

MEMORANDUM

To: Dublin City Council

From: Jennifer D. Readler, Law Director
Philip K. Hartmann
Thaddeus M. Boggs

Date: May 18, 2017

Re: Ordinance 35-17 - Proposed Medical Marijuana Legislation

INTRODUCTION

On May 25, 2016, the Ohio General Assembly passed Substitute House Bill 523 (“H.B. 523”), which allows individuals with a qualifying medical condition, on the recommendation of a physician, to apply to the State, and upon approval of their application receive an identification card allowing them to obtain, possess, and use medical marijuana for the treatment of the specified condition. H.B. 523 was signed into law by Ohio Governor John Kasich and thereafter became effective on September 9, 2016. Final rules implementing the bill’s medical marijuana program must be completed on or before September 8, 2017, and the Medical Marijuana Control Program must be operational on or before September 8, 2018.

Staff brought this issue to City Council at its April 10, 2017, meeting; at that meeting, Council directed staff to move forward with the proposed ban on medical marijuana cultivators, processors, and dispensaries. The proposal would amend the zoning code to prohibit these uses in all Dublin zoning districts, and so it was heard by the Planning and Zoning Commission at its May 4, 2017, meeting. Planning staff supported the ordinance and, following discussion, the Commission voted to recommend passage of the proposed ordinance to Council.

The reason Dublin is considering this ordinance under its home-rule authority is to protect the health, safety and general welfare of its residents and community. The City’s concern stems from marijuana’s continued illegal status under federal law. This carries a number of consequences, including the need for medical marijuana businesses and customers to possess significant quantities of cash due to banking restrictions on marijuana proceeds. The presence of raw plant materials in cultivation and processing also raises concerns for safety of those facilities. With these considerations in mind, the City is sensitive to the concern that medical marijuana products may provide relief for some residents suffering from illness and *this proposed legislation in no way affects the use of medical marijuana.*

FACT SHEET

The following is a short summary of the main components of medical marijuana law in Ohio:

FACT:

House Bill (H.B.) 523 created a framework for the legal use of medical marijuana in the State of Ohio. This framework places three state entities—the Department of Commerce, the Board of Pharmacy, and the Board of Medicine—in charge of making rules relating to the cultivation, distribution, recommendation, sale, testing, and use of medical marijuana in the state.

FACT:

H.B. 523 included a specific provision affirming local municipalities' rights to prohibit the cultivation, processing, and dispensing of medical marijuana within their limits. This provision is codified at Section 3796.29 of the Ohio Revised Code.

- This provision does not relate to the use or possession of medical marijuana by a patient, or to a qualified physician's ability to recommend medical marijuana to a patient.
- Local action to ban cultivation, processing, and dispensing does not impact patient use or a qualified physician's ability to recommend medical marijuana.
 - Cultivation means the growing and harvesting of medical marijuana for commercial purposes authorized by H.B. 523. It requires licensure under the law and rules being finalized by the State.
 - Processors take the raw marijuana produced by cultivators and refine it into oil, tinctures, edibles, or patches that are authorized for distribution as medical marijuana under the law.
 - Dispensaries sell medical marijuana to the patient or caregiver with a physician recommendation to use medical marijuana.
- If the local medical marijuana cultivation, processing, and dispensing ban passes, Dublin residents could still use medical marijuana (subject to the state's requirements) within the City of Dublin.

FACT:

Marijuana (cannabis), including medical marijuana, remains a Schedule I controlled substance under the federal Controlled Substances Act.

- This means that, according to the federal government, it has no medicinal value and is an illicit drug.
- As a consequence, FDIC-insured and nationally chartered banks, and credit card companies, cannot provide financial services where funds are derived from medical marijuana. Most transactions necessarily will have to be made in cash.
- The federal government also, at any time, could shift from the laissez faire approach it has recently taken to enforcing federal law against marijuana. Any medical marijuana operation could be subject to federal enforcement action.

LAW AND ANALYSIS

The Ohio Constitution's Home Rule Amendment gives municipalities the inherent power to enact planning, zoning, and business-regulation laws that further the health, safety, and welfare within the municipality, provided that they do not conflict with state law. Additionally, H.B. 523 enacted Section 3796.29 of the Revised Code, which expressly affirms that municipalities may

adopt restrictions, including prohibiting or limiting the number of cultivators, processors, or retail dispensaries of medical marijuana within their corporate limits.

