician assistant nor a nurse practitioner is authorized to sign the statement

attesting to the patient's debilitating medical condition.

(15) "Primary caregiver" means a person who is at least 21 years old and who has agreed to assist with a patient's medical use of marihuana and who has never been convicted of a felony involving illegal drugs.

(16) "Public place" means a place open to the public.

(17) "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.

(18) "Registry identification card" means a document issued by the department that identifies a person as a registered qualifying patient or registered primary caregiver.

(19) "Supplemental Security Income" means the monthly benefit assistance program administered by the federal government for persons who are age 65 or older, or blind, or disabled and who have limited income and financial resources.

(20) "Usable marihuana" means the dried leaves and flowers of the marihuana plant, and any mixture or preparation thereof, but does not include the seeds, stalks, and roots of the plant.

(21) "Visiting qualifying patient" means a patient who is not a resident of this state or who has been a resident of this state for less than 30 days.

(22) "Written certification" means a document signed by a physician stating the patient's debilitating medical condition and stating that, in the physician's professional opinion, the patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition.

(23) Terms defined in the act have the same meanings when used in these rules.

History: 2009 ACS.

R 333.103 New registration application; qualifying patient and primary caregiver.

Rule 3. A qualifying patient applying for a registry identification card shall comply with all of the following:

(a) Submit a completed application on a form provided by the department, together with the requisite fee. The completed application shall include all of the following:

(i) Name, address, and date of birth of the qualifying patient. The address for the qualifying patient shall be a physical address located in this state. A qualifying patient who is homeless shall not be required to provide a physical address.

(ii) Name, address, and telephone number of the qualifying patient's physician.

(iii) The name, address, and date of birth of the patient's primary caregiver, if applicable. A qualifying patient may designate 1 primary caregiver to assist with his or her medical use of marihuana.

(iv) A designation of whether the qualifying patient or the patient's primary caregiver, if applicable, will be allowed to possess marihuana plants for the qualifying patient's medical use.

(v) An attestation by the primary caregiver named on the application that he or she agrees to serve as the patient's primary caregiver.

(vi) A primary caregiver shall authorize the department to use the information provided on the application to secure his or her criminal conviction history to determine if he or she has a felony conviction involving illegal drugs.

(b) Submit photographic identification of both the qualifying patient and the patient's primary caregiver, if applicable. If the qualifying patient is under the age of 18 and does not have photographic identification, no photographic identification is required. Photocopies of the following shall be considered acceptable forms of identification:

(i) Current driver's license or identification card, with photo, issued by a state.

(ii) Identification card with photo issued by a federal, state, or government agency.

(iii) Current military identification card.

- (iv) Current passport.
- (v) Current student identification card with photo.
- (vi) Native American tribal identification with photo
- (vii) Permanent resident card or alien registration receipt card.
- (c) Submit a written certification, as defined in R 333.101(22), signed by a licensed physician. If the qualifying patient is under the age of 18, written certifications from 2 physicians are required.
- (d) If the qualifying patient is under the age of 18, submit a declaration of person responsible form.

History: 2009 AACS.

R 333.105 Declaration of person responsible form.

Rule 5. A declaration of person responsible form is required for any qualifying patient who is under the age of 18. The form shall include all of the following:

- (a) A statement that the qualifying patient's physician has explained to the patient and the patient's parent or legal guardian the potential risks and benefits of the medical use of marihuana.
- (b) Consent of the qualifying patient's parent or legal guardian to allow the qualifying patient's medical use of marihuana.
- (c) Consent of the qualifying patient's parent or legal guardian to serve as the patient's primary caregiver and to control the acquisition, dosage, and frequency of use of the marihuana by the patient.

History: 2009 AACS.

R 333.107 Incomplete application.

Rule 7. If an applicant fails to provide the information required under R 333.103 or R 333.105, as applicable, the application shall be denied. The department shall notify the applicant of the information that is missing in the event the applicant wishes to reapply. An applicant may reapply at any time.

History: 2009 AACS.

R 333.109 Verification of information.

Rule 9. The department shall verify the information contained in an application and the accompanying documentation, which may include, but is not limited to, the following:

- (a) Contacting each applicant by telephone or by mail. If proof of identity cannot be determined with reasonable reliability, the department may require the production of additional identification materials.
- (b) Contacting the parent or legal guardian of a qualifying patient who is under the age of 18.
- (c) Verifying that a physician is licensed to practice in the state.
- (d) Contacting the certifying physician directly to confirm the validity of the written certification.

History: 2009 AACS.

R 333.111 Fees; reduced fees; renewal.

Rule 11. (1) The fee for a new or renewal application is \$100.00, unless a qualifying patient can demonstrate his or her current enrollment in the Medicaid health plan or receipt of current Supplemental Security Income benefits, in which case the application fee is \$25.00. To qualify for a reduced fee, an applicant shall satisfy either of the following requirements:

- (a) Submit a copy of the qualifying patient's current Medicaid health plan enrollment statement.
  - (b) Submit a copy of the qualifying patient's current monthly Supplemental Security Income benefit card, showing dates of coverage.
- (2) The department shall deny the application of a qualifying patient who

submits a reduced fee for which he or she is not eligible and shall notify the qualifying patient of the application denial. A qualifying patient may resubmit the correct fee with his or her qualifying documentation at any time.

(3) The fee for a revised or duplicate copy of the registration identification card for the qualifying patient or the primary caregiver is \$10.00. If a duplicate card is requested, the qualifying patient or primary caregiver shall submit to the department the fee with a statement attesting to the loss or destruction of the card.

History: 2009 AACCS.

R 333.113 Registration approval; denial.

Rule 13. (1) Pursuant to section 6(c) of the act, the department shall approve or deny an application within 15 days of receiving a completed application and the requisite fee.

(2) If an application is approved, within 5 days of approving the application, the department shall issue a registry identification card to the registered qualifying patient and the registered primary caregiver, if applicable. The registry identification card shall include all of the following:

(a) The name, address, and date of birth of the registered qualifying patient.

(b) If the registered qualifying patient has designated a primary caregiver, the name, address, and date of birth of the registered primary caregiver.

(c) The issue date and expiration date of the registry identification card.

(d) A random and unique identification number.

(e) A clear designation showing whether the registered primary caregiver or the registered qualifying patient will be authorized to possess marijuana plants for the registered qualifying patient's medical use. The designation shall be determined based solely on the registered qualifying patient's preference.

(3) When a registered qualifying patient has designated a primary caregiver, the department shall issue a registry identification card to the registered primary caregiver. The registered primary caregiver's registry identification card shall contain the information specified in subrule (2) of this rule, as appropriate.

(4) The department shall deny an application for any of the following:

(a) The applicant did not provide the physician's written certification.

(b) The department determines that any information provided by the applicant was falsified.

(c) An applicant fails to provide a physical address located in this state. This provision shall not apply if the applicant is homeless.

(d) The applicant failed to meet the requirements of R 333.107.

(5) If the department denies an application, the department shall mail the applicant a denial letter within 15 days of receipt of the completed application. The denial letter shall be sent by certified mail to the address listed on the application form and shall state the reasons for denial and when the applicant may reapply.

(6) Denial of a registry identification card shall be considered a final department action, subject to judicial review.

History: 2009 AACCS.

Rule 333.115 Primary caregiver; number of qualified patients; compensation.

Rule 15. (1) The department shall issue a registry identification card to the primary caregiver, if any, who is named in a qualifying patient's approved application. A registered primary caregiver may assist not more than 5 qualifying patients with their medical use of marijuana.

(2) A registered primary caregiver may receive compensation for costs associated with assisting a registered qualifying patient in the medical use of marijuana. Any such compensation shall not constitute the sale of a controlled substance.

History: 2009 AACCS.

R 333.117 Annual renewal; expiration of registry identification card; fee.

Rule 17. (1) Pursuant to section 6(e) of the act, a registry identification card shall be renewed on an annual basis to maintain active status as a registered qualifying patient or a registered primary caregiver.

(2) A registry identification card shall expire on the first day of the month 1 year following issuance of the card.

(3) An applicant for renewal of a registry identification card shall submit an application and information as provided in R 333.103(a), (c) and (d).

(4) If an applicant fails to comply with subrules (1) and (3) of this rule by the expiration date on the registry identification card, the registry identification card shall be considered null and void and of no further effect. The applicant may submit a new application to the department.

(5) The department shall verify the renewal application information in the same manner as specified in R 333.109.

History: 2009 AACCS.

R 333.119 Changes in status; notifications; requirements.

Rule 19. (1) In order to update registry information for a qualifying patient or primary caregiver, the registered qualifying patient, registered primary caregiver, or registered qualifying patient's parent or legal guardian, as applicable, is responsible for notifying the department of a change in any of the following:

- (a) The registered qualifying patient's name.
- (b) The registered qualifying patient's address.
- (c) The registered qualifying patient's primary caregiver.
- (d) The registered qualifying patient's legal guardian.

(2) The department may notify a registered primary caregiver by certified mail at the address of record within 14 days of any changes in status including, but not limited to, both of the following:

(a) The registered qualifying patient's termination of the individual's status as primary caregiver or designation of another individual as the registered primary caregiver.

(b) The end of eligibility for the registered qualifying patient to hold a registry identification card.

(3) If the department is notified by a registered qualifying patient that the registered primary caregiver for the patient has changed, the department may notify the initial primary caregiver by certified mail at the address of record that the caregiver's registry identification card is null and void and of no effect.

(4) If a registered qualifying patient's certifying physician notifies the department in writing that the patient has ceased to suffer from a debilitating medical condition, the department shall notify the patient within 14 days of receipt of the written notification that the patient's registry identification card is null and void and of no effect.

History: 2009 AACCS.

Rule 333.121 Confidentiality.

Rule 21. (1) Except as provided in subrules (2) and (3) of this rule, Michigan medical marijuana program information shall be confidential and not subject to disclosure in any form or manner. Program information includes, but is not limited to, all of the following:

(a) Applications and supporting information submitted by qualifying patients.

(b) Information related to a qualifying patient's primary caregiver.

(c) Names and other identifying information of registry identification cardholders.

(d) Names and other identifying information of pending applicants and

their primary caregivers.

(2) Names and other identifying information made confidential under subrule (1) of this rule may only be accessed or released to authorized employees of the department as necessary to perform official duties of the department pursuant to the act, including the production of any reports of non-identifying aggregate data or statistics.

(3) The department shall verify upon a request by law enforcement personnel whether a registry identification card is valid, without disclosing more information than is reasonably necessary to verify the authenticity of the registry identification card.

