AGENDA REPORT

To: Mayor Pat Humphrey & the Clare City Commission
From: Jeremy Howard, City Manager
Date: January 12, 2023
RE: Ordinance 2023-001 – Marijuana

For the Agenda of January 16, 2023

Background. The City of Clare permits licensure of all categories of medical marihuana businesses (grow, process, transport, certification, and provisioning) as well as the same for adult-use recreational marihuana businesses with the exception of recreational sales within its jurisdictional boundaries as allowed by the State of Michigan and city zoning regulations.

Since the adoption of these ordinances, there have been very few issues with the ordinance. There have been a very small number of "complaints" of smell from other businesses in the Industrial Park. After meeting with the licensees as well as one of the business owners who has expressed concerns regarding the smell from time to time, further discussions were held with the City Attorney and the City Commission in late 2022. At that time, the City Commission asked City staff to work with the City Attorney to draft an ordinance amendment (*copy att'd*) that would clean up the language regarding the enforcement of smell. The proposed intent is to retain language which mandates filtration and odor control measures while minimizing Code Enforcement requirements. Additional amendments include language to prohibit greenhouses; to improve the administrative processes by creating one annual renewal date for all licenses; and to allow city staff to approve the Special Use permits administratively for annual renewals, change of name, transfer, or change of ownership; the Planning Commission would still approve the Special Use Permits/Site Plans in relation to new facility construction, additions to existing facilities, façade improvements of any sort, and new licensing.

The approval authority for all ordinance changes in the City is the Clare City Commission. But in matters related to Chapter 52 (Zoning), the City Planning Commission is required to provide a formal recommendation to be considered by the City Commission in its discussions regarding the proposed ordinance changes.

The City's Planning Commission held a public hearing on January 11, 2023 to consider the ordinance amendment. The city received and shared one public comment regarding the proposed ordinance amendment (*copy att'd*) with the Planning Commission. Following discussion and consideration of the proposed Ordinance amendment, the Planning Commission made the decision to recommend approval of Ordinance 2023-001 to the City Commission by the adoption of 2023-005PC (*copy att'd*).

All ordinance code amendments require the approval of the Clare City Commission. And all ordinances require two readings and approval of the Clare City Commission subsequent to a public hearing. The required public notice (*copy att'd*) announcing the hearing has been published. Subsequent to the conduct of the hearing, the Commission has the option of allowing a First Reading of the proposed Ordinance or denying the conduct of a First Reading, thereby rejecting the proposed ordinance.

The City Commission is asked to conduct the required public hearing, consider and discuss the proposed new ordinance, and direct a First Reading of that proposed Ordinance.

Issues & Questions Specified. Should the City Commission consider and discuss the proposed amendment, hold a public hearing, and approve the first reading of Ordinance 2023-001?

Alternatives.

1. Hold a public hearing and conduct a first reading of the proposed ordinance.
2. Do not hold a hearing, nor direct a first reading thereby declining to consider the new ordinance.
3. Hold the requisite public hearing and recommend further changes to the ordinance.
4. Set aside the decision regarding this matter to a later date.

Financial Impact. Presently indeterminable.

Recommendation. I recommend that the City Commission consider and discuss the ordinance, hold the requisite public hearing, and approve the First Reading of Ordinance 2023-001.

Attachments.

1. Ordinance 2023-001.
2. Resolution 2023-005PC
3. Public Comment-Tom Kunse.
4. Public Notice.

ORDINANCE NO. 2023 - 001

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF CLARE BY amending the City Code, Chapter 27.

Section 27 of the Clare City Code is hereby amended and restated as follows:

ARTICLE II – LICENSING OF MARIJUANA FACILITIES

Sec. 27-31. - License and annual fee required.

(a) No person shall establish or operate a marijuana commercial entity in the City without first having obtained from the City and the State a license for each such facility to be operated. License certificates shall be kept current and publicly displayed within the facility. Failure to maintain or display a current license certificate shall be a violation of this Chapter.