A. Proposed rules for medical marijuana

Since the bill's effective date, the State's Department of Commerce, Board of Pharmacy, and Medical Board have been drafting rules setting standards and procedures for the medical marijuana control program. In the meantime, many other municipalities—including Grove City, Upper Arlington, and Grandview Heights, among others—have enacted temporary moratoria on any medical marijuana manufacture, distribution, and dispensing. These moratoria vary in length, but they are united in their desire to see what these state boards propose before making a final decision on the presence of medical marijuana in their communities.

Since the beginning of the year, proposed rules have been released for processors, dispensaries, and cultivators. Under these proposed rules, Ohio will license 60 dispensaries, 24 cultivators (with potential for more based on growth in patient population), and 40 processors across the state. Each of these functions has its own licensing and fee structure, along with requirements for security plans and other disclosures. The rules also would require patients and caregivers to register with the state before purchasing medical marijuana, and medical marijuana could only be sold pursuant to a recommendation from a physician who is certified to recommend marijuana under the state's rules. Initial versions of the rules included a requirement that all dispensaries hire a part-time clinical director (either a physician, pharmacist, or mid-level practitioner) to oversee dispensary operations; this requirement was removed from the final proposed rules, however.

Rules for cultivators took effect on May 6, and the Department of Commerce has unveiled the application process. Cultivation applications will begin to be accepted in June or July, and they will be awarded in a scored, competitive process for the limited number of permits.

B. Actions taken by other municipalities

Many cities' moratoria have not expired, but others have already begun the process to ban medical marijuana cultivators, processors, and dispensaries in their territories. Worthington's city council recently had a first reading of an ordinance that would prohibit medical marijuana; Plain City has discussed a ban as well. The cities of Hamilton and Fairfield, in Butler County, and the Village of Evendale, near Cincinnati, have enacted bans. Sidney, near Dayton, has extended its moratorium to October 2017. The City of Troy has struggled with the issue, having extended its moratorium through July while proposals for a small number of medical marijuana dispensaries have bounced between the city council and planning commission. Meanwhile, the Village of Johnstown approved a resolution stating its intention not to prohibit medical marijuana facilities in the village, and the City of Richmond Heights (near Cleveland) has passed an ordinance incorporating medical marijuana uses in its zoning code. Akron has also proposed measures to regulate medical marijuana activities, but would not ban them. Still, and as the rules have neared completion, the majority of jurisdictions acting on the issue have either tended toward banning medical marijuana uses or extending moratoria for further study when the remaining administrative rules become final in coming weeks and months.

C. The impact of marijuana's continued prohibition under federal law

The State's proposed rules have not addressed—and cannot address—a vital component of medical marijuana businesses: the continued illegality of marijuana under federal law. This has not changed since the issue first was presented to Council. Marijuana (cannabis) remains classified as a Schedule I controlled substance under the Federal Controlled Substances Act, rendering the manufacture, distribution, dispensation, and the possession of marijuana with intention to manufacture, distribute, or dispense, criminal under federal law. A consequence of the continued prohibition of marijuana by the federal government is that financial services providers such as banks and credit card companies are unable to do business with marijuana enterprises because it is illegal under federal law to transmit funds known to have been derived from marijuana. The unbanked status of marijuana businesses results in the businesses and their customers carrying significant amounts of cash and this, in turn, invites opportunity for robbery, theft, money laundering, tax evasion, and other crimes constituting threats to the public health, safety, and welfare. This has been a problem in states that have legalized medical and recreational marijuana (the banking issue applies for medical as well as recreational uses).

CONCLUSION AND RECOMMENDATION

This legislation has no impact on the use of medical marijuana that complies with Ohio law and the rules that are currently under consideration. The continued illegality of marijuana, including medical marijuana, under federal law, and the consequences of that illegal status, continue to cast a shadow over the industry. Legal, Planning, and Police, along with the Planning and Zoning Commission, support the ordinance banning the cultivation, processing and dispensing of medical marijuana in the City.

Staff respectfully recommends passage of Ordinance 35-17 at the second reading/public hearing on June 12.