(4) The department may release information to other persons only upon receipt of a properly executed release of information signed by all individuals with legal authority to waive confidentiality regarding that information, whether a registered qualifying patient, a qualifying patient's parent or legal guardian, or a qualifying patient's registered primary caregiver. The release of information shall specify what information the department is authorized to release and to whom.

(5) Violation of these confidentiality rules may subject an individual to the penalties provided for under section 6(h)(4) of the act.

History: 2009 AACS.

#### Rule 333.123 Complaints.

Rule 23. The department shall refer criminal complaints against a registered qualifying patient or registered primary caregiver to the appropriate state or local authorities.

History: 2009 AACS.

#### R 333.125 Revocation; nullification.

Rule 25. (1) A registered qualifying patient or registered primary caregiver who has been convicted of selling marihuana to someone who is not allowed to use marihuana for medical purposes under the act, shall have his or her registry identification card revoked and may be found guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both, in addition to any other penalties for the distribution of marihuana.

(2) A registry identification card that is later determined to be based on fraudulent information is null and void and of no effect.

(3) Any person who has been convicted of a felony involving illegal drugs shall not serve as a qualifying patient's primary caregiver under the act.

(4) The department shall send written notice by certified mail to a registered qualifying patient or the patient's registered primary caregiver of any of the following:

(a) An intent to revoke or nullify a registry identification card.

(b) That a primary caregiver no longer qualifies for approval under the act based on a felony drug conviction.

(5) The notice referenced in subrule (4) of this rule shall include the right to request a contested case hearing. If the request for hearing is not filed with the department within 21 days from the date the notice was mailed by the department, the right to request a contested case hearing shall be waived.

History: 2009 AACS.

#### Rule 333.127 Management of medical marihuana.

Rule 27. (1) A qualifying patient who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the medical use of marihuana in accordance with the act, if the qualifying patient possesses an amount of marihuana that does not exceed the following:

(a) Two and one-half (2.5) ounces of usable marihuana.

(b) If the qualifying patient has not specified that a primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked facility.

(c) Any incidental amount of seeds, stalks, and roots.

(2) A primary caregiver who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for assisting a qualifying patient to whom he or she is connected through the department's registration process with the medical use of marihuana in accordance with the act, if the primary caregiver possesses an amount of marihuana that does not exceed the following:

(a) Two and one-half (2.5) ounces of usable marihuana for each registered qualifying patient to whom he or she is connected through the department's registration process.

(b) For each registered qualifying patient who has specified that the primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked facility.

(c) Any incidental amount of seeds, stalks, and unusable roots.

(3) An individual may simultaneously be registered as a qualifying patient and as a primary caregiver.

History: 2009 AACS.

Rule 333.131 Review panel for reviewing petitions for additional medical conditions or treatments.

Rule 31. (1) The department shall appoint a panel of not more than 15 members to review petitions to add medical conditions or treatments to the list of debilitating medical conditions under R 333.101 (5). A majority of the panel members shall be licensed physicians, and the panel shall provide recommendations to the department regarding whether the petitions should be approved or denied.

(2) Members of the review panel shall include, but not be limited to, the Michigan chief medical executive and 7 appointed members of the advisory committee on pain and symptom management as described in MCL 333.16204a. The 7 review panel members from the advisory committee on pain and symptom management shall include 4 licensed physicians and 3 non-physicians.

(3) The department shall provide staff support to the review panel to assist with the scheduling of meetings, conference calls, dissemination of petition-related materials, and to perform other administrative duties related to the performance of the panel's review.

(4) A quorum of the review panel shall concur with the recommendation in order to be considered an official recommendation of the panel. For the purposes of this subrule, a majority of the members appointed and serving on the review panel constitutes a quorum.

History: 2009 AACS.

Rule 333.133 Petition to add qualifying diseases or medical conditions; review panel; recommendations.

Rule 33. (1) The department shall accept a written petition from any person requesting that a particular medical condition or treatment be included in the list of debilitating medical conditions under R 333.101.

(2) The department shall submit the written petition to the review panel. Within 60 days of receipt of the petition, the panel shall make a recommendation to the department regarding approval or denial of the petition.

(3) Upon receipt of a recommendation from the review panel, the department shall do all of the following:

(a) Post the panel's recommendations on the department's website for public comment for a period of 60 days.

(b) Give notice of a public hearing not less than 10 days before the date of the hearing.

(c) Hold a public hearing within the 60-day time period that the recommendation from the panel is posted on the department's website.

(4) After a public hearing, the department shall forward comments made during the hearing to the panel for review. If, based on a review of the comments, the panel determines that substantive changes should be made to its initial recommendation, the petition shall be denied, the department shall provide the petitioner with a copy of the initial recommendation and an explanation of the substantive changes, and the petitioner may resubmit the petition to the department at any time. If no changes are made to the initial recommendation or the changes are minor and do not affect the general content of the recommendation, the department shall forward the recommendation to the department director for a final determination on the petition.

(5) Within 180 days of the date the petition is filed with the department, the department director shall make a final determination on the petition. The approval or denial of the petition shall be considered a final department action subject to judicial review under the act.

(6) If the petition is approved, the department shall create a document verifying the addition of the new medical condition or treatment to the list of debilitating medical conditions identified under R 333.101. Until such time as these rules are amended to officially recognize the medical condition as a qualifying debilitating medical condition, the department shall develop a policy that allows the new medical condition to be used as a qualifier for a registry identification card.

History: 2009 AACCS.

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## About the MMMP

### **Purpose of the MMMP**

The Michigan Medical Marihuana Program (MMMP) is established to administer the registration program provided for in the Michigan Medical Marihuana Act (MMMA), which was approved by Michigan voters on November 4, 2008.

### **Mission Statement**

To assure that the registration process is conducted efficiently and effectively, consistent with all statutes and administrative rules pertaining to the MMMP.

### **Administration of the MMMP**

The MMMP will be administered by the Michigan Department of Community Health, Bureau of Health Professions.

### **Responsibilities of the MMMP**

- Review applications submitted by patients and caregivers wishing to participate in the MMMP and issue medical marihuana registration identification cards to those individuals whose applications are approved.
- Maintain the confidentiality of program records in accordance with applicable state and federal confidentiality laws.
- Provide information regarding the MMMA, MMMP policies and application processes.
- Collect and disseminate statistics about participation in the MMMP including, but not limited to:
  - Number of applications filed and approved.
  - Nature of the debilitating medical conditions of qualified patients.
  - Number of registration identification cards revoked.
  - Number of physicians providing written certifications for qualifying patients.

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## Frequently Asked Questions

**Question:** Why is marihuana spelled with an "h", rather than a "j", in Initiated Law 1 of 2008 and the administrative rules?

**Answer:** Marihuana is one of two acceptable spellings in the dictionary and is consistent with the spelling in the Michigan Public Health Code, Act 368 of 1978, and Initiated Law 1 of 2008.

**Question:** How do I register as a medical marihuana patient with the state?

**Answer:** "Qualifying patients" must register with the Michigan Department of Community Health, Bureau of Health Professions, P.O. Box 30083, Lansing, Michigan 48909.

To register, the patient must submit (on forms provided by the department) the following information:

- (a) an application or renewal fee;
- (b) the name, address, and birth date of the qualifying patient;
- (c) the name, address, and telephone number of the qualifying patient's physician;
- (d) the name, address, and birth date of the qualifying patient's caregiver, if any.
- (e) written certification that the person is a qualifying patient.

**Question:** What medical conditions are eligible?

**Answer:** Patients must suffer from a debilitating medical condition, defined as:

(a) cancer, glaucoma, or positive status for human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, agitation of Alzheimer's disease, or nail patella.

(b) a chronic or debilitating disease or medical condition or its treatment that produces one of more of the following:

- (i) cachexia or wasting syndrome;
- (ii) severe and chronic pain;
- (iii) severe nausea;
- (iv) seizures, including but not limited to those caused by epilepsy;
- (v) severe or persistent muscle spasms, including but not limited to, those which are characteristic of multiple sclerosis; or

(c) any other medical condition or treatment for a medical condition adopted by the department by rule. (NOTE: To date, the department has not added to the list by administrative rule.)

**Question:** Do any age limits apply?

**Answer:** Registered caregivers must be 21 or older. Patients under age 18 must have the consent of their parent or guardian responsible for medical decisions. The parent or guardian must be the registered caregiver of the minor patient.

**Question:** What is the fee to apply for participation in the Michigan Medical Marihuana Program (MMMP)? Are there any circumstances under which the fee can be reduced?

**Answer:** The fee for a new or renewal application is \$100.00, unless a qualifying patient can demonstrate his or her current eligibility in the Medicaid Health Plan or receipt of current SSD or SSI benefits, in which case the application fee is \$25.00.

**Question:** I don't have the money for the registration fee. Is it a one-time payment? Can it be waived? Can I make installment payments?

**Answer:** Full payment, by check or money order, must be made at the time of the initial application and at renewal each year. The fee cannot be waived, and the department cannot accept installment payments.

**Question:** Why do I need to have a physician sign and date a "Physician Certification" form? Why can't I just provide my medical records?

**Answer:** According to the Michigan Medical Marihuana Act (MMMA), a physician must state in writing that the patient has a qualifying debilitating medical condition and that medical marihuana may mitigate the symptoms or effects of that condition. The MMMP contacts each physician during the application process to verify the patient is under the physician's care. A signed and dated "Physician Certification" must be current within 3 months of the date of a person's new or renewal application.

**Question:** Can the MMMP refer me to a physician?

**Answer:** No. The MMMP does not serve as a referral source. Any Doctor of Medicine (MD) or Doctor of Osteopathic Medicine (DO) licensed in Michigan can recommend a patient for the program.

**Question:** Why are only MDs (Medical Doctors) and DOs (Doctors of Osteopathic Medicine) qualified to sign the "Physician Certification"? Why not chiropractors, physician's assistants or nurse practitioners? Does the physician have to be licensed in Michigan?

**Answer:** The MMMA states that a "physician" means a Doctor of Medicine (MD) or Doctor of Osteopathic Medicine (DO) licensed under Article 15, Parts 170 and 175 of the Michigan Public Health Code. MDs and DOs are the physicians licensed under these parts. The law also specifies that a physician must be licensed in Michigan. The MMMP verifies with the Board of Medicine or Board of Osteopathic Medicine that each patient's attending physician has a valid license to practice medicine in Michigan and has no disqualifying restrictions.

**Question:** Can I have someone else sign and date my application (a "proxy") if I am physically unable to do so?

**Answer:** Yes, as long as the individual signing your application identifies him or herself as your proxy next to his or her signature on your application or has provided documentation showing guardianship or power of attorney.

**Question:** What happens to my application once I mail it? What if I don't send in all the required parts of my application?

