

City Clerk's Response to the
Continuation of Mayor Waterman,
Attorney Anthony Chubb and Attorney
Matt Gibb Conflicting Opinions and
Distributing Inaccurate Information
about the Medical Marihuana Review
Process

Presented By: Garland Doyle, M.P.A.
Interim City Clerk

January 5, 2021

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

- ▶ What are the requirements to obtaining a Medical Marihuana Permit in the City of Pontiac?
- ▶ What is the conflict causing the delay?
- ▶ Has the City Clerk offered solutions to the conflict?
- ▶ What agreement was reached at Council Sub-Committee that will resolve the conflict?
- ▶ Was the City Clerk newsletter an election budget expense?
- ▶ Has the City Attorney given the City Clerk bad legal advice about the Medical Marihuana process before?
- ▶ When will the Clerk begin to announce the selection of Medical Marihuana applicants?
- ▶ Are there other issues now causing potential conflict for the city?

What are the requirements to obtaining a Medical Marihuana Permit in the City of Pontiac?

The Facts

The process is determined by Ordinance 2357(B) “City of Pontiac Medical Marihuana Facilities Ordinance”. The ordinance was approved by Pontiac voters in August 2018.

The ordinance requires the following for Grower, Processor, Safety Compliance and Secure Transporter Applicants

1. Submit a completed application to the City Clerk
2. Pay the non-refundable \$5,000 application fee
3. Application is reviewed by the City Clerk
4. If the applicant satisfactorily meets the requirements of Ordinance 2357(B)
 - b. Fire Department and Building and Safety Department inspects the proposed location for compliance with all state and local building, electrical, fire, mechanical and plumbing requirements
 - c. Application must be in compliance with Ordinance 2363 (Medical Marihuana Zoning)
 - d. Applicant receives certificate of occupancy and if necessary, a building permit
5. Clerk can issue a permit to applicant after steps 1-4d if applicant has obtained their pre-approval from the State of Michigan

The Ordinance requires the following for Provisioning Center Applicants

The City will award no more than 20 Provisioning Center permits. (No more than five (5) in each of the following districts):

- ▶ Cesar Chavez
- ▶ Downtown
- ▶ Non Overlay
- ▶ Walton Blvd

1. Submitted a completed application to the City Clerk between January 6-27, 2020 for one of the designated districts
2. Paid the non-refundable \$5,000 application fee
3. Application is reviewed by the City Clerk based on a 130 point scale
4. The applications receiving the five highest scores in each of four districts will be awarded a permit if:
 - b. Fire Department and Building and Safety Department inspects the proposed location for compliance with all state and local building, electrical, fire, mechanical and plumbing requirements
 - c. Application must be in compliance with Ordinance 2363 (Medical Marijuana Zoning)
 - d. Applicant receives certificate of occupancy and if necessary, a building permit
5. Clerk can issue a permit to applicant after steps 1-4d if applicant has obtained their pre-approval from the State of Michigan

What is the conflict causing the delay?

- ▶ Ordinance 2363 (Medical Marihuana Zoning) only permits Growers or Processors to be licensed if they are located in the Cesar Chavez or Walton Overlay Districts.
- ▶ Ordinance 2363 Section 2.544 – Medical Marihuana Grower Facilities

E. Licensing

2. Medical Marihuana Grower uses are not permitted outside the Cesar Chavez and Walton Blvd Medical Marihuana Overlay Districts.

Ordinance 2363 Section 2.545 Medical Marihuana Processor

E. Licensing

2. Medical Marihuana Processor uses are not permitted outside the Cesar Chavez and Walton Blvd Medical Marihuana Overlay Districts

The City has received the following grower and processor applications that are not in either the Cesar Chavez or Walton Blvd Overlay Districts as required by Ordinance 2363.

Grower Applications	
Establishment Name	Establishment Address
Family Rootz	1097 S Glenwood Bldg. C 48342
Family Rootz	1-97 S Glenwood Space 35 Unit 100 48342
Pharmaco Inc.	13 S Glenwood 48342
Processor Applications	
Family Rootz	1-97 S Glenwood Space 35 Unit 100 48342
Pharmaco Inc.	13 S Glenwood 48342

What will happen to these applications?

In January 2020, the City Council submitted a proposed zoning map amendment to the Planning Commission to allow grower and processor facilities to locate outside of the Cesar Chavez and Walton Blvd Overlay Districts. The Planning Commission has yet to issue a recommendation to the City Council. The City Council must receive a recommendation from the Planning Commission prior to amending Ordinance 2363. Until Ordinance 2363 is amended these applications cannot be licensed by the Office of the City Clerk.