(b) A nonrefundable, initial application fee to defray the administrative and enforcement costs associated with marijuana facilities located in the City not more than $5,000.00 per license, for each facility; and an annual nonrefundable license renewal fee per licensed facility each year thereafter, as set by resolution adopted by the City Commission.

(c) The annual nonrefundable fee required under this Section <u>for a new license,</u> shall be due and payable with the application for a license and upon the application for renewal of any such license under this Chapter. <u>Applications for licenses will not be processed, when submitted without the required fee(s). Fees for renewals of all licenses shall be due on December 31st of each year, for the upcoming year.</u>

(d) The license fee requirement set forth in this Chapter shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other federal, state, or city ordinance, including by way of example any applicable zoning or building permits.

(e) The issuance of any license, pursuant to this Chapter, does not create an exception, defense, or immunity to any person in regard to

any potential criminal liability the person may have for the production, distribution, or possession of marijuana under federal law.

ARTICLE III. - SPECIFIC MARIJUANA FACILITY REQUIREMENTS

Sec. 27-61. - Grower license.

(a) A grower may not hold more than one class of grower license.

(b) A grower shall comply with all of the following:

(1) ~~Until December 31, 2021, have as an active employee an individual who has a minimum of two years' experience as a registered primary caregiver~~.

(2) While holding a license as a grower, not be a registered primary caregiver and not employ an individual who is simultaneously a registered primary caregiver.

(3) Enter all transactions, current inventory, and other information into the statewide monitoring system as required in this act, rules, and the marijuana tracking act.

(4) Sell or transfer marijuana seeds or marijuana plants only to another grower by means of a secure transporter.

(5) Sell or transfer marijuana, other than seeds, only to a processor or provisioning center by means of a secure transporter.

(c) No pesticides or insecticides, which are prohibited by applicable law for fertilization or production of edible produce, shall be used on any marijuana cultivated, produced, or distributed by a marijuana business.

(d) ~~A marijuana business shall be ventilated so that the odor of marijuana cannot be detected by a person with a normal sense of smell at the exterior of the marijuana business or at any adjoining use or property.~~

Sec. 27-96. - ~~Marijuana cultivation~~. <u>Miscellaneous Regulations.</u>

(a) Cultivation, generally:

(1) No marijuana cultivation shall be conducted openly or publicly.

(2) Marijuana cultivation shall comply with all applicable requirements of the laws and regulations of the City and the State.

(3) Marijuana cultivation shall not occur in detached outbuildings.

(4) All marijuana cultivation shall take place in a locked and enclosed space.

(5) Marijuana cultivation shall not occur in temporary greenhouses, but instead shall occur within a fully enclosed building.

(b) All marijuana products kept on premises where marijuana plants are grown shall be stored in a locked and enclosed space.

(c) The use of any lighting for indoor marijuana cultivation shall be limited to light-emitting diodes (LEDs), compact fluorescent lamps (CFLs) or other fluorescent lighting. All high-intensity discharge (HID) lighting, including, but not limited to, mercury vapor lamps, metal-halide (MH) lamps, ceramic MH lamps, sodium-vapor lamps, high-pressure sodium (HPS) lamps and xenon short-arc lamps, is prohibited.

(d) Pollution: No marijuana cultivation activity shall result in the release ~~emission~~ of any gas, vapors, odors, smoke, dust, heat or glare ~~that is noticeable at or beyond the property line of the dwelling at which the cultivation occurs~~. contrary to environmental regulations. Sufficient measures and means of preventing the escape of such substances ~~from a dwelling~~ must be provided at all times. In the event that any gas, vapors, odors, smoke, dust, heat or glare or other substances exit a dwelling, the owner of the subject premises shall be liable for such conditions and shall be responsible for immediate, full clean-up and correction of such condition. The owner shall properly dispose of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations. In the event there is a lessee of the subject premises, the owner and the lessee shall be jointly and severally liable for such conditions.

Sec. 27-97. - Odor control.