**Answer:** The MMMP has 15 days to review your application to make sure it is complete and all parts are current. If your application is complete, your registry identification card will be issued within 5 days after the MMMP verifies the information on your application. If you don't send in all the required parts of your application, the application will be denied.

**Question:** Do I need to keep a copy of my application and any other information I send to the MMMP?

**Answer:** Yes. If your application has not yet been approved, denied or terminated you may provide law enforcement with a copy of your written documentation submitted to the department; you must also submit proof of the date of mailing or other transmission of the documentation. This documentation shall have the same legal effect as

a registry identification card, until such time as you receive your card or you have received notification that your application has been approved, denied or terminated.

**Question:** Who has access to the patient registry list?

**Answer:** The state will maintain a confidential list of "qualified patients" and "approved caregivers" to whom the department has issued registry identification cards. Individual names and other identifying information on the list must be confidential and is not subject to disclosure, except to:

(a) authorized employees of the department as necessary to perform official duties of the department; or

(b) authorized employees of state or local law enforcement agencies, only as necessary to verify that a person is a lawful possessor of a registry identification card.

**Question:** Is my confidentiality protected?

**Answer:** Yes. The MMMP does not give out lists of patients or caregivers. Law enforcement personnel may contact the MMMP only to verify if a patient or caregiver registration card is valid. The MMMP will tell law enforcement staff if the patient or caregiver is registered. The MMMP will disclose patient information to others only at the specific written request of the patient. MMMP computer files are secure and paper files are kept locked when not in use.

**Question:** Can a patient withdraw from the program?

**Answer:** Yes. A patient must submit a written statement that he or she wishes to withdraw from the MMMP. The MMMP will request that all cards be returned and the file will be closed. The patient's card and all cards associated will be voided. It is the responsibility of the patient to notify his or her caregiver, if applicable, that his or her card is no longer valid. It is the patient's responsibility to collect all cards associated with his or her patient card and return them to the Department. If the Department is notified by the patient that he or she would like to withdraw from the program, the Department shall notify the primary caregiver by mail at the address of record informing the caregiver that his or her card is no longer valid and must be returned to the Department within fourteen (14) calendar days. All cards must be returned to the Department within fourteen (14) calendar days of the date that the Department was notified of withdrawal. If the patient so chooses he or she may reapply as a new patient at any time. In order to reapply a patient must submit the required documentation and application fee.

**Question:** Do patients get a refund if they withdraw from the program?

**Answer:** Yes and no. No refund will be given for patients who withdraw once their cards have been issued. A refund may be given to a patient who withdraws before cards are issued.

**Question:** Do I have to tell the MMMP if I change my mailing address or change my designated primary caregiver?

**Answer:** The answer to these questions is "yes". You are required to tell the MMMP in writing of any such changes within 14 days of the change. The MMMP does not accept changes of information over the telephone. The MMMP only accepts written changes about the patient's name, the patient's address, the patient's telephone number, the patient's physician, or the patient's primary caregiver. There is a \$10.00 fee for issuance of a new registry card. Your new card reflects the changes you have requested. Your changes will be made in our

computer database and will be put in your file. You will be protected from civil and criminal penalties for these changes. If you change your caregiver, you will be asked to return your old caregiver card within 14 days.

**Question:** Do I get a prescription from my doctor?

**Answer:** The federal government classifies marihuana as a Schedule 1 drug, which means that licensed medical practitioners cannot prescribe it. Your physician must provide written certification of a "debilitating medical condition" and can only recommend the use of medical marihuana.

**Question:** Where do I get the seeds or plants to start growing medical marihuana?

**Answer:** The MMMP is not a resource for the growing process and does not have information to give to patients.

**Question:** Why can't I go to a pharmacy to fill a prescription for medical marihuana?

**Answer:** Pharmacies can only dispense medications "prescribed" by licensed physicians. The federal government classifies marihuana as a Schedule I drug, which means licensed physicians cannot prescribe it.

**Question:** Can doctors get in trouble for discussing medical marihuana?

**Answer:** Not under Michigan state law. A physician may not be arrested, prosecuted or penalized in any manner, or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by the Board of Medicine or Board of Osteopathic Medicine.

**Question:** I am too ill to grow my own medical marihuana. What can I do?

**Answer:** The MMMA provides for a system of designated caregivers. The caregiver can acquire 2.5 ounces of usable marihuana and grow up to 12 marihuana plants for a qualifying patient. The caregiver may assist up to 5 patients. The caregiver must sign a statement agreeing to provide marihuana only to the qualifying patients who have named the individual as their caregiver. The caregiver's name, address, birth date and social security number must be provided to the state at the time of a patient's registration. The Department will issue a registry identification card to the caregiver who is named by a qualifying patient on his/her application. The Department may not issue a registry identification card to a proposed caregiver who has previously been convicted of a felony drug offense. The Department will verify through a background check with the Michigan State Police that the designated caregiver has no disqualifying felony drug conviction. A caregiver may receive reasonable compensation for services provided to assist with a qualifying patient's medical use of marihuana.

**Question:** Who can ingest medical marihuana?

**Answer:** Under the MMMA, only a person with a qualifying debilitating medical condition who has obtained a valid MMMP card is exempt from criminal laws of the state for engaging in the medical use of marihuana as justified to mitigate the symptoms or effects of the person's debilitating medical condition.

**Question:** How are the laws and rules of the MMMA enforced?

**Answer:** The MMMP enforces the registration process making sure applications are complete before issuing a registry identification card,

terminating incomplete or fraudulent applications, and revoking cards if individuals commit violations of the MMMA. The MMMP verifies the validity of a registration card of patients and caregivers with local and state law enforcement personnel if they call the MMMP requesting such information. Local and state law enforcement personnel may take any action they believe is necessary to enforce the criminal laws of the state, including violations of the MMMA. Local and state law enforcement actions may vary. The MMMP has no authority to direct the activities of local and state law enforcement agencies.

**Question:** Can the MMMP give me legal advice?

**Answer:** No. If you have questions concerning compliance with the Michigan Medical Marihuana Act, you may wish to consult with an attorney.

**Question:** Will paraphernalia associated with my medical use be protected?

**Answer:** Yes, in Section 4 of the MMMA, asserting medical use of your "paraphernalia relating to the consumption of marihuana" is an affirmative defense.

**Question:** Can the police search me just for having a patient registry card?

**Answer:** No, not under Michigan law. Possession of, or application for, a registry identification card does not alone constitute probable cause to search the person or property of the person possessing or applying for the registry identification card or otherwise subject the person or property to inspection by any governmental agency, including a law enforcement agency.

**Question:** Will my medical insurance cover medical marihuana?

**Answer:** Probably not. The MMMA does not require a government medical assistance program or commercial or non-profit health insurer to reimburse a person for costs associated with the medical use of marihuana.

**Question:** Can I use medical marihuana at work?

**Answer:** This is up to the employer. Even if you are a registered patient, your employer may still prohibit medical marihuana use in the workplace.

**Question:** If I live in a nursing home, assisted living facility, or a retirement home, can I consume medical marihuana?

**Answer:** Presuming you are registered with the state patient registry and carrying your registry identification card, the law does not specifically prohibit the use of medical marihuana in those settings. However, the facility or home may have prohibitions. Therefore, you must verify with the facility if using medical marihuana is permitted and under what circumstances or conditions.

**Question:** Where can I consume medical marihuana?

**Answer:** Presuming you are registered with the state patient registry and carrying your registry identification card, you may consume medical marihuana on your property or elsewhere. However, the law does not permit any person to do any of the following:

- (1) Undertake any task under the influence of marihuana, when doing so would constitute negligence or professional malpractice.
- (2) Possess marihuana, or otherwise engage in the medical use of marihuana:

- (a) in a school bus;
  - (b) on the grounds of any preschool or primary or secondary school;
- or
- (c) in any correctional facility.
- (3) Smoke marihuana:
- (a) on any form of public transportation; or
  - (b) in any public place.
- (4) Operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marihuana.

**Question:** I live within 1000 feet of a school, AKA a "drug free zone". Can I still grow and/or possess my medical marihuana there?

**Answer:** The MMMA does not address this issue. You may wish to contact an attorney about this issue.

**Question:** Do I have to tell my landlord that I am a patient in the MMMP? Can my landlord evict me if I am a patient in the MMMP and have my grow site in my rental housing? Can I live in subsidized housing and be a patient in the MMMP?

**Answer:** It is up to you to decide whether or not to tell your landlord that you are a patient in the MMMP. Nothing in the MMMA specifically addresses whether or not you can be evicted because you are a patient in the MMMP, even if you have only the amount of medical marihuana allowed by law. Nothing in the MMMA specifically addresses whether or not a person can be an MMMP patient and live in subsidized housing. If you have questions about these important issues, you may wish to talk to an attorney to learn about your rights and protections.

**Question:** What should I tell my employer if I am subjected to a drug test?

**Answer:** The MMMA states that employers are not required to accommodate employees who use medical marihuana. You may wish to consult an attorney about whether or not to tell your employer that you are a patient in the MMMP. A patient may contact the MMMP in writing to ask the program to release information about the patient's registration to an employer.

**Question:** Can I use marihuana while on parole/probation if I have an MMMP card?

**Answer:** The authorities that are responsible for your probation/parole/post-prison supervision can impose restrictions on your possession and use of medical marihuana as a condition of your supervision, even if you have a valid MMMP card. Most offenders' supervision is subject to an "obey all laws" condition. Since marihuana possession and use is illegal under federal law, supervisory authorities can sanction an offender for possessing marihuana, even if he or she has an MMMP card. Sanctions could result in your arrest and return to jail. If you are on probation, parole, post-prison supervision, or other form of conditional supervision for conviction of a crime, you should consult with your parole and probation officer regarding whether your possession or use of marihuana may subject you to sanction for violation of the conditions of your supervision." The MMMP will revoke the card of a cardholder if a court issues an order that prohibits the cardholder from participating in the medical use of marihuana or otherwise participating in the MMMP.

**Question:** I am a valid medical marihuana patient under another state's law. Am I protected?

**Answer:** Yes, under Section 4(j) of the MMMA, a registry identification card or its equivalent issued by another state government to permit the medical use of marihuana by a qualifying patient or to permit a person to assist with a qualify patient's medical use of marihuana has the same force and effect as a registry identification card issued by the Department.

**Question:** Is the MMMA recognized by other states? Can I travel to another state with medical marihuana and my MMMP registry identification card and not be arrested or charged with civil or criminal penalties?

**Answer:** At this time, the MMMP is not aware of any "reciprocity" agreements with any other states to honor the Michigan law. This includes even those states that have medical marihuana laws of their own, such as Washington and California. Because medical marihuana programs vary by state, you may want to contact the state you are traveling to for information on their laws.

