

Owosso Planning Commission



*Regular Meeting
6:30pm, Monday, April 23, 2018
Owosso City Council Chambers*



MEMORANDUM

301 W. MAIN ▪ OWOSSO, MICHIGAN 48867-2958 ▪ WWW.CI.OWOSSO.MI.US

DATE: April 20, 2018
TO: Chairman Wascher and the Owosso Planning Commission
FROM: Susan Montenegro, Asst. City Manager / Director of Community Development
RE: Regular Planning Commission Meeting: April 23, 2018

The planning commission shall convene at 6:30 pm on Monday, April 23, 2018 in the city council chambers of city hall.

The commission will continue the discussion of the attached draft language for Medical Marihuana Facilities within the city of Owosso. The intent from planning commission was to have a public hearing at the April meeting; however, I inadvertently forgot to send out the required notice for the public hearing so that will not take place this month. The packet contains the current draft language with additional portions the city attorney asked to be incorporated into the draft ordinance. Changes to the draft ordinance to date are shown either as a strike through for deleted sections or in **red** for additions.

The master plan update is proving to be more involved than initially anticipated. After discussing this with the city manager it was decided to send out a Request for Proposals (RFP) to obtain outside help with this task. We will discuss this more at the meeting.

Please take a moment to read through the packet; see you Monday!

Please **RSVP for the meeting**. Feel free to contact me at 989.725.0544 if you have questions.

Enjoy your weekend!

Sue

AGENDA
Owosso Planning Commission
Regular Meeting

Monday, April 23, 2018 at 6:30 p.m.
Council Chambers – Owosso City Hall
Owosso, MI 48867



CALL MEETING TO ORDER:

PLEDGE OF ALLEGIANCE:

ROLL CALL:

APPROVAL OF AGENDA: April 23, 2018

APPROVAL OF MINUTES: March 26, 2018

COMMUNICATIONS:

1. Staff memorandum.
2. PC minutes from March 26, 2018.
3. Draft ordinance for Medical Marihuana.
4. Mark Hannah communication.

COMMISSIONER/PUBLIC COMMENTS:

PUBLIC HEARING:

1. None.

SITE PLAN REVIEW:

1. None.

BUSINESS ITEMS:

1. Draft ordinance for Medical Marihuana Facilities Licensing.

ITEMS OF DISCUSSION:

1. Master Plan update.

COMMISSIONER/PUBLIC COMMENTS:

ADJOURNMENT: **Next meeting will be TUESDAY, May 29, 2018**

Commissioners, please call Sue at 725-0544 if you will be unable to attend the meeting on Monday, April 23, 2018.

[The City of Owosso will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audiotapes of printed materials being considered at the meeting, to individuals with disabilities at the meeting/hearing upon seventy-two (72) hours notice to the City of Owosso. Individuals with disabilities requiring auxiliary aids or services should contact the City of Owosso by writing or calling the following: Amy Kirkland, City Clerk, 301 W. Main St, Owosso, MI 48867 (989) 725-0500]. The City of Owosso website is: www.ci.owosso.mi.us

**MINUTES
REGULAR MEETING OF THE OWOSSO PLANNING COMMISSION
COUNCIL CHAMBERS, CITY HALL
MONDAY, MARCH 26, 2018 – 6:30 P.M.**

CALL TO ORDER: Chairman Wascher called the meeting to order at 6:30 p.m.

PLEDGE OF ALLEGIANCE: Recited.

ROLL CALL: Tanya Buckelew

MEMBERS PRESENT: Chairman Wascher, Vice-Chair Livingston, Commissioners Adams, Kirkland, Taylor.

MEMBERS ABSENT: Secretary Janae Fear, Commissioners Cook, Jenkins and Law.

OTHERS PRESENT: Assistant City Manager Susan Montenegro, City Attorney Scott Gould

APPROVAL OF AGENDA:

MOTION BY VICE-CHAIR LIVINGSTON, SUPPORTED BY COMMISSIONER TAYLOR TO APPROVE THE AGENDA FOR MARCH 26, 2018.

YEAS ALL. MOTION CARRIED.

APPROVAL OF MINUTES:

MOTION BY VICE-CHAIR LIVINGSTON, SUPPORTED BY COMMISSION TAYLOR TO APPROVE THE MINUTES FOR THE FEBRUARY 26, 2018 MEETING.

YEAS ALL. MOTION CARRIED.

COMMUNICATIONS:

1. Staff memorandum.
2. PC minutes from February 26, 2018
3. Sign ordinance, section 26-19/public hearing notice
4. Draft ordinance for Medical Marihuana
5. Letter to planning commission-Pollicella & Associates, PLLC
6. Master Plan update guide from MEDC

COMMISSIONER/PUBLIC COMMENTS:

Mark Hanna asked about religious institution on page 9 of 11. It is intended to be removed.

Leo asked about the distance and measurements in Westtown. There are residential homes about 30' from back of the buildings which would eliminate Westtown. Further discussion on measurement requirements that are in the draft ordinance.

Bob Hendricks of Wrigley, Hoffman and Hendricks represents the owner of 200 E Main St (former Citizens Bank building). Recommends removing caps and use zoning as a buffer for provisioning centers.

PUBLIC HEARING: Sign ordinance amendment, section 26-19

The city had not received any comments regarding the change to the ordinance. No one spoke during the public hearing.

