



ZTA Petition No. 152

Date: September 3, 2010

STAFF REPORT TO THE PLANNING COMMISSION

SUBJECT: ZONING TEXT AMENDMENT NO. 152
APPLICANT: City of Midland
PROPOSED: Text Amendment to address medical marihuana

REPORT

Please find attached a proposed zoning text amendment initiated by the City of Midland to propose to ban medical marihuana distribution sites in all areas of the City.

BACKGROUND

On November 4, 2008, Michigan voters approved, by initiative, the Michigan Medical Marihuana Act (MMMA), which took effect on December 4, 2008, to enable certain specified persons to obtain, possess, cultivate/grow, use, and distribute marihuana. The Michigan Department of Community Health adopted rules to implement the Act on April 4, 2009. The Act does not specify how patients and caregivers may acquire marihuana for medical purposes or address how medical marihuana would be dispensed by caregivers. The Act also conflicts with federal law.

The City's zoning ordinance does not regulate the location of medical marihuana dispensaries or the growing of marihuana. This proposed amendment addresses necessary aspects of the zoning ordinance to effectively prohibit the distribution of marihuana through the use of dispensaries or co-ops. These activities are not specifically authorized by the MMMA, and also in violation of Federal Law.

The proposed amendments are attached. The Act and rules promulgated by the Michigan Department of Community Health are available for review at [Michigan Medical Marihuana Act](#) and [Administrative Rules, effective April 4, 2009](#).

ASSESSMENT

In accord with Section 30.03(C) of the Zoning Ordinance, the Planning Commission and City Council shall at a minimum, consider the following before taking action on any proposed zoning ordinance text amendment:

1. Is the proposed amendment consistent with the City's Master Plan?

Yes. The City's Master Plan goals include protecting the long term stability of existing, quality neighborhoods, encouraging integration or mixture of appropriate uses to create great places, promote a healthy, walkable community.

Marihuana is a federally controlled substance due to its deleterious effects. Possession and distribution is prohibited under Federal Law. Although the MMA has made it legal to possess marihuana in specific circumstances delineated by the act, the MMMA does not allow for marihuana dispensaries or co-ops to operate within the State of Michigan. Given that it is an illegal drug under all circumstances at the national level, its presence or permission for its distribution is incompatible with and contrary to the promotion of a healthy and stable community.

2. Have conditions changed since the Zoning Ordinance was adopted that justifies the amendment?

Yes. The Michigan Medical Marihuana Act was passed following the adoption of the zoning ordinance, necessitating this amendment.

3. Was there a mistake in the Zoning Ordinance that justifies the amendment?

No. There was no need to address the use of medical marihuana prior to the enactment of this law.

4. Will the amendment correct an inequity created by the zoning ordinance?

No. The amendment is intended to clarify the unaddressed subjects of distribution and use under the state statute and to recognize that as an illegal substance under federal law, no person will be permitted to operate a marihuana dispensary or co-op within the City of Midland.

5. Will the amendment merely grant special privileges?

No. The amendment is intended to clarify the unaddressed subjects of distribution and use via dispensaries and co-ops under the state statute and to recognize that as an illegal substance under federal law, no person will be permitted to operate a Marihuana dispensary or co-op within the City limits of the City of Midland use or distribute marihuana in the City.

6. Will the amendment result in unlawful exclusionary zoning?

It is the opinion of the City and County Prosecutor that there is no legal mechanism to use or distribute marihuana under federal law. This proposed language will apply to every person and every location equally.

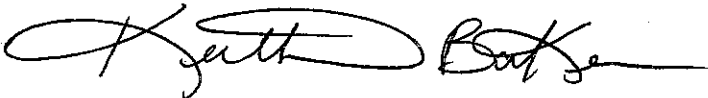
STAFF RECOMMENDATION

Upon careful review of the requested zoning change staff recommends approval of Zoning Petition No. 152. It is the opinion of staff that the proposed amendments are consistent with the City's Master Plan and the intent of the zoning ordinance to regulate businesses and organizations not in compliance with local, state or federal law.

PLANNING COMMISSION ACTION

Staff currently anticipates that the Planning Commission will hold a public hearing on this matter on September 14, 2010. It will formulate a recommendation to City Council during its regular meeting of September 28, 2010. We further anticipate that on October 11, 2010 the City Council will set a public hearing on this matter. Given the statutory notification and publication requirements, the City Council hearing will likely be scheduled for November 8, 2010. Please note that these dates are merely preliminary and may be adjusted due to Planning Commission action and City Council agenda scheduling.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Keith Baker". The signature is fluid and cursive, with a large initial "K" and a long, sweeping underline.