**Question:** Can patients form growing cooperatives?

**Answer:** The law does not address this. Consult with your local law enforcement officer or personal attorney.

**Question:** How do I become a caregiver?

**Answer:** The MMMA defines a "Primary Caregiver" as a person who is at least 21 years old and who has agreed to assist with a patient's medical use of marihuana and who has never been convicted of a felony involving illegal drugs. Therefore, the qualifying patient (applicant or registrant) and you must complete a "Caregiver Attestation" to be submitted by the qualifying patient.

**Question:** What if my registry ID card was lost or stolen?

**Answer:** You would submit a signed statement attesting to the fact that your registry ID card has been lost or stolen (whichever applies) requesting a replacement card. Include your full name clearly written, copy of your identification, and \$10.00 check or money order made payable to "State of Michigan-MMMP." Mail the statement and fee to:

Michigan Department of Community Health  
Medical Marihuana Registry  
PO Box 30083  
Lansing, MI 48909

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# CHALLENGES SURROUNDING LOCAL REGULATION OF MEDICAL MARIHUANA

By Mark Graham, AICP, PCP, Planning Director, Delta Township

## Introduction

In November of 2008, the Michigan Medical Marihuana Act (MMMA) was approved as a citizen initiative by 63% of Michigan voters. (The law became effective in April, 2009.) There are now 14 states in the nation (and the District of Columbia pending final approval by Congress) which permit the medical use and cultivation of marijuana (see map on next page). The full impact of the law is now being recognized as communities throughout the state struggle to determine how they wish to address various issues which have arisen. Readers should be cognizant of the fact that Michigan Law still prohibits the possession of non-medical marihuana, in any quantity, which is a misdemeanor punishable by up to a year in jail and a fine of up to \$2,000. It is also a violation of federal law.

This article opens with an overview of the Michigan Medical Marihuana Act. It then examines a variety of zoning issues and regulatory options. Questions and pros and cons of various approaches are examined including doing nothing, prohibiting certain uses, and several regulatory approaches for dispensaries, compassion clubs and smokehouses, growing operations and cooperatives. Regulatory alternatives to zoning are also examined. There remains considerable uncertainty about the legality of various actions of medical marihuana advocates, and of the regulatory authority of local governments relative to some of the most common land uses associated with growing, dispensing and using medical marihuana. Readers are urged to review the contents of this article with local legal counsel and do additional research in this rapidly evolving arena before settling on an approach that is appropriate for your community. It is probably also wise to annually repeat your research and review your regulatory approach with an eye to updating it to reflect recent statutory changes and court decisions.

## Overview of the MMMA

The MMMA is identified as Initiated Law 1 of 2008 and is located in MCLA 333.26421 to 333.26430. The purpose of the Law is:

*"to allow under state law the medical use of marihuana; to provide protections for the medical use of marihuana; to provide for a system of registry identification cards for qualifying patients and primary caregivers; to impose a fee for registry application and renewal; to provide for the promulgation of rules; to provide for the administration of the act; to provide for affirmative defenses; and to provide for penalties for violations of the act."*

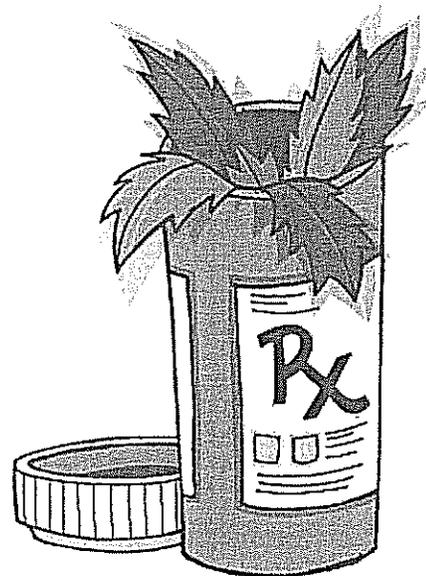
The main provisions of the MMMA are summarized as follows:

- "Qualifying Patients" can legally obtain, possess, cultivate/grow, use and distribute medical marijuana. Patients under 18 must obtain parent/guardian consent.
- "Qualifying Patients" must obtain certification from a physician that they have a debilitating condition as specified in the Act. (See definition of "debilitating medical condition" in FAQ sidebar on next page.)
- Once the "Qualifying Patient" receives a physician's certification they apply to the Michigan Department of Community Health (DCH) for a Registry Identification Card.
- As of 6/4/2010 there were 18,012 patient registrations issued.
- A "Qualifying Patient" (Patient) can possess 2.5 ounces of marijuana and 12 marijuana plants but they must be kept in an enclosed, locked facility.
- When a Patient completes the application form with the DCH, they may designate a "Primary Caregiver" (Caregiver) to assist them in obtaining medical marijuana. However, if the Patient designates a Caregiver, the Patient loses the ability to cultivate and manufacture marihuana. The Caregiver could change with the annual registration.

- A Caregiver must obtain certification from the DCH, they may care for a maximum of five Patients. The Caregiver may cultivate 12 plants per Patient, possess 2.5 ounces of usable marihuana per Patient, and deliver, transfer, and acquire marihuana. Thus, the Caregiver could possess 60 plants for his patients and, if the Caregiver was also a Patient, they could possess 72 plants.
- As of 6/4/2010 there were 7,813 caregiver registrations issued.

## Protection of the Rights of Patients and Caregivers

Municipal officials must accept the fact that the MMMA has made the medicinal use of marihuana legal. Officials should be cognizant of the aforementioned rights and privileges afforded to patients and caregivers by the MMMA such as the rights to grow, use, possess and ingest medical marihuana. Numerous provisions in the MMMA insure that patients will have access to medical marihuana and their caregivers absent the fear of prosecution. Ordinances which contain provisions contrary to the specifics of the MMMA are vulnerable to legal challenge.



## About the Author

Mark Graham has been Planning Director in Delta Township, Eaton County since 1978 and he was a planner there for two years previous to that. Under his direction, the Township has been a leader in planned growth, access management and professional zoning administration. He can be reached at MGraham@deltami.gov. □

## Zoning and the MMMA

The MMMA makes no reference to zoning or local land use regulations. In the 18 months since the MMMA was enacted, municipalities have taken a wide variety of zoning approaches which are summarized below.

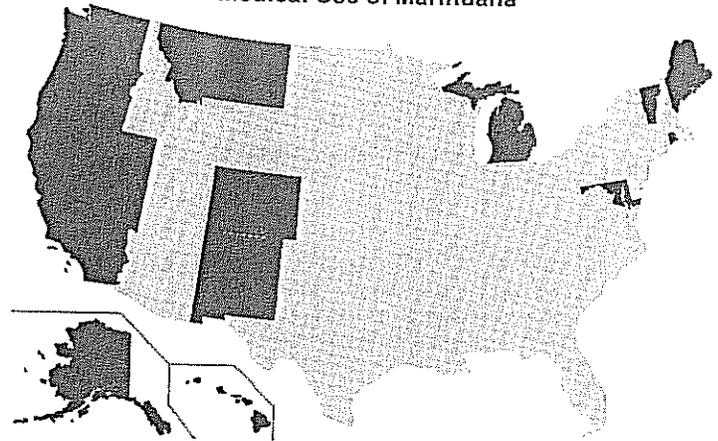
### Do Nothing Approach

Some communities have either formally or informally adopted a "do nothing" approach. Justifications for this approach include: "it can't happen here," "we don't have the money/manpower to address medical marijuana issues," "we're not located near a university," etc.

Adoption of the "do nothing" approach could result in the following consequences:

- A community might be more attractive to entrepreneurs seeking to establish medical marijuana uses if the community had no regulations.
- Once established, a medical marijuana proprietor could claim

Figure 1 Map of US States with Laws Permitting Medical Use of Marijuana



Source: NORML and wikimedia commons

## Frequently Asked Questions

**Q.** Why is marijuana spelled with an "h" rather than a "j" in the State Law?

**A.** The DCH web site notes that marijuana is one of two acceptable spellings in the dictionary and is consistent with the spelling in the Michigan Public Health Code.

**Q.** What are the benefits of Medical Marijuana?

**A.** MCLA 333.26422 of the MMMA states: "Modern medical research, including as found by the National Academy of Sciences' Institute of Medicine in a March 1999 report, has discovered beneficial uses for marijuana in treating or alleviating the pain, nausea, and other symptoms associated with a variety of debilitating medical conditions."

**Q.** What is a "debilitating medical condition"?

**A.** MCLA 333.26423 of the MMMA defines a "debilitating medical condition" as follows:

- (1) "Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, agitation of Alzheimer's disease, nail patella, or the treatment of these conditions.
- (2) A chronic or debilitating disease or medical condition or its treatment that produces 1 or more of the following: cachexia or wasting syndrome; severe and chronic pain; severe nausea; seizures, including but not limited to those characteristic of epilepsy; or severe and persistent muscle spasms, including but not limited to those characteristic of multiple sclerosis.
- (3) Any medical condition or its treatment approved by the state department of community health....."

**Q.** Is it true that Federal Law does not permit the use of medical marijuana?

**A.** Yes. The ability to grow, cultivate, store, dispense, manufacture, transfer, ingest, or acquire marijuana, as permitted by the MMMA, constitutes violations of federal law. However, in November 2008 U.S. Attorney Eric Holder directed federal prosecutors to back away from pursuing cases against medical marijuana patients and their sanctioned suppliers in those states which allow medical marijuana. Thus, it appears that the Obama Administration has established a policy of not pursuing federal prosecution of state marijuana laws.

**Q.** Is the Michigan Medical Marijuana Act the same as the California law?

**A.** No. There are significant differences between the two laws. California's law provides for "cooperatives" which has resulted in

many communities permitting the sale of marijuana at dispensaries. Los Angeles recently adopted a new ordinance which takes effect on June 7, 2010 limiting the number of dispensaries to 186. A May 11, 2010 *Wall Street Journal* article referred to the City Attorney sending out letters mandating that 439 dispensaries shut down before the effective date of the new ordinance. Unlike Michigan, California doesn't limit the amount of medical marijuana a patient can possess. Legal experts have indicated that the Michigan Law was modeled after the Rhode Island law.

**Q.** Can doctor's offices or pharmacies dispense marijuana?

**A.** No. Federal law classifies marijuana as a Schedule 1 drug which means that doctors and pharmacists can not prescribe or distribute it.

**Q.** What's the likelihood that the MMMA will be amended?

**A.** The MMMA was a citizen initiated law which makes it difficult to amend or repeal. Michigan Law mandates a ¾ majority vote in the Senate and the House to overturn a "legislative initiative" such as the MMMA. In addition it must be recognized that 63% of the voters supported the initiative and that there are now over 20,000 registered Patients and Caregivers.

