

# CITY OF MASON

201 West Ash St.  
Mason, MI 48854-0370

City Hall 517-676-9155  
Fax 517-676-1330

## PLANNING COMMISSION MEETING - COUNCIL CHAMBER Tuesday, January 10, 2012

6:30 p.m.

### Agenda

1. Call to Order
2. Roll Call
3. Approval of Minutes: December 13, 2011
4. Unfinished Business
5. Election of Chair, Vice-Chair and Secretary
6. People from the Floor
7. Announcements
8. Public Hearing
  - A. Ordinance No. 187 – An Ordinance to Amend Section 94-173, at Subsection (e) of Chapter 94, Zoning, of the Code of the City of Mason to Permit Swimming Pools to be Constructed as an Accessory Structure Within ten Feet of a Rear or Side Property Line
9. Regular Business
  - A. Resolution No. 2012-01 – A Resolution Recommending that the City Council Adopt Ordinance No. 187 – An Ordinance to Amend Section 94-173, at Subsection (e) of Chapter 94, Zoning, of the Code of the City of Mason to Permit Swimming Pools to be Constructed as an Accessory Structure Within ten Feet of a Rear or Side Property Line
  - B. Discussion – Medical Marihuana Ordinance
10. Unfinished Business
11. New Business
12. Correspondence
13. Liaison Reports
14. Administrator Report
15. Director Report
16. Adjournment

**CITY OF MASON  
PLANNING COMMISSION MEETING  
MINUTES OF DECEMBER 13, 2011**

Reeser called the meeting to order at 6:30 p.m. in the Council Chambers at 201 W. Ash Street, Mason, Michigan.

Present: Commissioners: Brown, Burns, Cotter, Green, King, Reeser, Sabbadin, Waltz  
Absent: Commissioner: Smith (excused)  
Also present: Martin A. Colburn, City Administrator  
David Haywood, Zoning & Development Director  
Deborah J. Cwierniewicz, City Clerk

**APPROVAL OF MINUTES: November 15, 2011**

MOTION by Brown, second by Burns,  
To approve the Minutes of November 15, 2011 as presented.  
MOTION APPROVED UNANIMOUSLY

**PEOPLE FROM THE FLOOR**

None.

**ANNOUNCEMENTS**

None.

**REGULAR BUSINESS**

**Discussion – Swimming Pool Setback Standards**

By formal action at the November regular meeting, the Commission directed staff to prepare an amendment for swimming pool setback standards. Haywood presented a draft ordinance stating that it is being reviewed by the city attorney; a public hearing will be held January 10, 2012.

**UNFINISHED BUSINESS**

Reeser thanked members who attended the Michigan Medical Marihuana Act work session.

**NEW BUSINESS**

None.

**CORRESPONDENCE**

Distributed.

**LIAISON REPORTS**

Waltz informed the Commission regarding City Council business.

**ADMINISTRATOR'S REPORT**

Colburn informed the Commission regarding City business.

**DIRECTOR'S REPORT**

Haywood informed commissioners regarding current zoning and development issues.

**ADJOURNMENT**

The meeting adjourned at 6:53 p.m.

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Deborah J. Cwierniewicz, City Clerk

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Jim King, Secretary

# City of Mason

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## MEMORANDUM

TO: Planning Commission

FROM: David E. Haywood, Zoning & Development Director

A handwritten signature in black ink, appearing to be "DEH", is written over the name "David E. Haywood" in the "FROM" line.

RE: Ordinance Amendment – Ordinance No. 178 – Swimming Pools

DATE: January 5, 2012

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As previously discussed and directed, staff has prepared a draft ordinance to amend Section 94-173 of the code of the City of Mason amending subsection (e) to permit the construction of a swimming pool as an accessory structure within ten feet of the side and rear property line. After legal review it was determined that the entire Section 173 must be part of the ordinance. Therefore, staff has added the entire section to the previously drafted memo. The ordinance is now complete and ready for Planning Commission action. Attached is Ordinance No. 178 for your review. Enclosed is Resolution No. 2012-01 recommending that City Council adopt Ordinance No. 178.