(a) No person, tenant, occupant, or property owner shall permit the emission of marijuana odor from any source to result in detectable odors that leave the premises upon which they originated and interfere with the reasonable and comfortable use and enjoyment of another's property, as set forth in this Section.

(b) Whether or not a marijuana odor emission interferes with the reasonable and comfortable use and enjoyment of a property shall be measured against the objective standards of a reasonable person of normal sensitivity, taking into account the following factors:

(1) Whether the impacted parcels are residences, or other uses. Impact upon residences will be deemed more impactful, than non-residential uses.

(2) The number of impacted parcels, as evidenced by complaints of parcel owners or occupants.

(3) The number of days, or length of time that the odor occurs.

(4) Whether the odor occurs occasionally, or on a persistent basis.

(5) The Zoning District that the odor originates from. In all instances, odor from residential parcels or residential adjacent parcels will be deemed more impactful than others.

(6) Any other factors deemed relevant, under the circumstances.

(c) A grower or a processor shall install and maintain in operable condition a system which ~~precludes~~ is designed to contain marijuana odor. ~~from the premises~~.

Sec. 27-102. - Financial statements.

Is repealed, in whole.

Section 52-351 - Special use regulations related to marijuana.

Marijuana land uses, because of their unique character and potential impacts on the welfare of adjacent properties and the City, require additional specific requirements. Such requirements are listed below

and shall be the specific standards and regulations that must be met in addition to any standards imposed elsewhere for approval.

(1) All marijuana licensed activities shall comply at all times with the Medical Marijuana Act, Public Act 281 of 2016, the Medical Marijuana Facilities Licensing Act, MCL § 333.27101, et seq., and the Michigan Regulation and Taxation of Marijuana Act, MCL § 333.27951, et seq., and the applicable rules of the State of Michigan, as they may be amended from time-to-time.

(2) Cultivation shall be conducted so as not to create dust, glare, noise, odors, or light spillage beyond the parcel and shall not be visible from an adjoining public way. Special use permit applications shall address measures contemplated to control all dust, glare, noise, odors, or light spillage. In addition, cultivation shall be conducted so as not to create discharge to the City wastewater treatment system that unduly burdens the City. The special use permit application shall address the amount and type of discharge that will be entering the City wastewater treatment system and subject to review and approval by the City.

(3) A marijuana facility shall not be located within 1,000 feet of an R-1 or R-2 residential zoning district or within 1,000 feet of any church, State-licensed day care facility, public library, public park, preschool, elementary school, middle school, high school, or public recreation facility.

(4) A marijuana facility shall obtain a zoning compliance certificate and if the applicant is not the owner of the parcel, such certificate shall include the property owners' consent to the use of the parcel as a ~~medical~~ marijuana cultivation facility.

(5) ~~To the extent cultivation occurs outside an enclosed building,~~ the special use permit application shall include and address all security matters, including security fencing, intrusion alarms to the satisfaction of the Planning Commission and City Commission.

(6) No marijuana facility may be established, operated, or maintained within 500 feet of any other ~~medical~~ marijuana facility, except as provided below.

(7) Distance limitations shall be measured in a straight line from the respective parcel or lot line of both the subject parcels and/or

parcels zoned R-1 or R-2, or occupied by special uses specified in this Subsection (b)(8).

(8) No person under 18 years will be admitted to the facility without his or her parent or legal guardian.

(9) Insofar as multiple State licensed facilities are permitted to be operated under the same roof or in the same facility, this Section shall be deemed to permit and encourage any combination of multiple State licensed marijuana operations at one location, or on the same property, or in the same building. For the purposes of this Section, multiple licensed facilities may operate on one zoning parcel.