RECORD OF ORDINANCES

Ordinance No. 35-17

Passed _____, 20____

AN ORDINANCE PROHIBITING MEDICAL MARIJUANA CULTIVATION, PROCESSING, AND RETAIL DISTRIBUTION WITHIN THE CITY OF DUBLIN

WHEREAS, on May 25, 2016, the Ohio General Assembly passed Substitute House Bill 523 ("H.B. 523"), which allows individuals with a qualifying medical condition, on the recommendation of a physician, to apply to the State, and upon approval of their application receive an identification card allowing them to obtain, possess, and use medical marijuana for the treatment of said condition; and

WHEREAS, H.B. 523 was signed into law by Ohio Governor John Kasich and thereafter became effective on September 9, 2016; and

WHEREAS, pursuant to home rule authority found in Article XVIII of the Constitution of the State of Ohio, the City Charter, and the Ohio Revised Code, municipalities have the inherent power to enact planning, zoning and business regulation laws that further the health, safety, welfare, comfort and peace of the citizens of the municipality, including restricting, prohibiting and/or regulating certain business uses; and

WHEREAS, ORC § 3796.29, enacted by H.B. 523, affirms that municipalities may adopt restrictions, including prohibiting or limiting the number of cultivators, processors, or retail dispensaries of medical marijuana within their corporation limits; and

WHEREAS, H.B. 523 provides that the Ohio Department of Commerce, the Board of Pharmacy, and the State Medical Board shall adopt rules establishing standards and procedures for the medical marijuana control program; and

WHEREAS, these state boards have published their proposed rules governing operation of marijuana dispensaries, cultivators, and processors, the issuance of certificates to physicians wishing to recommend medical marijuana to patients, and the registration of patients and caregivers wishing to purchase medical marijuana pursuant to these recommendations; and

WHEREAS, these proposed rules are in the process of completing the state's agency rule-review; and

WHEREAS, the City has studied these proposed rules; and

WHEREAS, marijuana (cannabis) remains classified as a Schedule I controlled substance under the Federal Controlled Substances Act, rendering the manufacture, distribution, dispensation, and the possession of marijuana with intention to manufacture, distribute, or dispense, a crime under federal law; and

WHEREAS, a consequence of the continued prohibition of marijuana by the Federal government is that financial services providers such as banks and credit card companies are unable to do business with marijuana enterprises because it is illegal under Federal law to transmit funds known to have been derived from marijuana; and

WHEREAS, the unbanked status of marijuana businesses results in the businesses and their customers carrying significant amounts of cash; and

WHEREAS, the presence of large amounts of cash invites opportunity for robbery, theft, money laundering, tax evasion, and other crimes constituting threats to the public health, safety, and welfare; and

WHEREAS, due to the above threats to public health, safety, and welfare, having reviewed the State's rules and Federal law's continued classification of marijuana (cannabis) as a Schedule I drug, the City of Dublin determines that cultivation,

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Ordinance No. 35-17

Passed Page 2 of 3, 20

processing, and retail dispensing of marijuana for medical purposes, or otherwise, shall not be a permitted use within this City;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Dublin, Delaware, Franklin, and Union Counties, State of Ohio, _____ of the elected members concurring, that:

SECTION 1. That Title XI, Business Regulations, shall be amended by adding Chapter 121, Medical Marijuana, to read as follows:

CHAPTER 121 – MEDICAL MARIJUANA

121.01 DEFINITIONS.

(a) "Academic medical center" has the same meaning as in section 4731.297 of the Ohio Revised Code.

(b) "Marijuana" has the same meaning as marihuana as defined in section 3719.01 of the Ohio Revised Code.

(c) "Medical marijuana" means marijuana that is cultivated, processed, dispensed, tested, possessed, or used for a medical purpose.

(d) "State university" has the same meaning as in section 3345.011 of the Ohio Revised Code.

121.02 CULTIVATION, PROCESSING, OR RETAIL DISPENSING OF MEDICAL MARIJUANA PROHIBITED.

(a) The cultivation, processing, or retail dispensing of medical marijuana within the City of Dublin is hereby prohibited.

(b) This section does not prohibit research related to marijuana conducted at a state university, academic medical center, or private research and development organization as part of a research protocol approved by an institutional review board or equivalent entity, if otherwise permitted by State law or rule, or local ordinance.

121.99 PENALTY

Whoever violates Section 732.02(a) is guilty of a misdemeanor of the fourth degree. Each day of violation shall constitute a separate offense.

SECTION 2. Chapter 153, Zoning Regulations, shall be amended by enacting Section 153.035, Medical Marijuana Cultivation, Processing, or Retail Dispensing, to read as follows:

153.035 CULTIVATION, PROCESSING, OR RETAIL DISPENSING OF MEDICAL MARIJUANA PROHIBITED IN ALL DISTRICTS.

(a) The cultivation, processing, or retail dispensing of medical marijuana shall be a prohibited use in all zoning districts within the City of Dublin.