Keith Baker, AICP, CFM
Director of Planning & Community Development

/cw



City Hall • 333 West Ellsworth Street • Midland, Michigan 48640-5132 • 989.837.3300 • 989.835.2717 Fax • www.midland-mi.org

BY COUNCILMAN

RESOLVED, that notice is hereby given that a public hearing will be held by the City Council on Monday, _____, 2010, at 7:00 p.m. in the Council Chambers, City Hall, for the purpose of considering the advisability of amending Ordinance No. 1585, the Zoning Ordinance of the City of Midland, as set forth in the following proposed Ordinance, which is hereby introduced and given first reading; and

RESOLVED FURTHER, that the City Clerk is hereby directed to publish said notice on _____, 2010.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND ORDINANCE NO. 1585, BEING AN ORDINANCE TO REGULATE AND RESTRICT THE LOCATION OF TRADES AND INDUSTRIES AND THE LOCATION OF BUILDINGS DESIGNED FOR SPECIFIC USES, TO REGULATE AND LIMIT THE HEIGHT AND BULK OF BUILDINGS HEREAFTER ERECTED OR ALTERED, TO REGULATE AND DETERMINE THE AREA OF YARDS, COURTS, AND OTHER OPEN SPACES SURROUNDING BUILDINGS, TO REGULATE AND LIMIT THE DENSITY OF POPULATION, AND FOR SAID PURPOSES, TO DIVIDE THE CITY INTO DISTRICTS AND PRESCRIBE PENALTIES FOR THE VIOLATION OF ITS PROVISIONS BY AMENDING THE ZONING ORDINANCE TO FURTHER DEFINE THE REGULATION OF BUSINESSES AND ORGANIZATIONS NOT IN COMPLIANCE WITH LOCAL, STATE OR FEDERAL LAW WITHIN THE CITY OF MIDLAND.

The City of Midland Ordains:

Section 1. That Ordinance No. 1585, being the Zoning Ordinance of the City of Midland, is hereby amended as follows:

Amend Article 2.00 Definitions, Section 2.02 to include the following definitions:

MARIHUANA, also known as MARIJUANA, also known as CANNABIS. That term shall have the meaning given to it in section 7601 of the Michigan public health code, 1978 PAS 368, MCL 333.7106, as is referred to in section 3(d) of The Michigan Medical Marihuana Act, P.A. 2008, Initiated Law, MCL 333.26423(d). Any other term pertaining to marihuana used in this Chapter and not otherwise defined shall have the meaning given to it in the Michigan Medical Marihuana Act and/or in the General Rules of the Michigan Department of Community Health issued in connection with that Act.

MEDICAL USE OF MARIHUANA. 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, as defined under The Michigan Medical Marihuana Act, P.A. 2008, Initiated Law, MCL 333.26423(d).

Amend Article 3.00 General Provisions, Section 3.01 (A) Scope of Regulations to read as follows:

A. Scope of Regulations

No structure or tract of land, or part thereof, shall hereafter be used or occupied, and no structure, or part thereof, shall be erected, altered, or moved, except in conformity with the provisions of this Ordinance.

Furthermore, any business or organization in violation of local, state or federal law is prohibited from locating or operating within the city limits of Midland.

However, where a building permit for a building or structure has been issued in accordance with law prior to the effective date of this Ordinance and construction is begun within six (6) months of the effective date, said building or structure may be completed in accordance with the approved plans. Any subsequent text or map amendments shall not affect previously issued valid permits.

Section 2. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

Section 3. This Ordinance shall take effect upon publication.

YEAS:

NAYS:

ABSENT:

I, Selina Tisdale, City Clerk, City of Midland, Counties of Bay and Midland, State of Michigan, do hereby certify that the foregoing is a true and correct copy of a resolution adopted by a yea vote of all the Councilmen present at a regular meeting of the City Council held Monday, August 9, 2010.

Selina Tisdale, City Clerk

MAJOR THOROUGHFARE: A main traffic artery designated on the Midland Thoroughfare Plan as a major thoroughfare.