MOTION BY VICE-CHAIR LIVINGSTON, SUPPORTED BY COMMISSIONER TAYLOR TO RECOMMEND APPROVAL OF A PROPOSED AMENDMENT TO CHAPTER 26, SIGNS, SECTION 26-19 (1) A OF THE CODE OF THE CITY OF OWOSSO, AS ATTACHED, REDUCING THE REQUIRED SETBACK FROM ANY PUBLIC OR PRIVATE STREET RIGHT-OF-WAY TO FIVE (5) FEET.

RCV YEAS ALL MOTION CARRIED

SITE PLAN REVIEW:

None

BUSINESS ITEMS:

None

ITEMS OF DISCUSSION:

1. Draft ordinance language for Medical Marihuana Facilities Licensing. Look at proposed ordinance language and discuss.
 - A revised draft from the February 2018 meeting was discussed.
 - All special use permit language has been removed
 - City Attorney Scott Gould presented his recommendations:
 - Sec. 1001 – add *Further, the city does not intend that permitting and regulation under this chapter to be construed as a finding that such facilities comply with any law.*
 - Sec. 1004 – add *If the application is for a grower's license, the maximum number of plants that the applicant intends to grow will be included.*
 - Sec. 1004 – add *The License requirement in this chapter applies to all facilities whether operated for a profit or not for profit.*
 - Sec. 1005 – add *Applications for renewal or amendment of existing permits shall be reviewed and granted or denied before applications for new permits are considered.*
 - Sec. 1007 – add D. *A license issued under this chapter may be suspended or revoked for any of the following violations:*
 - (1) *Any person required to be named on the permit application is convicted of or found responsible for violating any provision of this chapter;*
 - (2) *A permit application contains any misrepresentation or omission of any material fact, or false or misleading information, or the applicant has provided the city with any other false or misleading information related to the facility;*
 - (3) *Any person required to be named on the permit application is convicted of a crime which, if it had occurred prior to submittal of the application, could have been cause for denial of the permit application;*
 - (4) *Marihuana is dispensed on the business premises in violation of this chapter or any other applicable state or local law, rule or regulation;*

(5) *The facility is operated or is operating in violation of the specifications of the permit application, any conditions of approval by the city or any other applicable state or local law, rule or regulation.*

(6) *The city, the county, or any other governmental entity with jurisdiction, has closed the facility temporarily or permanently or has issued any sanction for failure to comply with health and safety provisions of this chapter or other applicable state or local laws related to public health and safety.*

(7) *The facility is determined by the city to have become a public nuisance.*

(8) *The facility's state operating license has been suspended or revoked.*

- Discussion held regarding adding the word alcohol to Other Activities
- Add to Provisioning Centers - *A new application for a provisioning center, or a request to transfer location of an existing license, may be denied if the proposed location is within 200 feet of a school. The City may waive the school provision if the school does not file an objection to the proposed license. If the school does file an objection, the City shall hold a hearing before making a decision on the issuance of the license.*
- Discussion about measuring distance. Agreed to keep what is in the draft.
- Accepting applications – need a process. Discussion on the first round of applications. Set a 30 day deadline to submit and then the 4 applicants would be chosen by a lottery (for provisioning centers only). The State does the heavy work on backgrounds and qualifications of applicants. Applicant would pay \$5,000 up front and if don't make lottery, they would receive \$2,500 back. If a license is vacated, do another lottery.
- A rough draft will be completed with the new changes and presented at the April 23, 2018 Public Hearing.

2. Master Plan updates review process. Discuss the timeline and implementation strategy necessary to update the current mast plan.

- An update guide has been provided by the MEDC.
- Planning commission members are asked to review the current Master Plan and using the review table on page 7 (from MEDC guide) make recommendations to update the Master Plan.
- The planning commission will review sections at upcoming meetings and hopefully by September they can start the public hearing process.

COMMISSIONER/PUBLIC COMMENT:

Hillary Dulany spoke about the selection process. Does not feel the lottery is fair. Other ways to make selections. Hire an outside service to do the criteria selection.

Chuck Senatore states there is a risk with the lottery system. How are applicants going to know the lottery system is fair – just throw everyone in a hat? It would have to be in public viewing.

At this time, additional discussion about the lottery system was held. It would have to be in a public setting/meeting, just like the opening of bids process is. The City is concerned of liability and doing the selection process by criteria, numbering system, etc. Legal opinion is the lottery system has the lowest liability factor.

Mark Hanna spoke about those applicants with experience and how the lotto could exclude them.

ADJOURNMENT:

**MOTION BY VICE-CHAIR LIVINGSTON, SUPPORTED BY COMMISSIONER TAYLOR TO ADJOURN AT 8:07 P.M. UNTIL THE NEXT MEETING ON APRIL 23, 2018.
YEAS ALL, MOTION CARRIED.**

Janae L. Fear, Secretary

Police Power Ordinance

AN ORDINANCE TO AUTHORIZE AND REGULATE THE ESTABLISHMENT OF MEDICAL MARIHUANA FACILITIES.