(10) Uses permitted under Public Act 281 of 2016 the Medical Marijuana Facilities Licensing Act, MCL § 333.27101, et seq., and the Michigan Regulation and Taxation of Marijuana Act, MCL § 333.27951, et seq., and the applicable rules of the State of Michigan, being marijuana growers, secure transport, safety compliance facilities, provisioning centers, and processing centers, shall be subject to a separate license and permit from the City and:

> (a) The fee for the permit shall be as set by the City Commission from time-to-time, and
>
> (b) If at any time the business licensed under this Public Act has the State revoke, suspend, or the business otherwise loses its license, it must immediately shut its doors and the City permit will be considered to be null and void, and
>
> (c) The permits run annually January 1 to December 31st each year. <u>Permits issued mid-year shall expire December 31st in the year of issue. An initial application shall include a full site plan and regular Special Use approval. A subsequent application may be processed administratively as a renewal unless there is new licensing, new construction, additions to the facility, façade improvement of any sort and will not necessitate a full site plan.</u>

(11) <u>Should a Special Use Permit be issued under this Section, and a Certificate of Occupancy not acquired for the Facility within one year of issuance, the Special Use Permit shall lapse</u>.

Passed by the City Commission of the CITY OF CLARE on _____, at its regular meeting with _____ commissioners in attendance, _____ voting aye, _____ nay. Adopted by the City Commission of the City of Clare this _____ day of _____, 2022.

Signed: _____, Mayor.
Patrick Humphrey

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I hereby certify that the foregoing was duly adopted by the CITY COMMISSION of CITY OF CLARE, Michigan, at its regular meeting on the _____ of _____, 2022, that of _____ members of the City Commission, _____ were in attendance and _____ voted for the adoption of the Ordinance. I further certify that the above and foregoing ordinance is recorded in Ordinances for the CITY OF CLARE.

Effective Date

This Ordinance shall take effect thirty (30) days following date of publication as required by law. All Ordinances or part Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

_____
Diane Lyon, Clerk

RESOLUTION 2023-005PC

A RESOLUTION OF THE CLARE CITY PLANNING COMMISSION RECOMMENDING THAT THE CLARE CITY COMMISSION ADOPT ORDINANCE 2023-001.

WHEREAS, the City of Clare presently permits licensure of all categories of medical marihuana businesses and recreational businesses (excluding recreational sales) allowed by the State of Michigan; and

WHEREAS, the City Staff, City Attorney, City Planning Commission, and the City Commission have been discussing code enforcement in relation to odor for some time; and

WHEREAS, in response to discussions at many levels, it has been determined that an ordinance amendment to remove code enforcement in relation to odor "pollution", while maintaining the requirement for odor prevention plans and controls is in the best interest of the City; and

WHEREAS, a determination has been made that additional amendments shall include language to prohibit greenhouses; to improve the administrative processes by creating one annual renewal date for all licenses; and to allow city staff renewal of the annual Special Use permits unless there is new construction, additions to the facility, façade improvement of any sort, change of name, transfer, or change of ownership; and

WHEREAS, the first formal step in consideration of the proposed ordinances is a public hearing, a formal discussion, and formulation of recommendations by the City's Planning Commission to the City Commission with respect to whether the proposed ordinance changes should be adopted by the Clare City Commission; and

WHEREAS, the City Planning Commission has held a properly noticed public hearing regarding said proposed Ordinance and has subsequently discussed and considered said Ordinance; and

NOW THEREFORE BE IT RESOLVED THAT the City Planning Commission of the City of Clare hereby recommends that the Clare City Commission adopt Ordinance 2023-001, said ordinance considered to be in the best interests of the City of Clare and its residents.

ALL RESOLUTIONS AND PARTS OF RESOLUTIONS INSOFAR AS THEY CONFLICT WITH THE PROVISIONS OF THIS RESOLUTION BE AND THE SAME ARE HEREBY RESCINDED.

The Resolution was introduced by Commissioner Wyman and supported by Commissioner Clark. The Resolution declared adopted by the following roll call vote:

YEAS: Glenda Carmoney, Josh Clark, Angie Cozat, Elaine Demasi, Jason Lowe, Brett Moser, and Nick Wyman.

NAYS: None.

ABSENT: None.