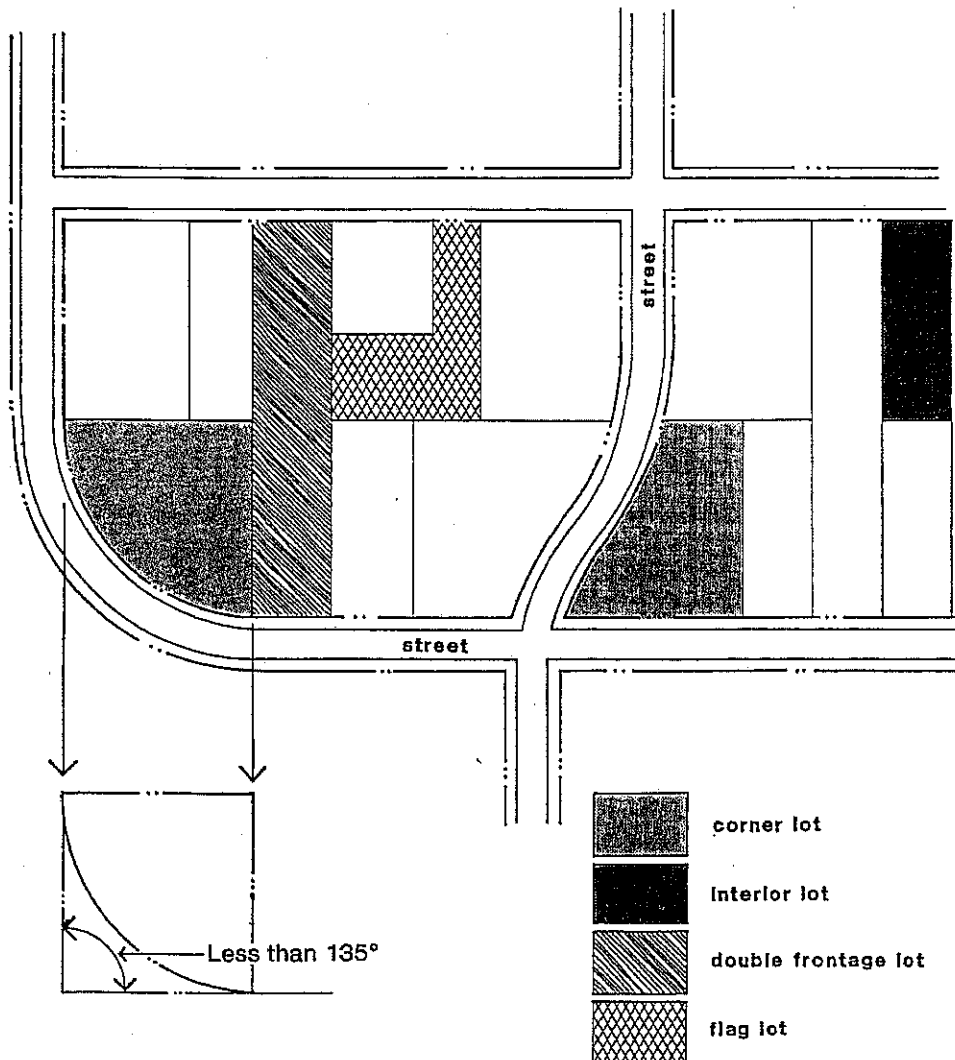
MANEUVERING LANE: The area of a drive which provides direct maneuvering access to a parking space.

MANUFACTURED HOUSING: See DWELLING, MANUFACTURED.

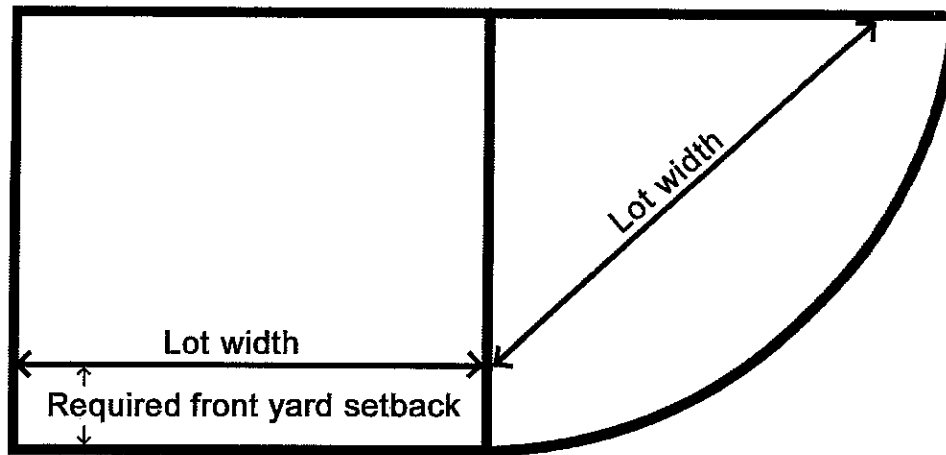
MARGINAL ACCESS ROAD: See SECONDARY ACCESS DRIVE.