**Q.** Are Patients required to register or obtain some type of permit from our municipality?

**A.** No. There are no provisions in the MMMA permitting municipalities to impose registration, licensing, or permit requirements on Patients.

**Q.** How many Patients and Caregivers do we presently have in our community?

**A.** Due to confidentiality provisions in the MMMA, there is no way of confirming how many Patients or Caregivers there are in a municipality or their home addresses.

**Q.** How much marijuana could be produced by a Patient's 12 permitted plants?

**A.** Cannabis plants grown indoors under ideal conditions flower 3-5 times before dying, meaning the 12 plants could annually produce 43-72 ounces. A study of medical marijuana patients in Washington revealed they consumed an average of 27 ounces per year.

**Q.** Any idea as to how much medical marijuana costs?

**A.** An April 20, 2010 article in the *Lansing State Journal* reported that a medical marijuana dispensary in Lansing was charging \$90 for a ¼ ounce. (Note: MCLA 333.26424 of the MMMA permits Caregivers to receive compensation for costs associated with assisting a Patient in the medical use of marijuana.)

"non-conforming use" status and argue that they were exempt from future regulations.

- If the community does not adopt medical marijuana regulations it could result in law enforcement agencies bearing the brunt of future problems.

### Prohibition Approach

In July 2009, the City of Livonia, Michigan adopted an Ordinance prohibiting the licensing of any business which is in violation of Federal Law. Federal law prohibits the cultivation and sale of marijuana. Thus, Livonia officials have taken the position that Federal law preempts the enactment of municipal ordinances permitting medical marijuana dispensaries.

The City of Grand Rapids is in the process of drafting zoning ordinance amendments pertaining to medical marijuana. Officials from the City's Planning Department have taken the position that dispensaries are a violation of Federal Law and also their zoning ordinance states that if a use isn't permitted it's prohibited, thus dispensaries are prohibited. Grand Rapids is also unique in proposing to permit caregivers to operate as home occupations subject to licensing by the City Clerk.

A March 8, 2010 *Detroit Free Press* article estimated 150 California cities have adopted outright bans on marijuana dispensaries.

The following pros and cons have been identified regarding the Prohibition Approach:

#### Pros:

- This is a simple approach, only two sentences would be needed to be inserted in the Zoning Ordinance reading: "Uses not expressly permitted herein are prohibited. Uses for enterprises or purposes that are contrary to federal, state or local laws or ordinances are prohibited."
- There is no specific language in the MMMA referring to uses such as dispensaries, thus a municipality is under no obligation to legally provide for them.

#### Cons:

- A legal challenge could be filed alleging that a prohibition constitutes a violation of the spirit of the MMMA.
- Prohibiting all medical marijuana uses could constitute a prohibition of a land use in the presence of a demonstrated need which is a violation of Section 207 of the Michigan Zoning Enabling Act. However, questions could arise as to whether the uses are "lawful."
- Attempting to prohibit uses associated with medical marijuana could boost "black market" operations which would not provide for any governmental scrutiny.

### Regulatory Approach

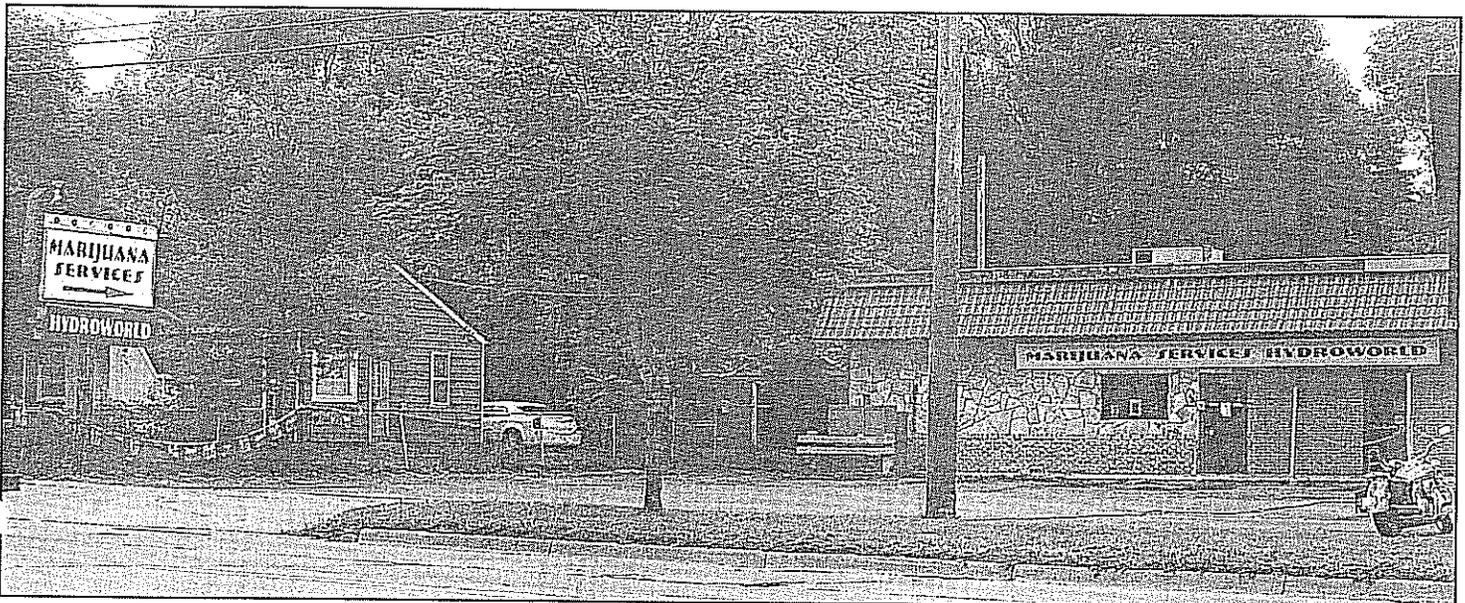
Planning and zoning officials have generally recognized that the failure to address distribution is one of the major failings of the MMMA. Although the term "dispensary" is not defined or referred to in the MMMA, it's become the generic term to connote medical marijuana distribution.

Numerous Michigan municipalities have adopted, or are in the process of adopting, zoning ordinance amendments which would allow for medical marijuana dispensaries via the Special Land Use procedure. MCLA 125.3502, being section 502 of the Michigan Zoning Enabling Act, provides general parameters for the Special Land Use procedure. As with any new use, municipal officials should analyze the various issues associated with dispensaries which could include the following:

#### Questions for Municipalities Opting to Regulate Marijuana Dispensaries

Following are key questions that municipalities which choose to regulate marijuana dispensaries should seriously consider before engaging in regulation:

- What concerns have municipal officials identified which may result from the operation of dispensaries?
- Do the proposed regulations reasonably protect the public health, safety and welfare?
- Are the proposed regulations consistent with the purpose of the municipal zoning ordinance and the goals/policies of the master plan?
- Are the regulations easy to interpret and enforceable by staff?
- What zoning district should dispensaries be permitted in? (It is often assumed that public opposition may be vehement if dispensaries are permitted in residential districts.)
- Should the definition of dispensary contain a "threshold point" as to how many caregivers could share the same facility without constituting a dispensary? (For example, should dispensaries be defined as premises housing three or more caregivers in order to permit husband and wife caregivers to cohabit without being classified as a dispensary?)
- Should there be separation requirements? (Some communities are requiring separation from schools, child care centers, and other dispensaries which is similar to distancing requirements for adult entertainment uses.)
- Should minimum security measures be mandated? (MCLA 333.16424 mandates that medical marijuana be kept in an enclosed, locked facility. Would this prevent growing plants outside in a fenced and locked facility?)
- Should the hours of operation be limited? (If the municipality



Business in South Lansing offering medical marijuana services.

does not limit the hours for other uses it would appear to be discriminatory to subject dispensaries to limited hours.)

- Traffic generation. (Some municipalities have attempted to limit weekly patient visits to a dispensary which would be difficult, if not impossible, to monitor. Are there any other uses in the municipality which have limited trips per day such as home occupations?)
- Should a "cap" be placed on the total number of dispensaries in the municipality? (San Francisco established a "cap." It could be difficult to legally justify a specific number of dispensaries in a community.)

#### Auburn Hills Example

In November 2009, the City of Auburn Hills was one of the first communities in Michigan to amend their zoning ordinance to permit Medical Marijuana Dispensaries. Auburn Hills officials decided to take the "regulatory approach" and permit dispensaries via the Special Land Use approach.

The Auburn Hills Ordinance defines dispensaries as follows:

*"Medical Marijuana Dispensary: A facility where primary caregivers who are legally registered by the Michigan Department of Community Health (MDCH) may lawfully assist qualifying patients who are also legally registered by the MDCH with the medical use of marijuana in accordance with the Michigan Medical Marijuana Act, as amended. A use which purports to have engaged in the medical use of marijuana either prior to enactment of said Act, or after enactment of said Act but without being legally registered by the MDCH, shall be deemed to not be a legally established use, and therefore not entitled to legal nonconforming status under the provisions of this Ordinance and/or State Law."*

Dispensaries are allowed in Auburn Hills' General Business District (B-2) subject to the granting of a Special Land Use Permit. The ordinance contains four specific criteria:

1. The dispensary building shall not be located within 1,000 feet of a school, nursery school, day nursery, or child care center site.
2. Quarterly inspections shall be made by the City Manager's designee to confirm the dispensary is operating in accordance with applicable laws including, but not limited to, State Law and City Ordinance.
3. If the dispensary ceases operations for a length of time of 60 days or greater, then the permit shall expire.
4. Dispensary drive-through facilities shall be prohibited.

#### **Regulation of Dispensaries**

The author has identified the following pros and cons regarding the regulation of dispensaries via a Special Land Use Permit:

##### Pros:

- The MMMA permits Caregivers to receive compensation for costs associated with assisting a Qualifying Patient in the medical use of marijuana. (See MCLA 333.26424)
- The MMMA stipulates that persons shall not be subject to arrest or prosecution for "assisting" patients with using or administering marijuana. (See MCLA 333.26424)
- Providing for the establishment of dispensaries would facilitate the delivery of medical marijuana to qualifying patients.
- Non-residential locations could provide adequate security, more police patrols, better lighting, fire safety and parking. The SLU process would provide an opportunity for inspections by the municipal staff and disclosure as to whether the applicant has ever been convicted of a violation of any law regulating controlled substances.
- Providing for dispensaries at commercial locations could fill vacant storefronts in the community.
- Establishing dispensaries would provide economies of scale for multiple caregivers.