(b) Use of property in violation of this section shall constitute a nuisance.

(c) In addition to other penalties provided by law, the Director of Law shall be authorized to institute civil proceedings in a court of competent jurisdiction to enjoin violations of this Section; for monetary damages arising from violations of this Section; and to take all actions necessary to secure enforcement of any injunction and collect

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upon any damage award, judgment, or fine in contempt levied in relation to a violation of this Section.

SECTION 3. Council hereby finds that all deliberations and votes taken in relation to this Ordinance were done in a public meeting in accordance with Section 121.22 of the Ohio Revised Code

SECTION 4. The provisions of this Ordinance are severable, and if any one or more should be found unenforceable for any reason, the remaining provisions shall remain in full force and effect.

SECTION 5. This ordinance shall take effect at the earliest opportunity allowed by law.

Passed this _____ day of _____, 2017.

Mayor – Presiding Officer

ATTEST:

Clerk of Council

FACTS ABOUT THE STATE AND LOCAL REGULATION OF MEDICAL MARIJUANA

The City of Dublin is considering an ordinance that would prohibit medical marijuana cultivation, processing, and retail dispensing within the City. The City is considering this action under its home-rule authority to protect the health, safety, and general welfare of its residents and community. This action is also specifically permitted by the law that created Ohio's medical marijuana program.

The City's concern stems from marijuana's continued illegal status under federal law. This carries a number of consequences, including the need for medical marijuana businesses and customers to possess significant quantities of cash due to banking restrictions on marijuana proceeds. The presence of raw plant materials in cultivation and processing also raises concerns for safety of those facilities. With these considerations in mind, the City is sensitive to the concern that medical marijuana products may provide relief for some residents suffering from illness and this proposed legislation in no way affects the use of medical marijuana.

The information provided in this document is intended to summarize what the proposed ordinance would—and would not—do.

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 - Dispensaries sell medical marijuana to the patient or caregiver with a physician recommendation to use medical marijuana.

- If the local medical marijuana cultivation, processing, and dispensing ban passes, Dublin residents could still use medical marijuana (subject to the state's requirements) within the City of Dublin.

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Cities with bans (verified)

Hamilton (city) – Ban (Ord. 2015-2-14)
Middletown – Ban (Ord. O2017-07) (Feb. 2017)
Lancaster – Ban (Ord. 24-16) (Oct. 24, 2016)
Oakwood – Ban (Ord. 4837) (March 6, 2017)
Tipp City – Ban (Ord. 1-17) (Jan. 3, 2017)
Louisville (OH) – Ban (Ord. 17-07) (March 6, 2017)
Columbiana (city) – Ban (Ord. 17-O-2898) (Jan. 17, 2017)
Madeira – Ban on dispensaries (reported by Cincinnati Enquirer—not yet posted on site) (April 10, 2017)
Rocky River – Ban (Ord. 39-16) (Sept. 6, 2016)

Villages with bans (verified)

Village of Sheffield – Ban (Ord. No. 2544) (Dec. 12, 2016)
Village of Brewster – Ban (Ord. 14-2017) (March 20, 2017)
Village of Evendale – Ban (Ord. 16-77) (Jan. 10, 2017)

Townships with bans (verified)

Canton Township (Stark County) – Ban (Sept. 8, 2016)
Plain Township (Stark County) – Ban (Res. 16-461) (Sept. 8, 2016)
Jackson Township (Stark County) – Ban (Res. 16-118) (Sept. 8, 2016)
Lake Township (Stark County) – Ban (Res. 16-379) (Nov. 14, 2016)
Bath Township (Summit County) – Ban (Res. 2016-39) (Nov. 7, 2016)
Perkins Township (Erie County) – Ban (Res. 2016-169) (Aug. 23, 2016)
Russell Township (Geauga County) – Ban (Zoning Amendment 2016-8) (Feb. 15, 2017)

Cities considering bans

Fairfield (Butler County) – Ban to be introduced (April 24 council meeting)
Troy – Ban receiving 4th reading (Ord. O-9-17)

- Troy has also considered legislation that would permit up to 3 dispensaries in highway-adjacent business districts (it failed)

Cities with a moratorium (verified)

