



Office of the City Clerk  
Garland S. Doyle  
Interim City Clerk  
(248) 758-3200

<http://pontiaccityclerk.com/medical-marihuana>

March 2021

## Medical Marihuana Application Review Status Update

A Process that follows the ordinance as approved by the voters that is fair, transparent and has integrity.

### **Cesar Chavez District Provisioning Center Applications Rankings were announced on March 2, 2021**

1. Rize Cannabis
2. West Fort Holdings LLC
3. Greenhouse Farms Pontiac LLC
4. Caesar's Garden
5. The Cured Leaf TC Inc
6. Yellow Tail Ventures Inc
7. Larren Investments LLC
8. PGSH Holdings LLC
9. U-Versity Medz
10. Pure Life Solutions II LLC
11. Misty Mee LLC
12. Southeast Provisioning Center LLC
13. Top Hill Compassion Center LLC
14. OP Holdings II LLC
15. The Dixie Depot
16. Prime 7 LLC
17. Herb Wealth LLC

### **The following applicants appealed their rankings**

6. Yellow Tail Ventures INC
7. Larren Investments LLC
8. PGSH Holdings LLC
14. OP Holdings LLC
15. The Dixie Depot

**These applicants will received notices about their hearing date with the hearing officer by March 30, 2021.**

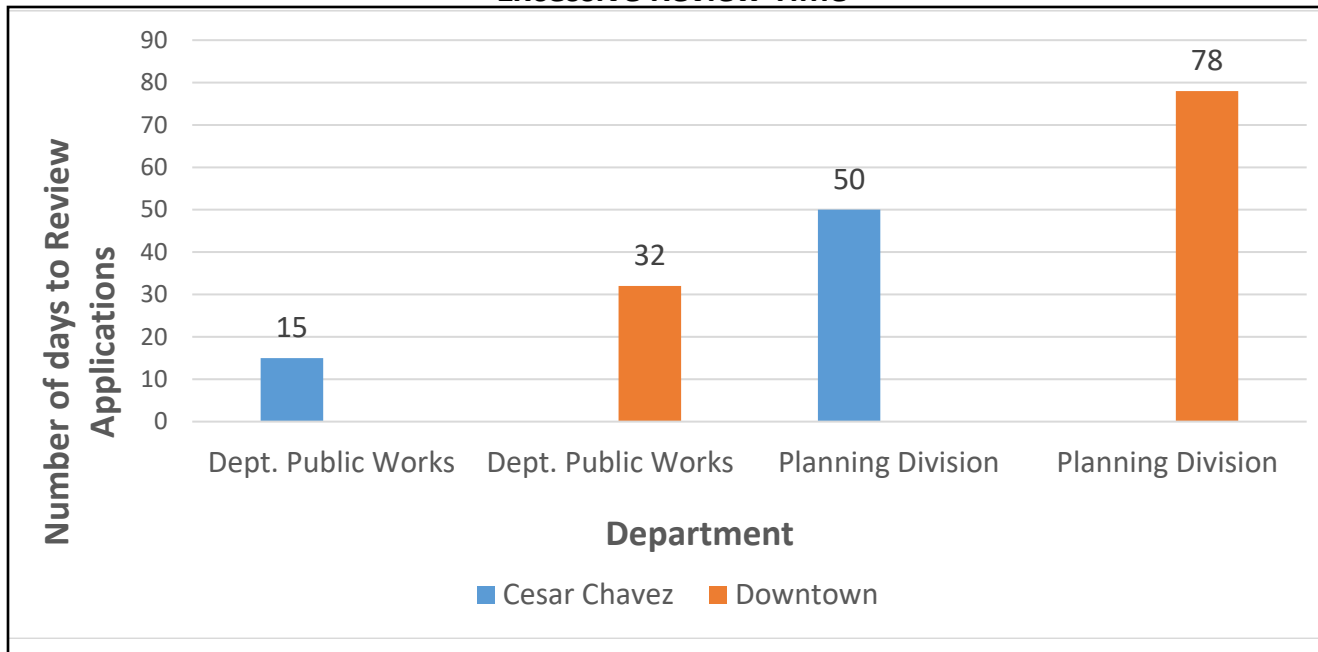
**Since applicants 9-13 and 16-17 did not appeal their rankings within the required 14 day period, they will not be able to appeal to the Hearing Officer or subsequently to the Marihuana Commission.**

<b>Application Status</b>	<b>Number of Applicants as of March 25, 2021</b>	<b>Review Phase</b>
Grower	8	6 in Phase 5 2 in Phase 1
Processor	3	2 in Phase 5 1 in Phase 1
Secure Transporter	1	Application Denied
Safety Compliance	0	
Provisioning – Cesar Chavez	17	17 in Phase 5
Provisioning – Downtown	23	23 in Phase 3
Provisioning – Non Overlay	48	48 in Phase 2 and 3
Provisioning – Walton Blvd	15	Ready for Phase 2