Section 1001. Purpose

- A. It is the intent of this ordinance to authorize the establishment of certain types of medical marihuana facilities in the city of Owosso and provide for the adoption of reasonable restrictions to protect the public health, safety, and general welfare of the community at large; retain the character of neighborhoods; and mitigate potential impacts on surrounding properties and persons. It is also the intent of this ordinance to help defray administrative and enforcement costs associated with the operation of a marihuana facility in the city of Owosso through imposition of an annual, nonrefundable fee of ~~not more than~~ \$5,000.00 on each medical marihuana facility licensee. Authority for the enactment of these provisions is set forth in the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq. **Further, the city does not intend that permitting and regulation under this chapter be construed as a finding that such facilities comply with any law.**
- B. Nothing in this ordinance is intended to grant immunity from criminal or civil prosecution, penalty, or sanction for the cultivation, manufacture, possession, use, sale, or distribution of marihuana, in any form, that is not in compliance with the Michigan Medical Marihuana Act, Initiated Law 1 of 2008, MCL 333.26421 et seq.; the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq.; the Marihuana Tracking Act, MCL 333.27901 et seq.; and all other applicable rules promulgated by the state of Michigan.
- C. As of the effective date of this ordinance, marihuana remains classified as a Schedule 1 controlled substance under the Federal Controlled Substances Act, 21 U.S.C. Sec. 801 et seq., which makes it unlawful to manufacture, distribute, or dispense marihuana, or possess marihuana with intent to manufacture, distribute, or dispense marihuana. Nothing in this ordinance is intended to grant immunity from any criminal prosecution under federal laws.
- D. Must comply with all state building codes, including but not limited to plumbing, mechanical, electrical, building energy and fire codes which includes the city of Owosso zoning ordinance, as applicable under law.

Section 1002. Definitions

For the purposes of this ordinance:

- A. Any term defined by the Michigan Medical Marihuana Act, MCL 333.26421 et seq., shall have the definition given in the Michigan Medical Marihuana Act.
- B. Any term defined by the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq., shall have the definition given in the Medical Marihuana Facilities Licensing Act.
- C. Any term defined by the Marihuana Tracking Act, MCL 333.27901 et seq., shall have the definition given in the Marihuana Tracking Act.

- D. "Grower" means a licensee that is a commercial entity located in this state that cultivates, dries, trims, or cures and packages marihuana for sale to a processor or provisioning center.
- E. "Licensee" means a person holding a state operating license issued under the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq.
- F. "Marijuana" or "marihuana" means that term as defined in the Public Health Code, MCL 333.1101 et seq.; the Michigan Medical Marihuana Act, MCL 333.26421 et seq.; the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq.; and the Marihuana Tracking Act, MCL 333.27901 et seq.
- G. "Marihuana facility" means an enterprise at a specific location at which a licensee is licensed to operate under the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq., including a marihuana grower, marihuana processor, marihuana provisioning center, marihuana secure transporter, or marihuana safety compliance facility. The term does not include or apply to a "primary caregiver" or "caregiver" as that term is defined in the Michigan Medical Marihuana Act, MCL 333.26421 et seq.
- H. "Person" means an individual, corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or other legal entity.
- I. "Processor" means a licensee that is a commercial entity located in Michigan that purchases marihuana from a grower and that extracts resin from the marihuana or creates a marihuana-infused product for sale and transfer in packaged form to a provisioning center.
- J. "Provisioning center" means a licensee that is a commercial entity located in Michigan that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualifying patients, directly or through the patients' registered primary caregivers. Provisioning center includes any commercial property where marihuana is sold at retail to registered qualifying patients or registered primary caregivers. A noncommercial location used by a primary caregiver to assist a qualifying patient connected to the caregiver in accordance with the Michigan Medical Marihuana Act, MCL 333.26421 et seq., is not a provisioning center for purposes of this article.
- K. "Safety compliance facility" means a licensee that is a commercial entity that receives marihuana from a marihuana facility or registered primary caregiver, tests it for contaminants and for tetrahydrocannabinol and other cannabinoids, returns the test results, and may return the marihuana to the marihuana facility.
- L. "Secure transporter" means a licensee that is a commercial entity located in this state that stores marihuana and transports marihuana between marihuana facilities for a fee.

Section 1003. Authorization of Facilities and Fee.

- A. The maximum number of each type of marihuana facility allowed in the city of Owosso shall be as follows.

<u>Facility</u>	<u>Number</u>
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Grower	unlimited
Processor	unlimited
Provisioning center	#4
Safety compliance facility	unlimited
Secure transporter	unlimited

- B. **Planning commission shall review the number of facilities allowed at the one year mark to re-evaluate and determine if the number allowed needs to be adjusted. From that point on,** every three (3) years, city council shall review the maximum number of each type of marihuana facility allowed and determine whether this maximum number should be changed. The review and its findings shall be recorded in the minutes of the relevant meeting of the city council.
- C. A nonrefundable fee shall be paid by each marihuana facility licensed under this ordinance in an annual amount of ~~not more than~~ \$5,000.00 as set by resolution of the city of Owosso City Council.
- D. **The first four provisioning center licenses shall be awarded via lottery. The application fee of \$5,000 shall be paid in full at the time the application is submitted. The first round of applications will be accepted for a 30 day period, to be determined by city council. All names of applicants will be entered into the drawing on a day to be set by council and shall be open to the public. Applicants whose names are not drawn shall receive a refund of \$2,500 within 30 days of the drawing.**
- E. **Vacated or revoked licenses. The city will hold another lottery to award the license to another applicant should a provisioning center license be vacated or revoked. The process would mimic the steps outlined above but would be limited to the number of vacated or revoked license(s) available.**