##### Cons:

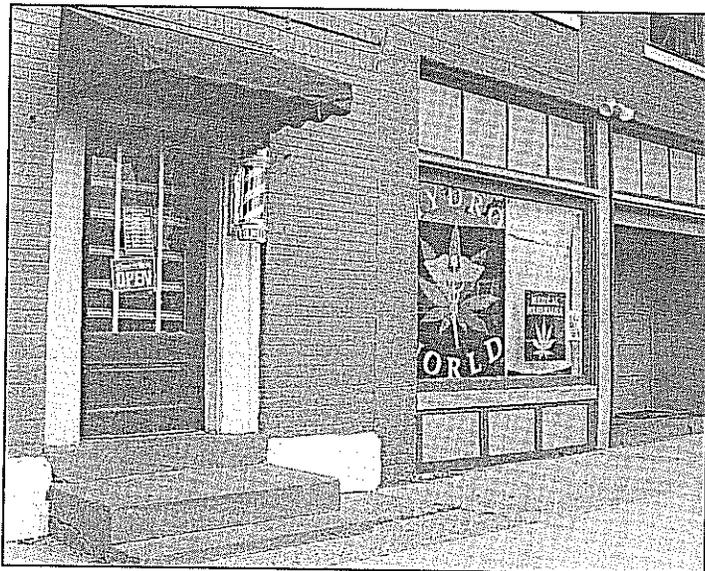
- Medical marijuana distribution establishments constitute a violation of the Federal Controlled Substances Act (see Sec.

21 USC 856) and thus should be prohibited.

- Would there ever be an instance where residents would support a dispensary near them? Elected officials would be in a quandary between an applicant who could possibly meet all ordinance requirements and neighborhood opposition. If they deny the request, they could be sued, just as they could for approving it.
- Quarterly inspections of dispensaries (or other monitoring requirements) could be onerous for a municipality, especially if a number of dispensaries are permitted. Are there any other uses in the municipality subjected to the quarterly inspection requirement?
- The public notice requirements of the Michigan Zoning Enabling Act for Special Land Uses could violate privacy rights.
- Subjecting dispensaries to the Special Land Use process could result in dispensaries "going underground" to avoid regulation.
- Medical Marijuana is considered a medicine as per the provisions of the MMMA. It could be argued that since medical clinics are typically a "Use Permitted by Right," Medical Marijuana Dispensaries should also be permitted "by right." (However, it could be argued that there are significant differences between the two uses in that dispensaries typically permit the growing and dispensing of marijuana while medical clinics do not permit similar activities.)
- It could be argued that mandating the Special Land Use process for medical marijuana dispensaries is inequitable. Other "assembly" uses (bars, theaters, bowling alleys) could also have "adverse secondary effects" but they often are not subjected to the Special Land Use process.

#### **Compassion Clubs and Smokehouses**

Among the land uses related to medical marijuana which are being established in some communities are Compassion Clubs. The City of Lansing's proposed ordinance defines a Compassionate Care Center as: "Any entity whose members are solely comprised of licensed caregivers and registered patients under the Act, who each pay membership dues equally to the entity, is incorporated as a non-profit corporation, does not collect or receive an administrative fee under the Act, and whose total supply of marijuana does not exceed \_\_\_\_\_ at any given time." The draft Lansing ordinance notes that Compassionate Care Centers "shall not be deemed dispensaries" and unlike dispensaries, Compassion Centers would not be subjected to regulation. Compassion clubs typically mandate dues and may or may not permit ingesting marijuana on the premises.



A haircut and ... alternative medicine. Storefront in Old Town in North Lansing.

Law enforcement personnel have expressed concerns about patients congregating at Compassion Clubs, ingesting medical marijuana and then driving away under the influence. However, parallels can be drawn to establishments serving alcoholic beverages at which attendees can over indulge and leave under the influence. In addition, Compassion Clubs can provide many support opportunities, including networking and social and educational functions.

The regulation of Compassion Clubs would most likely depend on what activities (dispensing, growing, ingesting) would be conducted on the premises. Compassion Clubs may have a wide variety of other activities including cooking classes, farmers' markets, and physician certifications for patients.

### Medical Marijuana Growing Operations or Cooperatives

Medical marijuana growing operations or cooperatives have been envisioned by some as an economic stimulus which could fill vacant warehousing, create jobs and provide a centralized location for multiple caregivers who wish to grow marijuana. However, other community officials have interpreted the MMMA such that a close patient/caregiver relationship was intended due to the small quantities of medical marijuana permitted to be grown and possessed and the fact that caregivers can only provide for five patients. This approach could be the antithesis of providing for retail and revenue opportunities such as dispensaries and large scale grow operations.

Zoning officials are faced with the dilemma of determining which zoning districts marijuana grow operations should be permitted in. Establishing grow operations in industrial districts makes sense because of Michigan's present surplus of warehouses, the security provisions offered by industrial-type buildings, the availability of public water for irrigation equipment, and the provision of heavy-duty electrical service to power grow lights and ventilation equipment. It could be argued that indoor marijuana grow

operations are similar to other indoor agricultural uses such as mushroom farming.

Permitting indoor marijuana growing in Agricultural Zoning Districts would most likely occur in rural areas if authorized by the Zoning Ordinance. Questions have arisen as to whether Michigan's "Right to Farm" Act could be used as a defense to establish a medical marijuana grow operation in an agricultural zoning district. The Act defines "farm product" as "plants.... useful to human beings produced by agriculture." However, the Act states that a farm operation shall not be found to be a public or private nuisance if it conforms to "generally accepted agricultural and management practices" (GAAMPs) as determined by the Michigan Commission of Agriculture. At this time the Commission of Agriculture has not developed such guidelines for the growing of medical marijuana.

Defenders of the MMMA have noted that the limitation of 60 plants per caregiver would provide growers an income of \$25,000 or less a year which would not permit them to rely on growing medical marijuana as their sole source of income. However, growers may be able to produce the drug more cheaply if a large scale growing/distribution operation could be established in a warehouse.

On June 3, 2009, there were three Senate Bills (616, 617 and 618) introduced which were primarily intended to reclassify medical marijuana from a Schedule 1 to a Schedule 2 controlled substance so that it could be dispensed at pharmacies. Senate Bill 618 would prohibit medical marijuana from being grown, sold or distributed unless it were grown in a medical marijuana growing facility licensed by the Department of Community Health. The Bill would only permit the licensing of up to 10 facilities per year with a \$2,500 annual fee. The Bill would also prohibit local governments from enacting ordinances regarding medical marijuana growing facilities. Medical marijuana advocates are generally opposed to any legislation which would limit their rights to "grow their own." As previously noted, the Bills have not advanced since being introduced.

### NORML

The NORML web site provides an excellent overview of the potential of hemp cultivation in the United States. Hemp is a variety of *cannabis sativa* (marijuana) that contains less than 1% THC which is the psychoactive ingredient in marijuana. Hemp based products such as jeans and computer paper could become popular if the Federal Drug Enforcement Agency were to relax their licensing rules for large-scale farming.

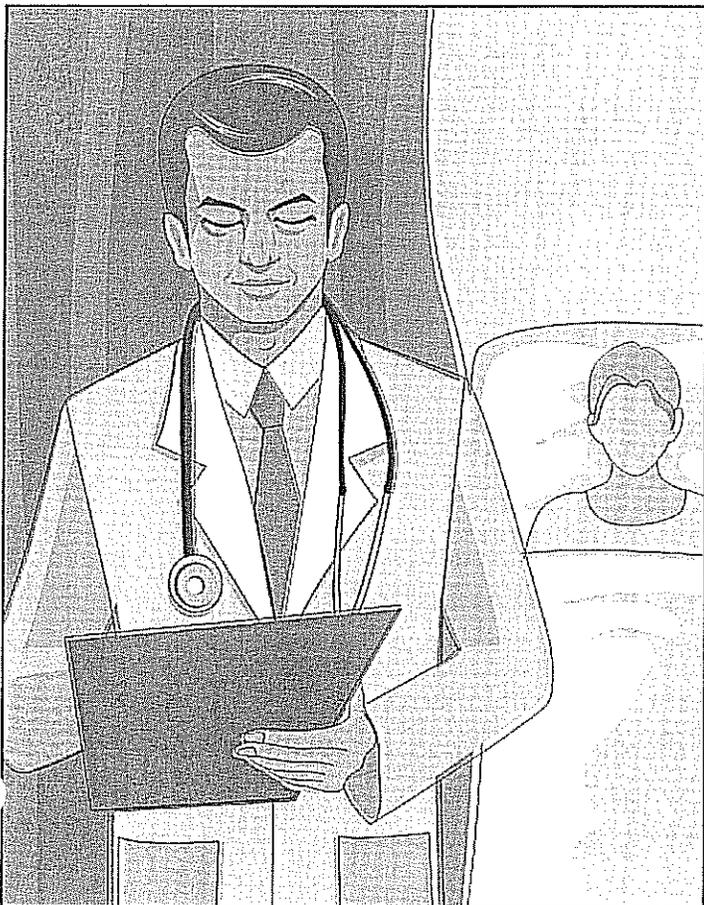
### Medical Marijuana Delivery Services

Medical marijuana delivery services, using mail/private delivery services or making personal deliveries, are beginning to proliferate in Los Angeles, California. The delivery services may possibly be a reaction to attempts to curtail the number of dispensaries in the city. Delivery service advocates have noted that those most in need of medical marijuana often are not well enough to get to a dispensary. Other customers avail themselves of a delivery service because they do not want to be seen frequenting a dispensary. Delivery services are low capital ventures in that all that is needed is a vehicle, a cell phone and a supply of medical marijuana. It would be very difficult for municipalities to be aware of the operation of a delivery service unless it was associated with another use such as a dispensary or compassion club.

### Uses Permitted by Right

It would appear that many uses associated with medical marijuana should be considered as "uses permitted by right" in commercial and office zoning districts by zoning officials. Examples of these uses include:

- Clinic where physicians provide certifications of a qualifying medical condition for a patient.
- Retail stores selling marijuana paraphernalia, growing supplies, etc.
- Classrooms where marijuana growing and cooking techniques are taught.



## Alternatives to Zoning

This article focuses on the use of zoning to regulate medical marijuana. Your municipal attorney may wish to explore a licensing procedure for medical marijuana. The following arguments are offered for the licensing approach:

- Licensing utilizes the municipalities' police powers which permit broader application and greater scrutiny than zoning which is encumbered by the stringent provisions of the Michigan Zoning Enabling Act.
- Licenses can be subject to annual renewals whereas once a land use is established under zoning it typically becomes a permanent permitted use and "runs with the land."
- Licenses could be applied to any location, thus decisions as to what zoning districts should be designated could be avoided.
- Licensing could generate annual revenue to defray the costs of administration.
- Zoning regulations pertaining to medical marijuana could be subjected to a referendum by well organized pro-marijuana interests. (Don't forget that 63% of the electorate supported the law!)
- Medical marijuana uses established prior to zoning rules could claim "grandfather" status and attempt to avoid regulation. It would be much more difficult to avoid an annual license.