<b>Reviewer</b>	<b>Reviews Completed</b>	<b>Under Review</b>	<b>Ready for Review</b>
Financial Advisor	6 Grower, 2 Processor, 17 Cesar Chavez, 23 Downtown & 7 Non Overlay		41 Non Overlay
Income Tax	6 Grower, 2 Processor, 17 Cesar Chavez, 23 Downtown & 12 Non Overlay	36 Non Overlay	
Treasury	6 Grower, 2 Processor, 17 Cesar Chavez & 23 Downtown	48 Non Overlay	
Code Enforcement	6 Grower, 2 Processor, 17 Cesar Chavez, 23 Downtown & 48 Non Overlay		
Planning	6 Grower, 2 Processor & 17 Cesar Chavez	23 Downtown	
City Clerk	6 Grower, 2 Processor, 17 Cesar Chavez & 23 Downtown		25 Non Overlay
DPW	6 Grower, 2 Processor & 17 Cesar Chavez	23 Downtown	
Security	6 Grower, 2 Processor, 17 Cesar Chavez & 23 Downtown	25 Non Overlay	

<b>Compliance</b>	<b>Reviews Completed</b>	<b>Under Review</b>	<b>Ready for Review</b>
Legal Advisor	6 Grower, 2 Processor & 17 Cesar Chavez		
Planning Advisor	6 Grower, 2 Processor & 16 Cesar Chavez		

### Excessive Review Time



- **DPW has taken 17 more days & counting to review Downtown Applications.**
  - More than double the time it took them to review Cesar Chavez.
- **Planning has taken 28 more days & counting to review Downtown Applications.**
  - More than one and a half the time it took them to review Cesar Chavez.

## Unresolved Issues

1. Professional Experts have not been paid. The review process has been suspended until Mayor Waterman allows the Finance Department to release payment to the professional experts.

Account Number	Description	Vendor	Invoice Date	Invoice Total	Finance Approved Date	Unpaid
101-255-816.007	Financial Advisor to City Clerk	Sherman J Taylor PC	12/4/20	\$13,500	12/10/20	90 days delinquent
101-255-816.011	Planning Advisor to City Clerk	Giffels Webster	1/27/21	\$16,200	2/12/21	30 days delinquent
101-255-818.012	Security Consultant	Global Alliance Protective Group	1/31/21	\$4,800	2/18/21	30 days delinquent
101-255-804.026	Legal Advisor to City Clerk	Kirk, Huth, Lange and Bandalamenti PLC	3/1/2021	\$13,450	3/11/2021	14 days delinquent

2. The Planning Commission has not made a recommendation to the City Council about the proposed zoning map amendment to allow grower and processor facilities to locate outside of the Walton Blvd and Cesar Chavez Overlay Districts. The text amendment was submitted in January 2020. It has been over a year and still no action by the Planning Commission.

The Clerk will not be able to issue any grower or processor licenses (permits) outside of the Walton Blvd. & Cesar Chavez Overlay Districts until Ordinance 2363 the zoning ordinance for Medical Marihuana is amended. Conditional rezoning addresses non-conforming zoning issues. Conditional rezoning does not address the licensing statute in the zoning ordinance. The Clerk is obligated to follow ordinances as they are written. The Clerk will continue to review applications not affected by this issue.

**The City Clerk has received an independent legal opinion that validates his 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.**

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

Topic	Questions	Opinion Summary
<p>Locational Requirements for Marijuana Growers and Processors</p>	<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 on <a href="http://pontiaccityclerk.com/medical-marihuana">http://pontiaccityclerk.com/medical-marihuana</a></b></p>

Topic	Questions	Opinion Summary
<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 on <a href="http://pontiaccityclerk.com/medical-marihuana">http://pontiaccityclerk.com/medical-marihuana</a></b></p>

Topic	Questions	Opinion Summary
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

		<p>breach of her duty to nominate new candidates for the 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 on <a href="http://pontiaccityclerk.com/medical-marihuana">http://pontiaccityclerk.com/medical-marihuana</a></b></p>
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Phases

Type of Review

What happens during the review phase?

Review Phase 1

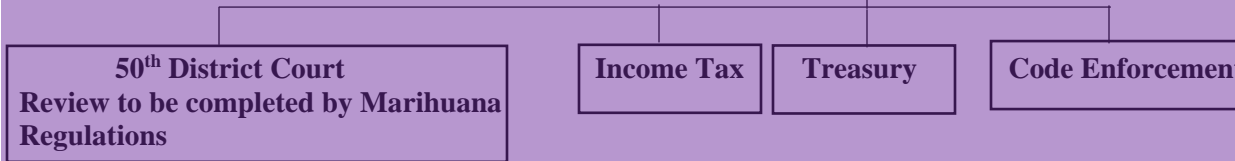
Content Review

Clerk staff will review application to make sure all information and exhibits have been submitted