Has the City Clerk offered solutions to the conflict?

Yes, the City Clerk has offered two solutions to the conflict that have been supported by his legal advisor Rob Huth, Esq.

- A. The Clerk proposed to the City Council to amend ordinance 2363 section 2.544 E Licensing
 - 2. Medical Marihuana Grower uses are not permitted outside the Cesar Chavez and Walton Blvd Medical Marihuana Overlay Districts unless the applicant has received a conditional rezoning.

This amendment was rejected by the City Attorney

- B. The Clerk proposed to the City Council to amend ordinance 2363 section 2.544 E Licensing
 - 2. Medical Marihuana Grower uses are not permitted outside the Cesar Chavez and Walton Blvd Medical Marihuana Overlay Districts unless the applicant receives a special exemption permit.

The City Attorneys are stating that this proposed amendment is already in the ordinance. There is special exemption language in the ordinance but it does not state that Grower and Processors can be licensed outside of Cesar Chavez and Walton Blvd Medical Marihuana Overlay Districts if they obtain a special exemption permit.

Legal Advisor Rob Huth, Esq. supports City Clerk's proposed amendments

Thank you for the note. The issue that your referring to is at the very least subject to interpretation that has sound arguments on both sides. My thought is that it be put to rest with a an amendment in ordinance (Sec. 2.544 E 2). I realize there are credible arguments against that approach. Still, Pontiac Citizens and the applicant are best served with a speedy resolution. Therefore, my opinion is the once the Clerk's Department has completed the review of the non-provisioning applications he should notify all of the applicants of the status. If an application review is complete but the property is outside of the Cesar Chavez or Walton Blvd Medical Marijuana Overlay Districts and the Clerk determines that a license should not be issued the Clerk should notify the applicant that the review is complete but the property is located outside of the Medical Overlay District.

Thank you,

Rob

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▶ What agreement was reached at Council Sub-Committee that will resolve the conflict?

No agreement was reached.

▶ Was the City Clerk newsletter an election budget expense?

Yes, since Medical Marihuana was a voter approved ballot initiative in 2018. The City Clerk was right to use election budget funds to inform Pontiac residents about the status of the Medical Marihuana process. The Clerk did not use grant funds which were designated for the 2020 Election.

Has the City Attorney given the City Clerk bad legal advice about the Medical Marihuana process before?

- ▶ Yes, the City Attorney told the City Clerk that the Clerk could not determine the 21 day application period because the Mayor vetoed a council resolution in November 2019. The settling of the 21 day application was challenged in court. The court ruled that the Clerk sets the 21 day application period.

When will the Clerk begin to announce the selection of Medical Marihuana applicants?

- ▶ Grower and Processor applications submitted before September 27, 2020 and the top 5 scored provisioning center applications for the Cesar Chavez Overlay District will be announced in January 2021.
- ▶ Announced after January 2021, the top 5 scored provisioning center applications for:
 - ▶ Downtown Overlay District
 - ▶ Non Overlay District
 - ▶ Walton Blvd Overlay District

Grower and Processor applications submitted after September 27, 2020.

▶ Are there other issues now causing potential conflict for the city?

Yes, a Medical Marihuana applicant has alleged to the City Clerk that the City entered into a conditional rezoning agreement with an entity that was not the property owner at the time the conditional rezoning was approved. The applicant is stating that the rezoning is invalid and threatening to sue the City.

If the City entered into a conditional rezoning agreement with a non property owner that would be a contradiction of the Michigan Zoning Enabling Act 110 of 2006 125.3405 Sec 405 that stipulates “an owner of land may voluntarily offer in writing and the local unit of government may approve, certain use and development of the land as a condition to rezoning of the land or an amendment to a zoning map”.

- ▶ The City cannot rezone land for non property owners.

Facts

- ▶ The City has approved two conditional rezonings
 1. Conditional rezoning for Medical Marihuana for Rubicon Capital LLC on January 29, 2020
 2. Conditional rezoning for Medial Marihuana for Ryan Fried (Flourish Michigan Grow) on September 1, 2020.

Both conditional rezonings were recommended by the Planning Commission and the rezoning agreement had been approved as to form by the City Attorney.

Questions

- 1) Did Rubicon Capital LLC own the land at the time of the approval of their rezoning on January 21, 2020?
- 2) Did Ryan Fried (Flourish Michigan Grow) own the land at the time of the approval of his rezoning on September 1, 2020?

The Office of the City Clerk
is committed to a process that follows the
ordinance as approved by the voters that is
fair, transparent and has integrity.

Garland S. Doyle, M.P.A.
Interim City Clerk