## General Suggestions

Following are some general suggestions that may help your community prepare a measured response to the principal medical marijuana issues facing your community.

- Provide municipal officials with a general overview of the MMMA and seek direction as to how they wish staff/planning commission to proceed. (Before an elected official states that "we don't want medical marijuana in our community" check the November 4, 2008 election results regarding Proposal One to see if a majority of the electors in your community supported the ballot proposal.)
- Consult with your municipal attorney when drafting any regulations pertaining to Medical Marijuana. Contemplate the costs of a protracted legal battle. Keep a dialogue with legal counsel going since litigation pertaining to medical marijuana appears inevitable.
- Seek the input of local law enforcement officials early on so they can be supportive of any regulations drafted.
- Contact Marijuana advocacy groups and solicit their input regarding draft municipal regulations.
- Accept the reality that there are most likely already "qualified patients" and "registered caregivers" in your community.
- Consider the passage of a six month moratorium on the issuance of any permits/licenses pertaining to any Medical Marijuana uses in order to provide time to draft regulations (The City of Grand Rapids passed such a moratorium in November 2009.)
- If the municipality intends to permit Medical Marijuana uses, "Test Drive" the regulations to make sure they will not be exclusionary. (For example, some communities mandate a 1,000 ft. separation between Medical Marijuana Dispensaries and a residential zoning district which could result in no parcels qualifying if a commercial strip is bordered by residential neighborhoods.)

## Municipalities That Have Adopted or Are Considering Medical Marijuana Ordinances

Howell, Michigan: On May 24, 2010 the Howell City Council approved a zoning ordinance amendment prohibiting uses that violate federal, state, or local law.

Livonia, Birmingham and Bloomfield Hills, Michigan: These three communities have amended their zoning ordinances to prohibit uses that violate federal, state or local laws.

Roseville, Michigan: In October, 2009 the City of Roseville adopted rules restricting dispensaries to business districts and mandating that dispensaries be located 1,000 feet from any church, school or residential use.

Lansing, Michigan: The City Attorney's Office drafted medical marijuana regulations in May 2010 and transmitted them to the City Council for review.

Niles, Michigan: An ordinance has been drafted mandating that caregivers obtain special land use permits to dispense medical marijuana in a commercial zoning district.

Royal Oak, Michigan: The planning department has drafted regulations pertaining to dispensaries which are under review.

Grand Rapids, Michigan: City staffers have drafted regulations which would prohibit dispensaries, cooperatives, grow facilities and compassion clubs. Registered caregivers would be allowed to operate as a home occupation. The regulations have yet to be adopted.

Auburn Hills, Michigan: In November, 2009 the City amended their Zoning Ordinance to permit dispensaries via the Special Land Use Permit process. On June 7, 2010 the City Council is scheduled to consider a 60-90 day moratorium on dispensaries to provide the City time to further study the issue and revise the current ordinance.

Garden City, Michigan: Officials have enacted Zoning Ordinance amendments requiring medical marijuana businesses to locate in their commercial zoning district, but prohibiting such businesses in the central business district.

Saginaw, Michigan: City planners have drafted amendments to the City's Zoning Ordinance to address medical marijuana.

## Information Sources on Medical Marijuana

For more information, consult the following:

- [www.michigan.gov/mmp](http://www.michigan.gov/mmp)  
The Michigan Department of Community Health site, provides general info regarding the MMMA.
- [www.michiganmedicalmarijuana.org](http://www.michiganmedicalmarijuana.org)  
The Michigan Medical Marijuana Association provides medical marijuana information.
- [www.norml.org](http://www.norml.org)  
National organization working to reform marijuana laws. □



MichiganMedicalMarijuana.org

## Symposium to Provide Opportunity for Discussion on Municipal Response to New Medical Marijuana Law

When Michigan voters passed the Medical Marijuana ballot initiative in November 2008, it is obvious that few knew what this would mean for patients, caregivers and others in the community. From drive-through dispensaries to medical marijuana lounges, a wide range of issues have arisen as a result of this new legislation.

To learn more about this unconventional law, address differing perspectives and discuss its implications for municipalities, the Michigan Townships Association (MTA), Michigan Municipal League (MML) and Michigan Association of Counties (MAC) are hosting a symposium on **Tuesday, July 20, 2010, from 1 to 4 p.m. at the Ypsilanti Charter Township Civic Center in Washtenaw County.**

"*Municipal Responses to Michigan's Medical Marijuana Act-A Symposium to Discuss the Relevant Issues*" will feature an array of experts and include an overview of the law as well as panel discussions on law enforcement issues, land use considerations and zoning provisions.

The symposium is *not* a workshop, but rather an opportunity for elected and appointed local government officials, as well as law enforcement, county prosecutors, municipal attorneys and state agency representatives, to have dialogue on a myriad of issues affecting our communities and to determine possible next steps relative to the law.

Although this event is being offered on a complimentary basis to MTA, MML and MAC members, pre-registration is required as space is limited. To register, e-mail [rebecca@michigantownships.org](mailto:rebecca@michigantownships.org) with your name, position, municipality, and your e-mail address. Registrations will be accepted until July 15, or sooner if capacity is reached.



## NEW SELF-HELP AUDIT TOOLS AVAILABLE

By Kurt Schindler, AICP, MSU Land Policy Educator

Three new titles have been added to the MSU Extension Land Use Team *Planning and Zoning* series – a *Community Planning and Zoning Assessment System* series. The new titles focus on Capital Improvement Programming, Subdivision and Land Splitting Reviews, and Capital Improvement Review. These, like the first eight publications in the series were developed by MSU Extension Land Use Team members, then peer reviewed by a committee of consulting planners through the Michigan Association of Planning, and then tested in a municipality(ies) before being finalized.

The *Community Planning and Zoning Audit* series is intended for use by local units of government in Michigan, and by professional planning consultants for their government clients, to help perform an evaluation of the basics of the community's planning and zoning system. The reason for doing an assessment is to learn of shortcomings and problems before they become controversial issues. As a result of going through this booklet, local officials will be alerted to things that need "fixing" and deficiencies in the community's files. The document helps accomplish three objectives:

1. Identify liability risks from not following proper procedures and practices, and not having adequate documentation of those procedures and practices.
2. Learn to better manage the planning and zoning administration in your community.
3. Take corrective steps to improve your planning and zoning system.

The *Community Planning and Zoning Audit*, while not difficult to do, does take time and requires searching for and finding various records in your local government files. The *Community Planning and Zoning Audit* can be utilized by local units of government in a variety of ways. A community can go through this booklet as a group (e.g., the planning commission or a subcommittee) or a community can have an individual do so. The advantage of performing the assessment as a group is that reviewing the com-

munity's documents and files in detail is a great educational experience for local officials. Alternatively, a staff person within the planning department, or your consulting planner can perform the audit quicker and offer additional professional advice and recommendations. Regardless of the approach taken, the main idea is to take the time to find out where various documents are and to make sure that proper documentation is on file. Then, where necessary, take action to correct any shortcomings.

There are three new titles just completed in this series:

- *Planning and Zoning* #9: **Capital Improvement Programming** (MSU Bulletin number E-3104) provides a review of the process of creating an annual capital improvement program (CIP). By Jasneet Sharma, Land Policy Educator, Hillsdale and Lenawee counties; Brad Neumann, Land Policy Educator, MSU Extension, St. Joseph County; and Kurt H. Schindler, Regional Land Use Educator, Northwest Michigan.
- *Planning and Zoning* #10: **Subdivision and Land Splitting Reviews** (E-3105) provides a review of the administrative structure for handling land divisions, subdivisions or plats, site-condominiums, lot splits, and certified plats: pre-application meetings with the developer, public notification, plat review, record keeping, and use of standards in making decisions. By Schindler, Neumann, and Sharma.
- *Planning and Zoning* #11: **Capital Improvements Review** (E-3106) provides a review of the process for the planning commission to review and comment on local government construction projects (which are otherwise not subject to zoning), and outlines how this review can be used as a constructive way to ensure that government-funded projects comply with the adopted plan and local ordinances. By Neumann, Schindler, and Sharma.

Earlier titles in this series are:

- *Planning and Zoning* #1: **Community Planning & Zoning Audit, Basic Setup** (E-3051) to make sure your planning

# Traverse City Record-Eagle

July 27, 2010

## Forum: Marijuana puts residents at risk

By ADRIENNE ROSSI

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---- — The Traverse City Planning Commission recently approved a proposed ordinance governing the transfer and cultivation of medical marijuana. This ordinance threatens the safety and integrity of Traverse City's residential neighborhoods by allowing up to 72 marijuana plants to be grown in our single-family homes, sheds and garages.

No registration, inspection, or landlord notification will be required. Even law enforcement agencies won't know where these grow sites are located.

This ordinance deals with a substance still illegal under federal law. Marijuana-related crime often involves violence, weapons, and large sums of money. Secrecy will not deter pot-related crime.

Good lighting, high visibility, and regular police surveillance of identified medical marijuana grow sites will.

Restricting cultivation of more than 12 medical marijuana plants to just single-family homes or industrial sites puts undue pressure on our residential neighborhoods, where growers will be able to avoid both oversight and "middle man" costs.

Traverse City needs its single-family housing stock. This is the housing that lends stability to our community and shelters the families that keep our schools viable. Generations of residents have given of their time, talent, and treasure to protect and improve these neighborhoods.

City commissioners will soon have the opportunity to protect our neighborhoods, and lift the veil of secrecy surrounding the burgeoning medical marijuana industry. The business of medical marijuana cultivation should be recognized as a legitimate health care occupation by amending the proposed ordinance to allow medical marijuana cultivation in all appropriate zoning districts, including commercial and mixed-use districts.

If cultivation of more than the 12 plants allowed to individual registered patients is permitted in residential neighborhoods, it should be designated as a home occupation and our home occupations ordinance should be amended, as was done in Grand Rapids, to include registration, landlord notification, and periodic inspections.

This is not a "done deal." Please familiarize yourself with this ordinance, which is available online, at city hall, or at the Traverse City Area District Library. Ask that commissioners protect our single-family

neighborhoods by amending the proposed Medical Marijuana ordinance to:

n Allow medical marijuana cultivation in all appropriate zoning districts, including commercial and mixed-use districts.

n Require registration, periodic inspection, and landlord notification of all home occupations if cultivation of more than 12 medical marijuana plants per registered patient is allowed in single family homes

Remember, if you say nothing, commissioners assume you agree with the proposed ordinance.