Section 1004. Requirements and Procedure for Issuing License

- A. No person shall operate a marihuana facility in city of Owosso without a valid marihuana facility license issued by the city of Owosso pursuant to the provisions of this ordinance.
- B. Every applicant for a license to operate a marihuana facility shall file an application in the **city clerk's** office upon a form provided by the city of Owosso. ~~[The application shall contain the following information:]~~
- C. Every applicant for a license to operate a marihuana facility shall submit with the application a photocopy of the applicant's valid ~~and current~~ **provisional** license issued by the State of Michigan in accordance with the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq.
- D. Upon an applicant's completion of the above-provided form and furnishing of all required information and documentation, the **city clerk** shall accept the application and assign it a sequential application number by facility type based on the date and time of acceptance. The **city clerk** shall act to approve or deny an application not later than fourteen (14) days from the date the application was accepted. If approved, the **city clerk** shall issue the applicant a provisional license.

- E. A provisional license means only that the applicant has submitted a valid application for a marihuana facility license, and the applicant shall not locate or operate a marihuana facility without obtaining all other permits and approvals required by all other applicable ordinances and regulations of the city of Owosso. A provisional license will lapse and be void if such permits and approvals are not diligently pursued to completion.
- F. Within fourteen (14) days from the applicant submitting proof of obtaining all other required permits and approvals and payment of the license fee, the **city clerk** shall approve or deny the marihuana facility license. The **city clerk** shall issue marihuana facility licenses in order of the sequential application number previously assigned.
- G. Maintaining a valid marihuana facility license issued by the state is a condition for the issuance and maintenance of a marihuana facility license under this ordinance and continued operation of any marihuana facility.
- H. A marihuana facility license issued under this ordinance is not transferable.
- I. If the application is for a grower's license, the maximum number of plants that the applicant intends to grow will be included.**
- J. The License requirement in this chapter applies to all facilities whether operated for profit or not for profit.**

Section 1005. License Renewal

- A. A marihuana facility license shall be valid for one year from the date of issuance, unless revoked as provided by law.
- B. A valid marihuana facility license may be renewed on an annual basis by submitting a renewal application upon a form provided by the city of Owosso and payment of the annual license fee. Application to renew a marihuana facility license shall be filed at least thirty (30) days prior to the date of its expiration.
- C. Applications for renewal or amendment of existing permits shall be reviewed and granted or denied before applications for new permits are considered.**

Section 1006. Applicability

The provisions of this ordinance shall be applicable to all persons and facilities described herein, whether the operations or activities associated with a marihuana facility were established without authorization before the effective date of this ordinance.

Section 1007. Penalties and Enforcement.

- A. Any person who violates any of the provisions of this ordinance shall be responsible for a misdemeanor. Each day a violation of this Ordinance continues to exist constitutes a separate violation. A violator of this Ordinance shall also be subject to such additional sanctions, remedies and

judicial orders as are authorized under Michigan law.

- B. A violation of this Ordinance is deemed to be a nuisance per se. In addition to any other remedy available at law, the city of Owosso may bring an action for an injunction or other process against a person to restrain, prevent, or abate any violation of this Ordinance.
- C. This Ordinance shall be enforced and administered by the zoning administrator, or such other city official as may be designated from time to time by resolution of the city council.
- D. **A license issued under this chapter may be suspended or revoked for any of the following violations:**
 - (1) **Any person required to be named on the permit application is convicted of or found responsible for violating any provision of this chapter;**
 - (2) **A permit application contains any misrepresentation or omission of any material fact, or false or misleading information, or the applicant has provided the city with any other false or misleading information related to the facility;**
 - (3) **Any person required to be named on the permit application is convicted of a crime which, if it had occurred prior to submittal of the application, could have been cause for denial of the permit application;**
 - (4) **Marihuana is dispensed on the business premises in violation of this chapter or any other applicable state or local law, rule or regulation;**
 - (5) **The facility is operated or is operating in violation of the specifications of the permit application, any conditions of approval by the city or any other applicable state or local law, rule or regulation.**
 - (6) **The city, the county, or any other governmental entity with jurisdiction, has closed the facility temporarily or permanently or has issued any sanction for failure to comply with health and safety provisions of this chapter or other applicable state or local laws related to public health and safety.**
 - (7) **The facility is determined by the city to have become a public nuisance.**
 - (8) **The facility's state operating license has been suspended or revoked.**
- E. **Possession, sale or consumption of any form of alcohol is strictly prohibited in any of the licensed medical marihuana facilities.**

Section 1008. Severability.

In the event that any one or more sections, provisions, phrases or words of this Ordinance shall be found to be invalid by a court of competent jurisdiction, such holding shall not affect the validity or the enforceability of the remaining sections, provisions, phrases or words of this Ordinance.

Section 1009. Effective Date

This Ordinance shall take effect twenty-one days after city council passage in accordance with law.

Sample Zoning Ordinance Amendments

Definitions

Add the following definitions to Section 38-5. -Definitions.

"Grower" means a licensee that is a commercial entity located in this state that cultivates, dries, trims, or cures and packages marihuana for sale to a processor or provisioning center.

"Licensee" means a person holding a state operating license issued under the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq.