**Recommended Action:**

**The Planning Commission approve Resolution No. 2012-01.**

Introduced:  
Seconded:

**CITY OF MASON  
PLANNING COMMISSION RESOLUTION NO. 2012-01**

**A RESOLUTION RECOMMENDING THAT THE CITY COUNCIL ADOPT  
ORDINANCE NO. 187 – AN ORDINANCE TO AMEND SECTION 94-173 OF  
CHAPTER 94 – ZONING – OF THE CODE OF THE CITY OF MASON TO AMEND  
SUBSECTION (e) TO PERMIT SWIMMING POOLS TO BE CONSTRUCTED AS  
AN ACCESSORY STRUCTURE WITHIN TEN FEET OF A REAR OR SIDE  
PROPERTY LINE**

**January 10, 2012**

**WHEREAS**, it has come to the attention of the Mason Planning Commission that it is difficult to construct a swimming pool in compliance with Section 94-173(e) given the existing development patterns in the city; and

**WHEREAS**, the issue was studied by the Planning Commission finding that many cities in Michigan allow swimming pools within ten feet of the side and rear property line; and

**WHEREAS**, the Planning Commission finds that a ten feet side and rear yard setback is appropriate for swimming pools; and

**WHEREAS**, the Planning Commission finds that it is appropriate to consider a swimming pool an accessory structure; and

**WHEREAS**, the Planning Commission did properly notice and conduct a public hearing on the proposed amendments at its regular meeting held January 10, 2012.

**NOW THEREFORE BE IT RESOLVED**, that the City of Mason Planning Commission does hereby recommend that the City Council adopt Ordinance No. 187 to amend Section 94-173 of Chapter 94, Zoning, of the code of the City of Mason at subsection (e) to permit the construction of swimming pools as an accessory structure within ten feet from a side or rear property line.

Yes ( )

No ( )

**CLERK'S CERTIFICATION:** I hereby certify that the foregoing is a true and accurate copy of a resolution adopted by the Planning Commission at its regular meeting held Tuesday, January 10, 2012, the original of which is part of the Planning Commission minutes.

\_\_\_\_\_  
Deborah J. Cwierniewicz, Clerk  
City of Mason  
Ingham County, Michigan

Introduced/ First Reading: \_\_\_\_\_, 2012  
Second Reading/Adoption: \_\_\_\_\_, 2012  
Effective: \_\_\_\_\_, 2012

CITY OF MASON  
ORDINANCE NO. 187

AN ORDINANCE TO AMEND SECTION 94-173 OF CHAPTER 94 – ZONING – OF THE CODE OF THE CITY OF MASON TO AMEND SUBSECTION (e) TO PERMIT SWIMMING POOLS TO BE CONSTRUCTED AS AN ACCESSORY STRUCTURE WITHIN TEN FEET OF A REAR OR SIDE PROPERTY LINE.

**THE CITY OF MASON ORDAINS:**

Section 94-173 of Chapter 94 of the Mason City Code is hereby amended to read as follows:

**Sec. 94-173. Supplemental use regulations.**

*(a) Home occupation.*

(1) *Intent.* It is the intent of this section to set forth the requirements for establishing a home occupation as an accessory use of a single-family detached dwelling unit. Such home occupations could involve crafting, electronic or mail order sale or marketing of goods, the provision of services, or instruction in a craft or the fine arts which is conducted entirely within the dwelling unit by one or more persons, all of whom reside within the dwelling, and which is clearly incidental and secondary to the use of the dwelling as a residence.

(2) *Location.* Home occupations shall be allowed only as an accessory use in those districts specifically allowing such use as provided in article IV of this chapter.

(3) *Regulations and standards.* Home occupations shall meet the following regulations and standards:

a. There shall be no outdoor on-site storage of materials, inventory, equipment, or accessory items, or display of materials, inventory, goods, or supplies used in the conduct of the home occupation.

b. Only members of the immediate family who reside on the premises shall be employed in any part of the operation of the home occupation. All activities related to the home occupation shall be carried on entirely within the dwelling unit.

c. Home occupations are permitted only in the principal structure/building. However, in no case shall more than 25 percent or 480 square feet, whichever is smaller, of the gross floor area of the principal building be utilized for a home occupation.

d. A home occupation shall not generate an undue amount of traffic in excess of that prevailing or expected for the general area in which it is located. The home occupation shall not generate more than ten round trips per day, excluding trips generated by the occupants of the home. Adequate parking spaces shall be provided on the premises for persons patronizing the establishment.