Grandview Heights – 6-month moratorium (Ord. 2016-37) (Dec. 5, 2016)
Lakewood – 3-month moratorium (Res. 8916-17) (March 20, 2017)
Upper Arlington – 12-month moratorium (Ord. 43-2016) (Oct. 10, 2016)
Grove City – 12-month moratorium (Ord. C-91-16) (Nov. 7, 2016)
Troy – 6-month moratorium extension (Ord. O-59-2016) (Dec. 5, 2016)
Sidney – moratorium extended to Oct. 9, 2017 (Ord. A-2894) (March 27, 2017)

Townships with a moratorium (verified)

Miami Township – 9-month extension to moratorium (Res. 014-2017) (Feb. 14, 2017)
Ross Township (Butler County) – 2nd 6-month moratorium (Feb. 2017)

Political subdivisions with ban or moratorium reported on OMAA listserv, but unable to be independently verified

Village of Barnhill – second reading (unverified)
Sandusky Township (Erie County) – (unverified)
Vermilion Township (Erie County) – (unverified)
Loveland – (unverified)



MEETING MINUTES

Planning & Zoning Commission

Thursday, May 4, 2017

AGENDA

1. **Rockin' Jump Dublin** **Shier Rings Road**
16-010CU **Conditional Use (Approved 6 – 0)**
2. **Perimeter Center, Subarea E – Shell Service Station Signs** **6695 Perimeter Loop Rd.**
17-034AFDP **Amended Final Development Plan (Disapproved 3 – 3)**
3. **Medical Marijuana Regulations – Code Amendment**
17-038ADMC **Administrative Request Code (Recommended for Approval 6 – 0)**

The Vice Chair, Chris Brown, called the meeting to order at 6:29 p.m. and led the Pledge of Allegiance. Other Commission members present were: Cathy De Rosa, Deborah Mitchell, Stephen Stidhem, and Bob Miller. Amy Salay arrived at 6:35 pm and Victoria Newell was absent. City representatives present were: Phil Hartmann, Vince Papsidero, Claudia Husak, Tammy Noble, Logan Stang, JM Rayburn, and Flora Rogers.

Administrative Business

Motion and Vote

Mr. Stidhem moved, Ms. De Rosa seconded, to accept the documents into the record. The vote was as follows: Mr. Brown, yes; Mr. Miller, yes; Ms. Mitchell, yes; Mr. Stidhem, yes; and Ms. De Rosa, yes. (Approved 5 - 0)

Motion and Vote

Ms. De Rosa moved, Mr. Miller seconded, to approve the April 6, 2017, meeting minutes. The vote was as follows: Mr. Brown, yes; Mr. Stidhem, yes; Ms. Mitchell, yes; Ms. De Rosa, yes; and Mr. Miller, yes. (Approved 5 - 0)

The Vice Chair briefly explained the rules and procedures of the Planning and Zoning Commission. He said all of the cases were eligible for the Consent Agenda this evening. He determined the cases would be heard in the order they were published in the agenda.



**1. Rockin' Jump Dublin
16-010CU**

**Shier Rings Road
Conditional Use**

The Vice Chair, Chris Brown, said the following application is a request for a new 29,000-square-foot building and associated site improvements on a 2.29-acre vacant lot to be used as an indoor recreation facility on the south side of Shier Rings Road and east of Emerald Parkway. He said this is a request for a review and approval of a Conditional Use under the provisions of Zoning Code Section 153.236.

The Vice Chair swore in anyone intending to address the Commission in regard to this case.

Bob Miller asked staff for clarification on if the Commission is to just determine the Conditional Use or if they were voting on an extension since this application was previously approved but has since expired. Claudia Husak explained there is not an extension provision written into the Code so the applicant has brought the application forward as new.

The Vice Chair asked if there were specific questions or concerns or if this could be determined by Consent. The Commission as a whole decided a presentation was not necessary. The Vice Chair requested the Conditional Use with the four conditions be presented for a vote.

Ms. Husak stated approval is recommended for the Conditional Use with the alteration from the General Development Standards allowing parking to be within 19 feet of the western property line (Emerald Parkway frontage) and with four conditions:

- ~~1)~~ That the applicant pay a fee-in-lieu for any tree not replaced on-site and revise the landscape plan to also include detail on the plant selection at the building permitting stage;
 - 1)
 - ~~2)~~ That the applicant revise the plans to provide detail on the lot coverage at the building permitting stage;
 - 2)
 - ~~3)~~ That the applicant continue working with Engineering to address all technical comments regarding stormwater management and continue to demonstrate all stormwater requirements as defined in Chapter 53 are met; and
 - 3)
 - 4) That the applicant work with staff to provide site access aligning with the existing opposing driveway and to provide adequate sight distance.