"Marijuana" or "marihuana" means that term as defined in the Public Health Code, MCL 333.1101 et seq.; the Michigan Medical Marihuana Act, MCL 333.26421 et seq.; the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq.; and the Marihuana Tracking Act, MCL 333.27901 et seq.

"Marihuana facility" means an enterprise at a specific location at which a licensee is licensed to operate under the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq., including a marihuana grower, marihuana processor, marihuana provisioning center, marihuana secure transporter, or marihuana safety compliance facility. The term does not include or apply to a "primary caregiver" or "caregiver" as that term is defined in the Michigan Medical Marihuana Act, MCL 333.26421 et seq.

"Outdoor production" means growing marihuana in an expanse of open or cleared ground or in a greenhouse, hoop house, or similar non-rigid structure that does not utilize any artificial lighting, including but not limited to electrical lighting sources.

"Processor" means a licensee that is a commercial entity located in this state that purchases marihuana from a grower and that extracts resin from the marihuana or creates a marihuana-infused product for sale and transfer in packaged form to a provisioning center.

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

"Safety compliance facility" means a licensee that is a commercial entity that receives marihuana from a marihuana facility or registered primary caregiver, tests it for contaminants and for tetrahydrocannabinol and other cannabinoids, returns the test results, and may return the marihuana to the marihuana facility.

"Secure transporter" means a licensee that is a commercial entity located in this state that stores marihuana and transports marihuana between marihuana facilities for a fee.

Zoning Districts

Add, where appropriate, to each zoning district's list of possible special land uses the following, where wanted:

- A. A marihuana grower as authorized by the city of Owosso's police power authorizing ordinance in the **I-1 Light Industrial** District(s);
- B. A marihuana processor as authorized by the city of Owosso's police power authorizing ordinance in the **I-1 Light Industrial** District(s);
- C. A marihuana provisioning center as authorized by the city of Owosso's police power authorizing ordinance in the **B-1, B-2, B-3 and B-4 Business Districts and I-1 Light Industrial** District(s);

D. A marihuana safety compliance facility as authorized by the city of Owosso's police power authorizing ordinance in the **I-1 Light Industrial** District(s); and

E. A marihuana secure transporter as authorized by the city of Owosso's police power authorizing ordinance in the **I-1 Light Industrial** District(s).

Special Use Standards

~~Add a section to Article XIX—Special Use Permits.~~

~~16XX. Marihuana grower, marihuana processor, marihuana provisioning center, Marihuana secure transporter, and Marihuana safety compliance facility:~~

~~A. A marihuana grower, marihuana processor, marijuana provisioning center, marijuana secure transporter, and marijuana safety compliance facility, in accordance with the provisions of state law, may be permitted through the issuance of a special use permit pursuant to Article XIX in the specified zone(s), provided that:~~

- ~~1. Any uses or activities found by the state of Michigan or a court with jurisdiction to be unconstitutional or otherwise not permitted by state law may not be permitted by the city of Owosso. In the event that a court with jurisdiction declares some or all of this article invalid, then the city of Owosso may suspend the acceptance of applications for **Medical Marihuana Facilities Licenses** special use permits pending the resolution of the legal issue in question.~~
- ~~2. At the time of application for a special use permit the marijuana facility must be licensed by the state of Michigan and then must be at all times in compliance with the laws of the state of Michigan including but not limited to the Michigan Medical Marihuana Act, MCL 333.26421 et seq.; the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq.; and the Marihuana Tracking Act, MCL 333.27901 et seq.; and all other applicable rules promulgated by the state of Michigan.~~
- ~~3. At the time of application for a special use permit the marijuana facility must be licensed by the city of Owosso, [or have the city of Owosso license concurrently in process with the special use permit and site plan approval], and then must be at all times in compliance with the city of Owosso's police power authorizing ordinance.~~
4. The use or facility must be at all times in compliance with all other applicable laws and ordinances of the city of Owosso.
5. The city of Owosso may suspend or revoke a **Medical Marihuana Facilities Licenses** special use permit based on a finding that the **Medical Marihuana Facilities Licenses** provisions of the special use standards in this section, all other applicable provisions of this zoning ordinance, the city of Owosso's police power authorizing ordinance, or the terms of the special use permit and approved site plan are not met.
6. A marihuana facility, or activities associated with the licensed growing, processing, testing, transporting, or sales of marihuana, may not be permitted as a home business or accessory use nor may they include accessory uses except as otherwise provided in this ordinance.
7. Signage requirements for marihuana facilities, unless otherwise specified, are as provided in Chapter 26 – Signs of the *Owosso Code of Ordinances*.