Review Phase 2

Default Review

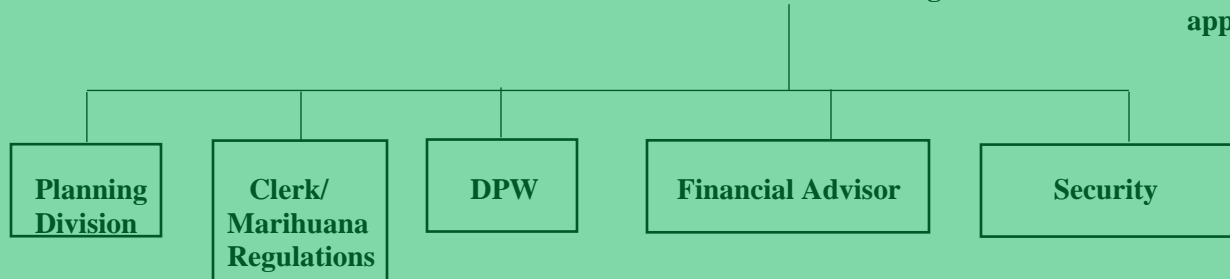
Staff from each department/division checks the applicant name and stakeholders to ensure they are not in default with the city



Review Phase 3

Evaluation and/or Scoring Review

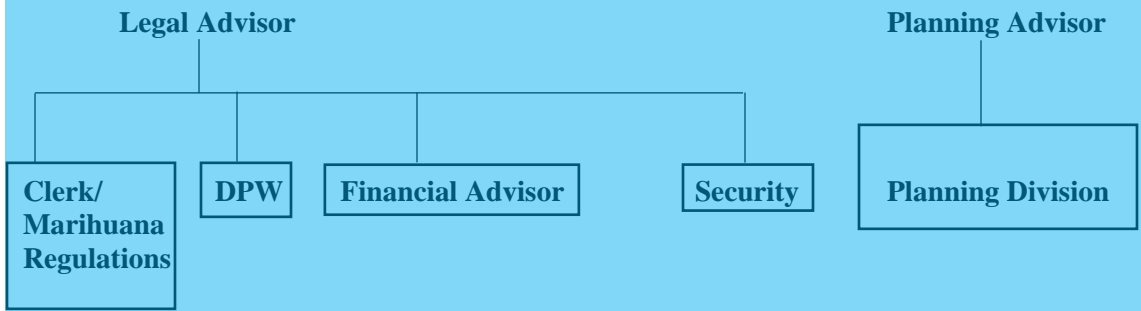
Evaluates and/or scores the relevant section of application



Review Phase 4

Compliance Review

Ensures that standards have been consistently applied by reviews



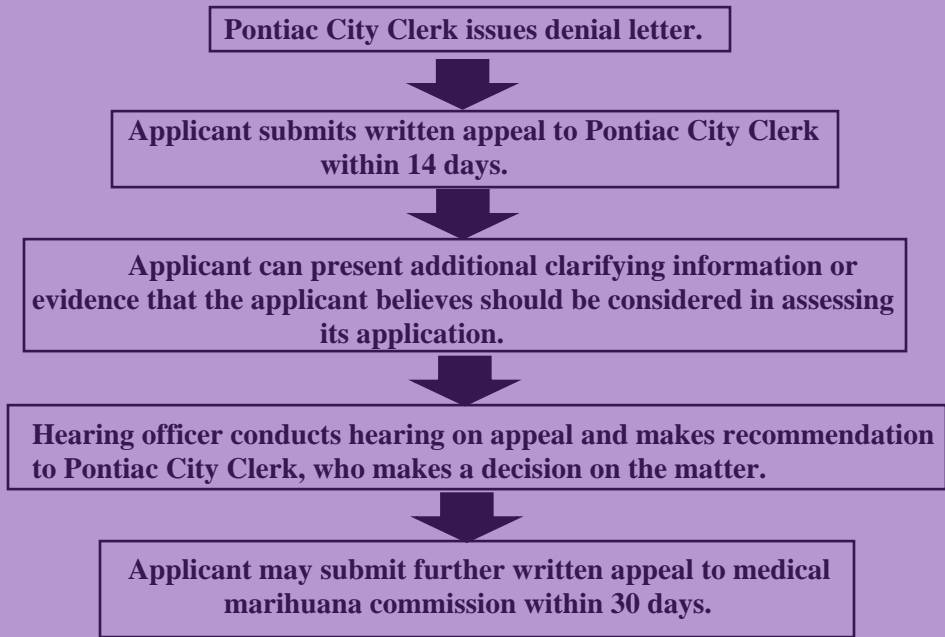
Review Phase 5

Conditional Approval, Notice of Deficiencies or

Application Denial

If applicant receives conditional approval, they advance to Phase 6

**PROCESS FOR APPEAL**



**Review Phase 6**

**Site Plan Approval and/if necessary Special Exemption Approval**

**Review Phase 7**

**Certificate of Compliance/Occupancy from Building and Fire**

**Review Phase 8**

**Clerk issues a permit provided you have been issued your pre-qualification from the State of Michigan**