Cathy De Rosa asked if the orientation of the building on the site has changed to which Ms. Husak affirmed the orientation had not changed.

JM Rayburn said there were two changes to make note of: 1) the dumpster was moved farther from Emerald Parkway and tucked into the southeast corner; and 2) the [design of the pedestrian access from the building entrance to the adjacent park.](#)

Mr. Stidhem moved, Ms. Mitchell seconded to approve the Conditional Use allowing parking to be within 19 feet of the western property line (Emerald Parkway frontage) and with the four conditions.

The applicant stated they were in agreement with the conditions.

The vote was as follows: Mr. Miller, yes; Ms. De Rosa, yes; Mr. Brown, yes; Ms. Salay, yes; Ms. Mitchell, yes; and Mr. Stidhem, yes. (Approved 6 – 0)

**2. Perimeter Center, Subarea E – Shell Service Station Signs 6695 Perimeter Loop Rd.
17-034AFDP Amended Final Development Plan**

The Vice Chair, Chris Brown, said the following application is a request for the replacement of two monument signs for an existing Shell Service Station located within the Perimeter Center Planned District, Subarea E. He said the site is on the west side of Perimeter Loop Road, southeast of the intersection with Avery-Muirfield Drive. He said this is a request for a review and approval of an Amended Final Development Plan under the provisions of Zoning Code Section 153.050.

The Vice Chair swore in anyone intending to address the Commission in regard to this case.

Logan Stang explained the signs were approved as part of the Final Development Plan and that any modifications to the size cannot be approved administratively. The Commission is responsible for making a determination as an Amended Final Development Plan.

The Vice Chair determined a presentation of the overview would be worthwhile.

Mr. Stang presented an aerial view of the site. He reported the Final Development Plan was approved in 1999 and included a combination of two monument signs; the first located along Avery-Muirfield Drive, and the second near the entrance on Perimeter Loop Road.

Mr. Stang presented the monument sign on Avery-Muirfield Drive as it exists with at an overall size of 12 square feet and a height of four feet. He said the sign was constructed on a stone base and used one of the four permitted background colors listed in the Development Text: Pantone 1817C - dark red. He presented the proposed sign that uses the existing stone base but increases the height by one foot, four inches, bringing the overall height to five feet, four inches and overall size to a little over 20 square feet. He added the background will match the existing dark red color that exists today and the shell logo will use a yellow background with a lighter red border.

Mr. Stang presented the existing monument sign on Perimeter Loop Road that was approved at an overall size of 18 square feet and a height of six feet. The sign contains similar features to the Avery-Muirfield Drive sign he said, using a stone base with a pier on the side and the same dark red background. The proposed sign he explained also maintains the existing width but increases the height by two feet, bringing the overall height to eight feet and overall size to a little over 30 square feet.

Mr. Stang stated the Development Text permits two monument signs for this property up to a cumulative size of 66.5 square feet and the proposal meets this requirement coming in at a cumulative size of 50.65 square feet. He said the text also limits a maximum font size of 16 inches, which the applicant will need to meet with regard to the price font shown on this sign. He explained the proposal actually meets that requirement and was a miscalculation on the plans.

Mr. Stang said approval is recommended with the one condition:

- 1) That the applicant revise the Perimeter Loop Road sign to meet the maximum font size requirement, prior to filing for sign permits.

The Vice Chair invited the applicant to speak.

Tyler Fischer, C&B Sign Services, Inc., ~~10013 Pleasant Plain, Ohio~~ said the owner of the gas station is requesting these modifications due to the growth and maturation of the landscaping; a larger sign will provide better visibility from the street.

Bob Miller suggested that from an aesthetic perspective, by putting the larger sign on the same base and not raising the stone on the side, the sign may appear out of proportion. Mr. Fischer answered he did not think the modification would jeopardize the visual integrity of the area.

Cathy De Rosa asked if the picture shown was current because she was not seeing the overgrown vegetation that the applicant is claiming. Mr. Fischer said the trees have matured and make the signs difficult to see.

Chris Brown said some of the signs across the street are hard to see because of the growth of vegetation but at the same time, the lack of brightness is a factor as the sign appears to have yellowed, which seems to be the bigger problem.

Steve Stidhem said it is a gas station and people know where gas stations are located. He wants to understand why the owner believes these signs should be changed.