- B. Marihuana growers and marihuana processors shall be subject to the following standards:
1. ~~Minimum Lot Size.~~ A minimum lot size standard shall apply as follows:
 - a. ~~In the [list the specific rural and agricultural district(s)], the subject property shall be a minimum of [#] acres, except that if the majority of abutting properties are equal to or greater than [lessor #] acres, the subject property shall be a minimum of [lessor #] acres. Abutting properties include properties that are contiguous to the subject property, as well as properties directly across any access drive, or private, public, or road.~~
 - b. ~~In the [list the specific industrial district(s)], the subject property shall be a minimum of [#] acres, except that if outdoor production is proposed, the subject property shall be a minimum of [greater #] acres.~~
 2. Minimum Yard Depth/Distance from Lot Lines. The minimum front, rear, and side yard setbacks for any structure used for marijuana production shall be 50 feet. The minimum front, rear, and side yard setbacks for outdoor production shall be a minimum of 100 feet from all lot lines. The minimum water front setback for any structure or outdoor production shall be a minimum of 100 feet from the ordinary high water mark. **Minimum yard depth/distance from lot lines shall adhere to measurement requirements as listed in Article XVI. –Schedule of Regulations for each zoning designation as listed.**
 3. Indoor Production and Processing. In the **I-1 light industrial district**, marihuana **processing** production shall be located entirely within one or more completely enclosed buildings. In the **I-1 light industrial district**, marihuana **production** processing shall be located entirely within a fully enclosed, secure, indoor facility or greenhouse with rigid walls, a roof, and doors.
 4. Maximum Building Floor Space. The following standards apply in the **I-1 light industrial district**:
 - a. ~~A maximum of [#] square feet of building floor space may be used for all activities associated with marijuana production on the subject property.~~
 - a. b. If only a portion of a building is authorized for use in marihuana production, a partition wall at least seven feet in height, or a height as required by the applicable building codes, whichever is greater, shall separate the marihuana production space from the remainder of the building. A partition wall must include a door, capable of being closed and locked, for ingress and egress between the marihuana production space and the remainder of the building.
 5. Lighting. Lighting shall be regulated as follows:
 - a. Light cast by light fixtures inside any building used for marihuana production or marihuana processing shall not be visible outside the building from 7:00 p.m. to 7:00 a.m. the following day.
 - b. Outdoor marihuana grow lights shall not be illuminated from 7:00 p.m. to 7:00 a.m. the following day.
 6. Odor. As used in this subsection, building means the building, or portion thereof, used for marihuana production or marihuana processing.
 - a. The building shall be equipped with an activated carbon filtration system for odor control to ensure that air leaving the building through an exhaust vent first passes through an activated carbon filter.

- b. The filtration system shall consist of one or more fans and activated carbon filters. At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the volume of the building (length multiplied by width multiplied by height) divided by three. The filter(s) shall be rated for the applicable CFM.
 - c. The filtration system shall be maintained in working order and shall be in use. The filters shall be changed a minimum of once every 365 days.
 - d. Negative air pressure shall be maintained inside the building.
 - e. Doors and windows shall remain closed, except for the minimum length of time needed to allow people to ingress or egress the building.
 - f. An alternative odor control system is permitted if the special use permit applicant submits and the municipality accepts a report by a mechanical engineer licensed in the state of Michigan demonstrating that the alternative system will control odor as well or better than the activated carbon filtration system otherwise required. The municipality may hire an outside expert to review the alternative system design and advise as to its comparability and whether in the opinion of the expert it should be accepted.
7. Security Cameras. ~~If used,~~ Security cameras **must be used and** shall be directed to record only the subject property and may not be directed to public rights-of-way as applicable, except as required to comply with licensing requirements of the state of Michigan. **Recordings shall be kept for #_____ of days.**
8. ~~Residency. In the [list specific rural or agricultural district(s)], an owner of the subject property, or the licensee associated with the subject property shall reside in a dwelling unit on the subject property unless there is a 24-hour, seven-days-a-week staffed security presence on the property with a direct phone number supplied to local law enforcement,~~

C. Provisioning centers shall be subject to the following standards:

- 1. Hours. A provisioning center may only sell to consumers or allow consumers to be present in the building space occupied by the provisioning center between the hours of **8:00 9:00 a.m. and 9:00 p.m.**
- 2. Indoor Activities. All activities of a provisioning center, including all transfers of marihuana, shall be conducted within the structure and out of public view. A provisioning center shall not have a walk-up window or drive-thru window service.
- 3. Other Activities. Marihuana and tobacco products shall not be smoked, ingested, or otherwise consumed in the building space occupied by the provisioning center.
- 4. Nonconforming Uses. A provisioning center may not locate in a building in which a nonconforming retail use has been established in any district.
- 5. Physical Appearance. The exterior appearance of the structure shall remain compatible with the exterior appearance of structures already constructed or under construction within the immediate area, and shall be maintained so as to prevent blight or deterioration or substantial diminishment or impairment of property values within the immediate area.
- 6. Buffer Zones. A provisioning center may not be located within the distance specified from the uses below as determined by the city of Owosso. ~~The distance shall be measured as the shortest straight line distance between the property line of the location of the following uses to the property~~

~~line of the parcel on which provisioning center premises is located, whichever is less.~~ **Distance shall be measured as stipulated in the Michigan Liquor Control Act as follows: The distance between the school building and the contemplated location must be measured along the center line of the street or streets of address between 2 fixed points on the center line determined by projecting straight lines, at right angles to the center line, from the part of the school building nearest to the contemplated location and from the part of the contemplated location nearest to the school building.**