To learn more about the marijuana culture, Google Marijuana Inc. View the video by that name and also the AI Roker report.

**About the author:** Adrienne Rossi is a lifelong Traverse City resident and was a member of the city committee considering a medical marijuana ordinance. She lives in Central Neighborhood and is a past president of the Central Neighborhood Association.

**About the forum:** The forum is a periodic column of opinion written by Record-Eagle readers in their areas of interest or expertise. Submissions of 500 words or less may be made by e-mailing [letters@record-eagle.com](mailto:letters@record-eagle.com). Please include biographical information and a photo.

# Traverse City Record-Eagle

*August 3, 2010*

## Forum: Plan protects patients

*By Adam Devaney*

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---- — This month, the Traverse City Commission will have the opportunity to enact a new set of zoning guidelines in response to the passing of the Michigan Medical Marihuana Act in 2008. This new state-level law allows qualifying patients to cultivate up to 12 plants or designate a caregiver to possess them for up to five patients.

Not surprisingly, this compassionate act passed by 63 percent of the vote. A year and a half after implementation, municipalities are trying to figure out how to zone land-use impacts in relation to the Act.

Traverse City set up a citizen committee in order to inform the city about possible guidelines and is to be commended for this. As a committee member, I had only two principles that I brought to the table: 1) protect the confidentiality of patients and their caregivers; and 2) limit the potential liability to the city of Traverse City by avoiding the types of regulations that have resulted in numerous lawsuits in cities such as Grand Rapids and Saginaw.

These are not mutually exclusive principles, and the committee was almost unanimous in its understanding of how we could best accomplish these goals. Adrienne Rossi represented the minority position on the committee, and her July 27 forum is a fair representation of her positions. While I commend her community involvement, the committee members and the city attorney have rejected the viability of arguing her positions on this issue in court each time they have been presented.

The Health Insurance Portability and Accountability Act protects the right to confidentiality of patients and their caregivers under the Marihuana Act through the Michigan Department of Community Health. If the city decides to regulate medical access, the opportunity for liability increases with every bit of information collected.

Even the state of Michigan, which is bringing in large amounts of money through application fees, has steadfastly refused to entertain the idea of conducting any type of inspections. Also, regulating this state-licensed activity as a home occupation with extra licensing fees or inspections would make it increasingly likely that the city would be liable for prohibitively restricting an act allowable under state law.

All these ideas were soundly rejected time and again in the committee and at the public hearing by committee members and the city attorney as currently indefensible in court.

That said, Traverse City is being looked to for leadership in this region. The types of regulations we

impose will set a precedent for the area. I am not suggesting that this zoning proposal is perfect, but I will stand on principle and say that the proposed zoning: 1) protects the confidentiality of patients and their caregivers; and 2) limits the potential for liability to the city of Traverse City.

We are talking about a vulnerable population that the voters of Michigan overwhelmingly chose to protect. It is important that we adopt zoning regulations in Traverse City that represent this. This zoning proposal goes a long way toward doing just that.

About the author: Adam DeVaney was petition coordinator for Traverse City's 2004 Medical Marihuana Lowest Law Enforcement Priority Amendment. He is a member of the public committee charged with investigating Medical Marihuana Act zoning for Traverse City. He holds bachelor of science degrees in sociology and psychology and is currently enrolled in the Masters of Social Work Program through Grand Valley State University.

About the forum: The forum is a periodic column of opinion written by Record-Eagle readers in their areas of interest or expertise. Submissions of 500 words or less may be made by e-mailing [letters@record-eagle.com](mailto:letters@record-eagle.com). Please include biographical information and a photo.

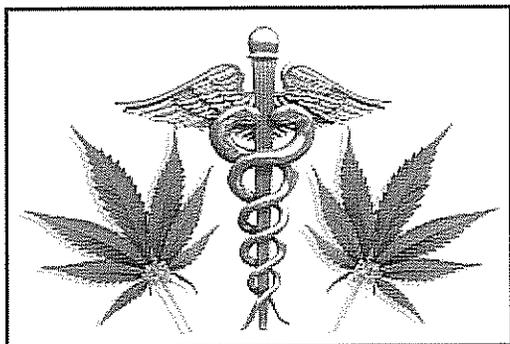
## Medical marijuana ordinance moves to City Council

Wed, Aug 11, 2010

BY ALEX DOTY

[adoty@grandhaventribune.com](mailto:adoty@grandhaventribune.com)

After issuing a moratorium several months ago on the dispensation of medical marijuana in Grand Haven, City Council will soon have a look at regulations governing the issue in the city.



[Click to enlarge](#)

"The city of Grand Haven felt it would be in the city's best interest to allow medical marijuana facilities to exist as a home-based occupation," City Planner Kristin Keery said.

The Grand Haven Planning Commission approved recommending the ordinance in a 6-3 vote Tuesday night. Commissioners Erin Kauth, Tyler Hayes and Mark Hills voted against it.

City Council is expected to consider the proposed zoning ordinance amendment at its Sept. 7 meeting.

While the dispensation of medical marijuana would be allowed as a "minor" home-based occupation in residential districts, it would not be permitted in commercial- or industrial-zoned districts. This was an issue that was taken up by some of the planning commissioners when debating the regulations.

"I'd like to see it in industrial or transitional industrial areas," Hayes said.

This additional zoning district would allow everyone to participate as a caregiver, he said, since certain restrictions such as proximity to local schools could cause people to not participate.

"Obviously, the attorney and I don't support that effort," Keery said of allowing caregivers to operate outside of the residential district.

She said their interpretation is that it isn't allowed by state law to be in the transitional industrial or industrial districts, which could open up the city to a potential lawsuit.

Along with only being allowed in the residential district, some of the regulations in the recommended ordinance include: having medical marijuana only be permitted in the home of the permitted caregiver, only one caregiver would be allowed to exist per dwelling, the medical

marijuana would have to be grown in the dwelling and no caregiver could have more than five patients. Caregivers would also be required to register with the Michigan Department of Community Health and the city's Planning Department.

"This would have helped my wife at the time she was suffering," said Planning Commissioner John Ringelberg, whose wife died in 2001 after a bout with cancer. "But we want to do this right."

Among his concerns with the new ordinance, Ringelberg said, is where the medical marijuana would come from. He made sure the ordinance spelled out that the medical marijuana was grown and processed at the caregivers' facilities.

The Planning Commission had scheduled a public hearing for Tuesday night's meeting, but there was no comment from the audience and Keery said she hadn't received any correspondence from Grand Haven citizens on the issue.

Along with making sure language was correct when sending the recommendation to City Council, planning commissioners also wanted to make sure residents were informed about the ordinance if City Council approves revised language.

Kauth said the city needed to give "due diligence" to make sure those that would want to be caregivers were notified that they had to register with the state as well as the city.

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**August 10, 2010**

**Ms. Ilona Haydon,  
Mayor, City of Manistee  
70 Maple Street  
Manistee, Mi 49660**

**Dear Mayor Haydon;**

**This letter references your input in today's News Advocate (Mayor Criticizes downtown merchants).**

**Lets go back to 1961.....**

**Jebavy-Sorensen Coal Corporation, 486 River Street**

**Closson's Jewelry, 395 River Street**

**Snyder Shoe Company, 397 River Street**

**Margaret's Shop, 396 River Street**

**Red Cross Pharmacy, 380 River Street**

**Dorr's Food Shop, 435 River Street**

**Economy Furniture, 317 River Street**

**Hotel Chippewa, West River Street**

**Economy Food Store, River Street**

**Sally and Sue Shop, River Street**

**Manistee Hardware, 337 River Street**

**Band Box Cleaners, 423 River Street**

**Wally's Radio Shop, River Street**

**Modern Cleaners, 439 River Street**

**American Cleaners, 286 River Street**

**Berglund Drug, Corner of River and Maple**

**Anderson Drug Store, 339 River Street**

**Culligan Soft Water Service, 443 River Street**

**Sea and Ski Shop, 302 River Street**

**Larson Studio, 342 River Street**

**Cheesebro Office Supply Co., 319 River Street**

**Ferguson's Electric Store, 318 River Street**

**Thompson's Men Store, River Street**

**Johnson and Goudie, 429 River Street**

**Menery's Drug Store, 359 River Street**

**Billies Clothes Shop, 385 River Street**

**Wagner's Flowers and Gifts, River Street**

**Knudstrup Electric Company, 421 River Street**

**Rex Grill Restaurant, 354 River Street**

City Drug Store, River and Maple  
Bradford Furniture Store, 407 River Street  
Western Auto, 342 River Street  
Larson Insurance Agency Inc., 364 River Street  
Hokanson Camera Supply, 308 River Street  
Manistee County Savings Bank, River Street  
F. W. Woolworth Company, River Street  
A & P Food Stores, River Street  
Vogue Theater, River Street  
Western Union Telegraph Co, River Street  
Montgomery Ward, River Street  
J.J. Newberry, River Street  
J. C. Penny, River Street

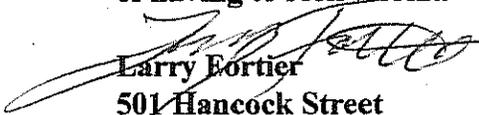
And Ms. Haydon, This is just on River Street, Three Food Stores, on River Street? How great is that?

Today I took A walk Downtown, and just on River Street, Coldwell Has 2 Store fronts for Sale,- Exit, 1 -Century 21, 4 - Ringel, 1, Another 4 are For Sale, 3 are for lease, 6 are for rent and 8 are just sitting vacant. (1961 must have had a hell of a DDA). Whats Missing? Jobs, Jobs, Jobs. Manmade Lake, what jobs? A Zillion Condo's, what jobs.....An expensive Marina....what jobs? A rusting City of Milwaukee??? What jobs?? Vogue Theater?? That'll make the town.

Perhaps a Big Box Store? Now, we're talkin..

I really took time on this walk to peek into empty stores and the side doors that face River Street. I gotta say its lookin bad, like a third world country.

I and my wife moved out of here in 1966 after growing up here and getting married here, but hey...No job's, had to go..30 years later we came back...Still not good. Sure glad me and her are retired and don't need the disappointment of having to seek work..

  
Larry Fortier  
501 Hancock Street  
Manistee, Mi 49660

P. S. You have my permission to use this letter in any manner you see fit..

CC: City Manager  
Downtown Development Authority  
Manistee Chamber of Commerce  
Economic Alliance for Economic Success  
Manistee City Planning Commission  
Manistee Main Street Downtown Development Authority  
Historic District Commission  
Manistee News Advocate