Amy Salay asked if other businesses have been approved with larger signs to which Mr. Stang answered they have. He cited Panera to the south and GetGo to the north that have the 50-square-foot monument sign on Avery-Muirfield Drive and a smaller one (approximately 15 square feet) on Perimeter Loop Road. He said both the Panera and GetGo signs have a similar stone pier on the side with the sign cabinet extending above. To put this application in context, he said the signs proposed would actually match what exists in the surrounding area.

Mr. Brown confirmed the proposed signs would be consistent with the signs adjacent.

Ms. Salay asked where in the Development Text the brighter yellow and brighter red are addressed because she thought everything in that Subarea had to be that Perimeter Center red, blue, black or green. Mr. Stang said those four colors apply to the background only and the logo is exempt from those color requirements. He said the background in this instance is not counted in the number of colors because one of the four permitted colors were chosen. He emphasized the applicant is meeting the color requirement.

Mr. Brown affirmed that the proposed signs meet Code, to which Mr. Stang agreed and added they are meeting everything in the Development Text, as well as the surrounding development.

Mr. Stidhem indicated the return on the investment will not be worth anything but that is not part of the Commission's consideration.

Ms. De Rosa said the new layout is less effective. Mr. Fischer affirmed the layout is what the applicant requested.

Mr. Miller said he did not understand Ms. De Rosa's comment and she pointed out the location of the prices for gasoline sold. She explained she is struggling with the efficiency of the new design.

Ms. Husak reiterated that the Development Text allows signs to be 9 feet tall in this particular Subarea. In the Administrative Approval allowances, she said the only thing they are permitted to review is changes to the sign face so if the applicant wanted to pull off the cabinet and change that, it could be determined administratively but location and height are not included in the administrative criteria.

Ms. Husak clarified the signs at those heights were approved at the Final Development Plan stage when the [package-site](#) was approved. She added Panera and BP signs were always bigger and taller than the Shell Station signs.

Mr. Stang indicated GetGo has gone through face changes over the years as the business has changed so they have gone through the Administrative Approval process.

Mr. Miller restated he did not think the base fit the cabinet. Mr. Stang indicated the applicant would not be permitted to raise the height of the pier on the side based on the development text requirement.

Mr. Brown reiterated that since the signs meet the Code, he has to approve them.

The Vice Chair called for a motion since there were no further questions.

Motion and Vote

Mr. Stidhem moved, Ms. Mitchell seconded, to approve the Amended Final Development Plan with the following condition:

- 1) That the applicant revise the Perimeter Loop Road sign to meet the maximum font size requirement, prior to filing for sign permits.

Tyler Fischer, C&B Sign Services, Inc., agreed to the above condition.

The vote was as follows: Ms. Salay, no; Mr. Brown, yes; Ms. De Rosa, no; Mr. Miller, yes; Ms. Mitchell, no; and Mr. Stidhem, yes. (Disapproved 3 – 3)

3. Medical Marijuana Regulations – Code Amendment 17-038ADMC

Administrative Request Code

The Vice Chair, Chris Brown, said the following application is a request for an amendment to the Zoning Code to prohibit medical marijuana cultivation, processing, and retail distribution within the City of Dublin. He said this is a request for a review and recommendation of approval to City Council for the proposed amendments to the Zoning Code under the provisions of Zoning Code Sections 153.232 and 153.234. He said those intending on addressing the Commission in regard to this case do not need to be sworn in as City Council is the final authority on this application.

The Commission decided they would like to see the presentation due to the interesting topic.

Phil Hartmann noted that Steve Stidhem left the Council Chambers as he had recused himself from this review ~~prior to the meeting~~.

Tammy Noble presented the history of Medical Marijuana as it relates to the State of Ohio:

- On May 25, 2016, the Ohio General Assembly passed H.B. 523, which allows individuals with qualifying medical conditions to apply to the State of Ohio, that if approved, allows them to receive an identification cards that allows them to obtain, possess, and use medical marijuana.
- Governor Kasich signed the bill into law September 9, 2016.
- Final rules for implementing the program must be completed by September 8, 2017, and the program must be operational before September 8, 2018.

Ms. Noble presented municipal authority:

- Pursuant to the Ohio's Constitutional Home Rule Amendment, municipalities have the power to enact planning, zoning, and business regulation law that further the health, safety and welfare of their community.
- H.B. 523 enacted a provision that allows municipalities to adopt restrictions, including prohibiting or limiting the number of cultivators, processors, or retail dispensaries of medical marijuana within their communities.