- a. A provisioning center may not be located within **200** feet of the real property comprising or used by a public or private elementary, vocational, or secondary school. ; ~~a public or private college, junior college, or university; a licensed child care center or preschool; a public playground, public swimming pool, or public or private youth activity facility; a public park, public outdoor recreation area, or public recreation facility; or a public library.~~
 - b. A provisioning center may not be located within **100** feet of a religious institution or a residentially zoned property.
 - c. A new application for a provisioning center, or a request to transfer location of an existing license, may be denied if the proposed location is within 200 feet of a school. The City may waive the school provision if the school does not file an objection to the proposed license. If the school does file an objection, the City shall hold a hearing before making a decision on the issuance of the license.**
7. Odor. As used in this subsection, building means the building, or portion thereof, used for a provisioning center.
- a. The building shall be equipped with an activated carbon filtration system for odor control to ensure that air leaving the building through an exhaust vent first passes through an activated carbon filter.
 - b. The filtration system shall consist of one or more fans and activated carbon filters. At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the volume of the building (length multiplied by width multiplied by height) divided by three. The filter(s) shall be rated for the applicable CFM.
 - c. The filtration system shall be maintained in working order and shall be in use. The filters shall be changed a minimum of once every 365 days.
 - d. Negative air pressure shall be maintained inside the building.
 - e. Doors and windows shall remain closed, except for the minimum time length needed to allow people to ingress or egress the building.
 - f. An alternative odor control system is permitted if the special use applicant submits and the municipality accepts a report by a mechanical engineer licensed in the State of Michigan demonstrating that the alternative system will control odor as well or better than the activated carbon filtration system otherwise required. The municipality may hire an outside expert to review the alternative system design and advise as to its comparability and whether in the opinion of the expert it should be accepted

~~D. Marijuana Safety Compliance Facility shall be subject to the following standards:~~

- ~~1. A marijuana safety compliance facility shall be subject to the special regulations and standards applicable to [medical laboratories and medical testing facilities] in the ordinance.~~

- ~~2. All activities of a marijuana safety compliance facility, including all transfers of marijuana, shall be conducted within the structure and out of public view.~~

~~E. Marijuana Secure transporter shall be subject to the following standards:~~

- ~~1. A marijuana secure transporter shall be subject to the special regulations and standards applicable to [transportation and warehousing] uses in the [ordinance] and the following standards.~~
- ~~2. Any buildings or structures used for the containment of stored materials shall be located no closer than [#] feet from any property line.~~

Nonconformities

Add a section to Article XVII – General Provisions, Section 38-378.

- A. No marihuana facility operating or purporting to operate prior to December 15, 2017, shall be deemed to have been a legally existing use nor shall the operation of such marihuana facility be deemed a legal nonconforming use under this **Section 38-378. –Nonconforming uses.**
- B. A property owner shall not have vested rights or nonconforming use rights that would serve as a basis for failing to comply with this **Section 38-378. –Nonconforming uses** or any amendment thereto.
- C. Discontinuation of a state medical marihuana facility license shall constitute prima facie evidence that a nonconformity has been discontinued.

City Responsibility.

The City Clerk shall provide the following information to the State Licensing Board within 90 days after the municipality receives notification from the applicant that he or she has applied for a license under this act:

- (a) A copy of the local ordinance that authorizes the marihuana facility.
- (b) A copy of any zoning regulations that apply to the proposed marihuana facility within the municipality.
- (c) A description of any violation of the local ordinance or zoning regulations included under subdivision (a) or (b) committed by the applicant, but only if those violations relate to activities licensed under this act or the Michigan medical marihuana act.
- (d) The municipality's failure to provide information to the board shall not be used against the applicant.
- (e) Information a municipality obtains from an applicant related to licensure under this section is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

MEMORANDUM

To: City of Owosso Planning Commission; Susan Montenegro, Community Development Director; Attorney Scott Gould, Esq., City Attorney.

From: Attorney Mark A. Hanna, Esq.

Date: March 28, 2018

Re: Proposed Approach to Marijuana Provisioning Center License Allocation-City of Owosso

A. Purpose of Memorandum is Twofold in a “Backdrop” of Scarcity:

Backdrop: Scarce Licenses; Protecting City from Litigation and Fair Merit Based

In the current draft (March 26, 2018) of the Proposed City of Owosso’s draft Marijuana Police Ordinance, four (4) Provisioning Center licenses will be allotted per the proposed ordinance; and, there are reasonable expectations that there may be as many as ten (10) time that number in applications, leaving the question of how to address two issues, namely (i) how to protect the city from litigation, while also creating an allocation devise to (ii) dignify the “High-Valued” applicants from a strict lottery system of allotment.

Purpose of Memorandum is Proffer an Acceptable Approach to Issuing Scarce Licenses

The purpose of this memorandum is to proffer or highlight an acceptable approach to the issue of allotting marijuana Provisioning Center licenses to applicants in the City of Owosso, while addressing the concerns of both the City and the Merit based system sought out by “High-Valued” Applicants in a balanced, collaborative way.

B) Two “Weighty” Issues to be discussed:

In order to highlight an acceptable approach to the allocation of scarce marijuana Provisioning Center licenses in the City of Owosso, two compelling concerns of the City, and Applicants for Marijuana Provisioning Center licenses are addressed.

The two weighty or compelling interests that have been stated by the parties involved are as follows:

- i) The City’s interest in protecting itself from litigation; and
- ii) The applicant’s interest in dignifying “High-Valued”* applicants in a merit based system as opposed to from a “strict lottery system” of allotment.

