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**City Clerk receives legal opinions from Nick Curcio, Esq.,  
 The Curcio Law Firm regarding Medical Marihuana and the Planning Commission**

| Topic  | Questions  | Opinion Summary   |
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| Locational Requirements for Marijuana Growers and Processors   | <p>Whether, and in what circumstances, the zoning ordinance allows parcels outside the Medical Marihuana Overlay Districts (MMODs) to be approved for marijuana-related uses?</p> <p>Can the Planning Commission grant a special exemption permit for a marijuana grower processor location outside of the Cesar Chavez or Walton Blvd Overlay Districts?</p> <p>Can a conditional rezoning agreement authorize the Planning Commission to do so, without rezoning the property in question to be part of an MMOD?</p> | <p>The zoning ordinance expressly allows other types of Medical Marihuana facilities to be located outside of the MMODs subject to a special exception permit, it makes no such allowance for grower and processors uses. Accordingly, the city cannot reasonably interpret the zoning ordinance to provide such an allowance, nor can it create such an allowance through contract with a private party.</p> <p>Rather, the only scenarios in which a parcel that is currently outside of an MMOD could be lawfully approved for grower or processor uses would be if: (1) the parcel is rezoned to be within an MMOD; or (2) the City amends the zoning ordinance to allow medical marijuana growers and processors in other locations, either as permitted uses or special exemption uses.</p> <p><b>See Attorney Memorandum regarding Locational Requirements for Marijuana Grower and Processors for entire legal opinion.</b></p> |
| <p><b>Independent Legal Opinion validates the Clerk’s decision that Ordinance 2363 Medical Marihuana Zoning Ordinance does not permit growers or processors to be located outside of the Cesar Chavez or Walton Blvd Overlay Districts</b></p> |  |   |

March 23, 2021

| Topic  | Questions  | Opinion Summary   |
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| <p>Planning Commission’s failure to act on City Council Referral</p> | <p>Does the Planning Commission have a duty to review a proposed ordinance amendment referred to it by the City Council and make an up-or-down recommendation to the City Council?</p> | <p>Pursuant to the Michigan Zoning Enabling Act, the legislative body (here, the City Council) “may refer any proposed amendments to the [planning] commission for consideration and comment within a time specified by the legislative body.” Although the statute does not expressly state that a legislative body’s referral obligates the planning commission to make a recommendation on the proposal, that obligation is necessarily implied from the text and structure of the statute. For one, if a planning commission could simply ignore referrals, the language in the statute that authorizes the legislative body to make referrals and set deadlines for the planning commission’s consideration would be effectively meaningless. That would be contrary to a principal rule of statutory interpretation that requires all words in a statute to be given operative meaning to the extent possible. Further, other provisions in the statute require that a planning commission hold at least one public hearing on a proposed zoning ordinance and make a recommendation to the legislative body before the legislative body can consider its adoption. In light of these requirements, if a planning commission could simply refuse to take action on a referral, it would effectively have the power to veto proposals put forward but the municipality’s elected officials. Given that planning commissions are appointed advisory bodies rather than elected lawmaking bodies, the statute could not possibly contemplate such extraordinary power.</p> <p><b>See Attorney Memorandum regarding Planning Commission’s Failure to Act on City Council Referral for entire legal opinion.</b></p> |

| Topic                         | Questions  | Opinion Summary   |
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| Planning Commission Holdovers | Are Planning Commissioners legally permitted to continue serving after their reappointments were rejected by City Council? | Michigan Planning Enabling Act states that a Planning Commissioner “shall hold office until his or her successor is appointed.” In light of this provision, the Planning Commissioner’s seat is not automatically vacated at the expiration of the appointed term. Rather, the incumbent Planning Commissioner becomes a “holdover” or “de facto” officer until a successor is appointed, and any actions that he or she takes during the holdover term have the same force and effect as the actions of other Planning Commissioners. In other words, the decision of a Planning Commission cannot be challenged on the grounds that a member of the Planning Commission was holding over in office after the expiration of his or her appointed term.   |
|                               | If so, whether there is any limitation on their ability to do so?  | The incumbent Planning Commissioner’s ability to holdover in office is subject to a practical limitation: the Mayor’s duty to nominate new candidates for the position. As noted above, the Planning Enabling Act provides for the appointment of Planning Commissioners by the Mayor with the consent of the City Council. The Michigan Attorney General has opined that when a statute vests the power of appointment in a particular officer, “the duty to provide for an election or to make an appointment within a reasonable amount of time is necessarily implied.” While there is no precise formula for determining what amount of delay is “reasonable,” a delay of seven months in making an appointment has previously been deemed “unreasonable”. Accordingly, it appears that the Mayor is likely in breach of her duty to nominate new candidates for the |

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|  |  | <p>Planning Commission within a reasonable time. A party harmed by that breach of duty – such as the City Council or an applicant for a seat on the Planning Commission – could potentially bring a lawsuit for mandamus seeking to compel the Mayor to nominate new candidates. The Mayor may also be subject to censure or other sanctions, particularly if there is evidence to suggest that she is refusing to nominate new candidates as an end-run around the City Council’s advice-and-consent power.</p> <p><b>See Attorney Memorandum regarding Planning Commission Holdovers for entire legal opinion.</b></p> |
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