MARIHUANA, also known as MARIJUANA, also known as CANNABIS. That term shall have the meaning given to it in section 7601 of the Michigan public health code, 1978 PAS 368, MCL 333.7106, as is referred to in section 3(d) of The Michigan Medical Marihuana Act, P.A. 2008, Initiated Law, MCL 333.26423(d). Any other term pertaining to marihuana used in this Chapter and not otherwise defined shall have the meaning given to it in the Michigan Medical Marihuana Act and/or in the General Rules of the Michigan Department of Community Health issued in connection with that Act.

MASTER PLAN: A comprehensive, long-range plan adopted and amended from time to time by the Planning Commission and/or City Council that is intended to serve as a guide for growth and development of the City, as provided for by the Municipal Planning Act, Public Act 33 of 2008. The plan consists of maps, text, tables, and graphics with recommendations concerning land use, economic development, housing, recreation and open space, transportation and community facilities.



Interior & Corner Lots



Lot Width

MEDICAL CLINIC: See CLINIC, MEDICAL.

MEDICAL OFFICE BUILDING: An office building of which greater than fifty (50) percent of the floor area is occupied by licensed medical, dental, optometric, osteopathic, or chiropractic offices for the examination or treatment of human outpatients.

MEDICAL USE OF MARIHUANA. *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, as defined under The Michigan Medical Marihuana Act, P.A. 2008, Initiated Law, MCL 333.26423(d).*

MEZZANINE: An intermediate level or levels between the floor and ceiling of any story with an aggregate floor area of not more than one-third (1/3) of the floor area of the story in which the level or levels are located (see illustration on page 2-31).

MINI-WAREHOUSE: A building or group of buildings, each of which contains several individual storage units, each with a separate door and lock and which can be leased on an individual basis. Also known as "Mini-Storage."

MOBILE HOME: See DWELLING, MOBILE HOME.

MOBILE HOME PARK: A parcel or tract of land under the control of a person upon which three (3) or more mobile homes are located on a continual nonrecreational basis and which is offered to the public for that purpose regardless of whether a charge is made therefore, together with any building, structure, enclosure, street, equipment, or facility used or intended for use incident to the occupancy of a mobile home, subject to conditions set forth in the Mobile Home Commission Rules and the Mobile Home Commission Act, Public Act 96 of 1987, as amended.

MOBILE HOME LOT: An area within a mobile home park which is designated for the exclusive use of a specific mobile home.

ARTICLE 3.00

GENERAL PROVISIONS

Section 3.01 -- ADMINISTRATIVE REGULATIONS

A. Scope of Regulations

No structure or tract of land, or part thereof, shall hereafter be used or occupied, and no structure, or part thereof, shall be erected, altered, or moved, except in conformity with the provisions of this Ordinance.

Furthermore, any business or organization in violation of local, state or federal law is prohibited from locating or operating within the city limits of Midland.

However, where a building permit for a building or structure has been issued in accordance with law prior to the effective date of this Ordinance and construction is begun within six (6) months of the effective date, said building or structure may be completed in accordance with the approved plans. Any subsequent text or map amendments shall not affect previously issued valid permits.

B. Minimum Requirements

The provisions of this Ordinance shall be held to be the minimum requirements for the promotion of public health, safety, convenience, comfort, and general welfare.

C. Relationship to Other Ordinances or Agreements

Except as noted in Section 32.02, this Ordinance is not intended to repeal or annul any ordinance, rule, regulation, permit, easement, covenant, or other private agreement previously adopted, issued, or entered into and not in conflict with the provisions of this Ordinance.

However, where the regulations of this Ordinance are more restrictive or impose higher standards or requirements than other such ordinances, rules, regulations, permits, easements, covenants, or other private agreements, the requirements of this Ordinance shall govern.

D. Vested Right

Nothing in this Ordinance should be interpreted or construed to bestow any permanent vested rights in the continuation of any particular use, district, zoning classification, or permissible activities therein. Furthermore, such rights as may exist through enforcement of this Ordinance are hereby declared to be subject to subsequent amendment, change or modification as may be necessary for the preservation or protection of public health, safety, and welfare, to the extent that such rights are not protected by the nonconforming use provisions in Article 4.00.

E. Continued Conformity with Yard and Bulk Regulations

The maintenance of yards and other open space and minimum lot area legally required for a building or structure shall be a continuing obligation of the owner of such building or structure or of the property on which it is located, for as long as the building or structure is in existence. No open space shall be encroached upon nor shall any building or structure be erected, converted, enlarged, reconstructed or structurally altered except in conformity with the area regulations of the district in which the structure is located.