*(Generally, there are applicants that do possess certain aspects that normally would be persuasive relative to predicting their durable, ongoing success from the perspective of operating a Provisioning Center in the City. For purposes of this memorandum, the writer gives the moniker to such applicants being “High-Valued” or as possessing a “High-Valued” resume, which is to mean that they possess including, but not limited to, certain assets and relevant business experience and real estate commitments that taken together, those applicants based on a generally held “merit system”** have

reasonable expectations of being awarded a license based on a merit based system. This is all verses a “strict Lottery system”.***

** (The merit based system is based on “mechanism” of an application form that would possess certain questions that would have a numerical value, the sum of which would give a numerical weight to the applicant’s answers, so thereby defining an objective basis of the applicant’s merits.)

*** (The strict lottery system referenced here is what was proposed at the March 26, 2018 hearing by the City of Owosso Planning Commission, where “applications fees were collected, and names would be put in a hat”.

There are serious negative implications associated with the strict lottery system.

First, is that there are the objections of applicants’ that from a business risk perspective, the lottery is no good predictable way of getting a return of precious capital expenditures, such as a \$5000 application fee contemplated by the city, for a play in a lottery.

The Second, there are the generally accepted principals of best qualified; most prepared; first come, first served; demonstrated consistent contribution of ideas, time and energy, to the drafting process of the ordinance, that support the High-Valued applicants from supporting a merit based system versus a lottery.

The Third, it is unlawful for the City to hold a lottery after the fashion proposed at the aforementioned hearing. Who can hold a raffle is defined, and how the proceeds are to be used is defined in state law, and Cities, in general, are excluded from holding them. (Lottery official. MCLA 750.372, and State Gaming Commission Website relative to what is allowed and what is not.)

C) A Preferred Allotment System Proffered – Addressing the Weighty Issues:

i) The City’s interest in protecting itself from litigation

This Memorandum proposes both the use by the City of an exculpation agreement protecting the City with an “Estoppel and Release Agreement” as an integral part and condition of application for a Provisioning Center license, fully negotiated and supported by consideration, as well as a blend of a merit based selection/allotment process for the four (4) licenses, followed by a lottery based system in the event of a tie score.

Bolstered City Interest- Consulting Firm and Minimum Standard Application Criteria

It is further recommended that the City retain, a neutral, non-biased consulting firm, for purposes of processing the applications against the merit based system of questions. This would be modeled after the City of Lansing method. Any fees associated with the consultant would be more than offset by multiples of the fees generated. Finally, the City’s best interest in avoiding risk of litigation would be bolstered by a minimum standard of application criteria to include, but not limited to, control of conforming real estate, proof of applicant state mandated capital requirements, preliminary criminal back ground check. Such minimums have also been used by City of Lansing.

Estoppel, and Release - A Bargained for Contract

Estoppel:

First, it is contemplated that as an integral part *and condition of the application for a Provisioning Center*, that the applicant would be required to acknowledge that they find the merit based questions found in the application fair, and proceed with their applications so stating.

Release - A Bargained for Contract

Second, it is further contemplated that a release is an integral part *and condition of the application for Provisioning Center* that the applicant would be required to release the City from any claims associated the subjectivity or unfairness, or possibly, equal protection under the law, relative to the merit based questions. Also, the City would pay a credit to the applicant of say \$100 dollars of the application fee, acknowledged by the parties (City and Applicant) to be treated as the consideration associated with the release. This make the release a separate contract, supported by consideration; however, a legally tried and supported process for arguing for exculpation.

ii) The applicant's interest in dignifying "High-Valued"* applicants in a merit based system as opposed to from a "strict lottery system" of allotment.

Here, it is contemplated that there be a blend of a merit based selection/allotment process for the four (4) licenses, followed by a lottery based system in the event of a tie score.

D) Conclusion

It is recommend to the Planning Commission, Staff, and Counsel, that employing the estoppel, release, and blended merit based/lottery system addresses the issues of concern stated by the parties at the March 26, 2018 Planning Board hearing, where the lottery mechanism was raised for the first time with some degree of conversation.

The writer believes that the lottery issue raised for the first time requires a revised approach to the "strict lottery" process proffered at the last meeting, (it being the last issue raised at the end of the last meeting) and rather consideration of adopting the immediate blended merit/lottery process as proffered in this memorandum for allotment Provisioning Center licenses.

A resolution of the allotment process as proffered here would finalize a favorable foundation to the diligently crafted, proposed Marijuana Ordinance for the City of Owosso.

Memorandum Addendum

While there is a “Tidied-Up” draft rendition of the ordinance expected for the April hearing, there remains the modification of **Section 1004 Requirements and Procedure for Issue License**. Sub C.

The issue here is that the State does not issue a “provisional license”, but rather at best gives notice that the application to the state has been made, and or notice of completion, but there is not provisional license.

Whereas, sub. C reads that

“Every applicant for a license to operate a marijuana facility shall submit with the application a photocopy of the applicant’s valid provisional license issued by the state of Michigan in accordance with the Medical Marijuana Facilities Licensing Act MCL 333.27101 Et. Seq.”;

therefore, it would be more accurate that it read that the applicant **attest** that it has submitted a prequalification application with the State.

State Process:

The State has designed the process so that the applicant would start with the City, and the City would issue an acknowledgment that the applicant has been approved for a license at the local level; and then it is incumbent upon the applicant to submit that local approval to the State, along with the prequalification application to the State; then the State will then perform prequalification evaluation, then if this is passed then, the applicant may apply for a State License.