Ms. Noble reported the Law Director analyzed the options available to our corporation. While H.B. 523 allows the State of Ohio to regulate medical marijuana, she said it continues to be classified as a Schedule I - Controlled Substance under the Federal Controlled Substance Act and is illegal under federal law. Based on the negative implications associated with the federal prohibition, she reported the Law Director recommends that the City of Dublin prohibit the cultivation, processing, and retail distribution of medical marijuana.

As a result of the recommendation, Ms. Noble said this Code Amendment would add Section 153.035 to the City of Dublin Zoning Code for provisions associated with regulating medical marijuana. She noted these provisions would prohibit the cultivation, processing, and retail dispensing of medical marijuana in all zoning districts and would state the penalties for such operations.

Ms. Noble said Planning has reviewed the Code Modification and determined it meets that criteria so approval to City Council is recommended.

Cathy De Rosa inquired about doctors writing prescriptions for medical marijuana. Mr. Hartmann said there are no rules to regulate that. He said a doctor gets licensed by the state to dispense it, even if he practices within the City of Dublin and could write the "recommendation" as it cannot be a "prescription" and cannot include a dosage amount so the person at the store would have to make a recommendation based on the doctor's "recommendation". He said these are all the issues as the laws conflict the ways around it and there is no way to prohibit that.

Mr. Brown noted it is conflicted because it is a federally-prohibited substance. Mr. Hartmann said even though the Federal Government has turned a blind eye to it so far, the conflict creates each problem. He added with the banking industry, banks cannot accept any money because it is a C-1 Substance and with being all-cash transactions, it is a big problem.

Mr. Brown asked if a doctor could "prescribe" it instead of "recommending" it, if a pharmacy could then dispense medical marijuana as a controlled substance.

Deb Mitchell inquired about the manner of distribution. She asked if one will have to go to a state store similar to buying liquor. Mr. Hartmann said medical marijuana is heavily regulated and would not be found in any pharmacy. He clarified there will be dispensaries and there will be only so many licenses and the regulations for one to become a dispensary is pretty stringent.

Mr. Brown concluded that no dispensary would be permitted in Dublin.

Ms. De Rosa asked where Columbus is leaning because across Sawmill Road is Columbus. Mr. Hartmann indicated the City of Columbus has not taken action on this yet; there is plenty of time because a lot of the rules have not been implemented yet.

Bob Miller asked Mr. Hartmann if the federal conflict is not there, what the pros and cons would be for allowing medical marijuana in Dublin.

Vince Papsidero asked for clarification of medical marijuana not being recreational so it is a health issue to which Mr. Hartmann agreed. Mr. Hartmann said all-cash dealings are an issue and that fact may draw more crime to the area. He added that not being able to prescribe a particular amount is very odd.

Mr. Brown noted medical marijuana is in an awkward place right now. He said he knows a nine-year-old that suffers from seizures that takes the oil with the TAC removed and it has cut the number of seizures down by 90%.

Mr. Hartmann pointed out that other cities around us are going through this same exercise and are making the same conclusion we are to prohibit medical marijuana outright.

Ms. De Rosa inquired about the language where it states a “violation” is a “nuisance”. Mr. Hartmann said the reason they do that is to provide the ability to either take it to court criminally or civilly to environmental court.

Motion and Vote

Ms. Mitchell moved, Ms. Salay seconded to forward a recommendation of approval to City Council for the Administrative Request Code Amendment with no conditions. The vote was as follows: Mr. Brown, yes; Mr. Miller, yes; Ms. De Rosa, yes; Ms. Salay, yes; and Ms. Mitchell, yes. (Approved 5 – 0)

Communications

Claudia Husak said when anyone on the Commission is leaning towards voting no on an application being presented in front of them, it would be in the best interest of the city to quote a criteria as to why they would feel as though the criteria in front of them are not met. ~~She indicated if a case goes to court it will be looked at quite in depth and it is harder to defend a decision if the criteria is not mentioned.~~ Phil Hartmann agreed.

Ms. Husak explained that the very last page of the Planning Report has all of the criteria listed and the details are included for that very reason.

~~Chris Brown said to telegraph that a Commission member is leaning toward a no vote would also be a courtesy to the applicant and would allow the applicant to decide if the application should be tabled so they would have the opportunity to revisit the issue, whatever it is, if they so choose.~~

The Vice Chair adjourned the meeting at 7:08 pm.

As approved by the Planning and Zoning Commission on _____, 2017.