Resolution approved for adoption on this 11th day of January, 2023.

_____

Jason Lowe, Planning Commission Chair

Diane Lyon

To: Diane Lyon (dlyon@cityofclare.org)
Subject: FW: Proposed Ordinance Amendment

From: Tom Kunse <tkunse@nordry.com>
Sent: Monday, December 5, 2022 4:11 PM
To: Diane Lyon <DLyon@cityofclare.org>
Cc: Jeremy Howard <JHoward@cityofclare.org>
Subject: RE: Proposed Ordinance Amendment

Diane,

The proposed ordinance will not stop the pot stench from spreading to adjoining properties. It is vague and riddled with ambiguous terms. Jaynie did not do well on the original ordinance, and this is certainly no improvement.

Specifically:

27-96 (d)

i. Define "sufficient"
ii. Odor is listed as being one of the items prohibited, but that is contrary to what is listed later in the ordinance.

27-97 (a)

i. Define "reasonable"
ii. Define "comfortable use"
iii. Define "enjoyment"
    a. These are ambiguous and make the entire section unenforceable.

27-97 (b)

i. Define "objective"
ii. There are six factors listed, but a decision-making process is not defined.
iii. Do a certain number of events have to occur?
iv. A certain order of events?
v. Are certain events more important than others?
vi. The entire subsection is a word salad of incoherence, and it appears to be incomplete.

27-97(c)

i. Define "is designed to contain" This could mean anything. Designed by whom to what standards?
ii. What happens if the design is bad?
iii. Does the City have the authority to require a design change if it is insufficient as determined by the mess in 27-97 (b)? We don't know as that is not defined.

Either the City finds the fortitude to enforce a simple ordinance "No smell off the property" or nothing will change. This ordinance would be ineffective and do nothing but allow the issues we are experiencing to continue. I genuinely hope the City puts forth a better effort than this poorly worded and likely useless ordinance.

Please share with the City Commission and Planning Commission members.

Thank you,

Your humble (but disappointed) public servant,

Tom Kunse
Cell: (989) 205-4133
Office: (989) 386-2389

From: Diane Lyon <DLyon@cityofclare.org>
Sent: Monday, December 5, 2022 2:08 PM
To: Tom Kunse <tkunse@nordry.com>
Cc: Jeremy Howard <JHoward@cityofclare.org>
Subject: FW: Proposed Ordinance Amendment

Good afternoon Tom,
Following consideration and discussion by the Clare City Commission, the Commission has proposed that the city attorney develop an Ordinance amendment to chapter 27 and chapter 52 of the City's Codes of Ordinance. A copy of the proposed amendment, which will first be considered by the City Planning Commission on January 11, is attached.

If any of you have any questions or comments, feel free to contact me.

Diane Lyon, City Clerk
Clare City Hall
202 W. Fifth St.
Clare, MI 48617

Phone: (989) 386-7541 x106
Fax: (989) 386-4508
Email: dlyon@cityofclare.org
City Hall office hours Monday -Thursday 7:00am-5:30pm

PROPOSED ORDINANCE AMENDMENT

CITY OF CLARE
NOTICE OF PUBLIC HEARINGS

The City of Clare Planning Commission will hold a public hearing on Wednesday, January 11, 2023 at 6:30 p.m., at Clare City Hall and the Clare City Commission will hold a public hearing on Monday, January 16, 2023, at 6:00 p.m. at Clare City Hall to receive public comments pertaining to an Ordinance amendment to Chapter 27, Article III, Specific Marijuana Facility Requirements; and Chapter 52-351 Special Use Regulations Related to Marijuana. A copy of the proposed Ordinance amendments is available for review by contacting the Clerk's office at dlyon@cityofclare.org or calling 989-424-4068. The Planning Commission and City Commission will accept comments during the hearings or in writing if the written comments are received by the City Clerk not later than 4 p.m. on the date of each respective hearing. The City of Clare is an equal-opportunity employer and provider.

Diane Lyon
Clare City Clerk
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