e. Home occupations shall maintain at least two on-site parking spaces dedicated for the permanent residents. All parking spaces shall be located in compliance with article IX of this chapter.

f. The establishment of a home occupation shall not necessitate exterior modification or alter the fire rating, except as may be required by the building official, of any structure/building on the property.

g. Home occupations shall not be open to the public except between the hours of 7 a.m. to 8 p.m., unless otherwise provided by special use permit.

h. No food or beverages shall be sold to be consumed on the premises.

i. No amusement games or devices shall be provided for or by customers on the premises.

j. Uses prohibited as home occupations shall include the following:

1. Convalescent and nursing homes.

2. Day care centers or nursery schools, except as provided for in this chapter.

3. Funeral homes.

4. Kennels.

5. Medical or dental clinics or hospitals, or animal hospitals.

6. Refuse collection businesses.

7. Repair of automobiles, motorcycles, boats, trailers, trucks or similar equipment or vehicles.

k. The use of a detached garage or accessory building for home occupation is not permitted.

l. All signs shall be in compliance with the provisions of section 58-127(a)(1) in chapter 58.

m. The home shall be in compliance with all other applicable laws and ordinances.

(b) *Solid waste disposal.*

(1) *Intent.* Receptacles for the temporary storage of refuse or recyclable material are permitted in all districts as an accessory use to any use other than single-family residential uses, subject to the requirements of this section and division 2 of article VII of this chapter. The requirements of this section shall apply to any receptacle commonly referred to as a dumpster or any other container or group of containers having a total capacity of more than four 30-gallon cans.

(2) *Location.* All receptacles shall be located in a rear or side yard, shall not encroach upon required parking areas, and shall be clearly accessible to servicing vehicles. Receptacles shall be located as far as practicable from any adjoining residential district or use but shall in no instance be located closer than 15 feet, or the minimum side yard setback of the particular zoning district in which it is located, whichever is greater, of any residential property line or district.

(3) *Regulations and standards.*

a. *Screening.* Receptacles shall be screened from view from adjoining property and public streets and thoroughfares. Receptacles shall be screened on three sides with a permanent wall or fence of not less than the minimum height required in section 94-241(h) or two feet above the highest wall of the enclosed receptacle, whichever is higher. The fourth side of the receptacle screening shall be equipped with an opaque lockable gate that is the same height as the other sides. The wall or fence should blend with the materials, color and style of the development.

b. The location and method of screening of all receptacles shall be shown on the site plans and shall be subject to the approval of the designated site plan approval body in accordance with division 1 of article VII of this chapter.

c. Receptacle locations shall be consolidated to minimize the number of collection sites and located so as to reasonably equalize the distance from the buildings they serve.

d. Receptacles shall be situated so as to not cause excessive nuisance or offense to occupants of the development they serve or of nearby buildings.

e. Concrete pads of appropriate size and construction shall be provided for all receptacles regulated by this section. Aprons shall be provided for loading of a single receptacle with a capacity of one and one-half cubic yards or more.

f. If a receptacle enclosure is situated directly adjacent to parking spaces or drives, it shall be protected at its base by concrete curb blocks.

g. The area inside and around the outside of a receptacle enclosure shall be maintained and litter free at all times. The enclosure shall also be maintained and repaired as necessary.

(4) *Compost piles.* Composting shall be limited to manufactured commercial compost containers or equivalent containers and shall be regulated the same as other types of receptacles covered in this section.

(c) *Satellite dish antenna.*

(1) *Intent.* The use of a satellite dish antenna shall be permitted in all districts as an accessory use. A satellite dish antenna is an apparatus capable of receiving communications from a transmitter or a transmitter relay located in a planetary orbit.

(2) *Location.*

- a. No satellite dish antenna may be located in any front yard or side yard open space unless mounted to and located completely within four feet of a building wall.
- b. No satellite dish antenna may be located within any required parking area.
- c. No satellite dish antenna may be constructed such that any part of the antenna or supporting structure is closer to a lot line than the minimum setback for the district in which the antenna is located.
- d. Satellite dish antennas greater than 24 inches in diameter are prohibited on the roof or walls of any building in residentially zoned districts.
- e. Roof-mounted satellite dish antennas shall be mounted directly upon the roof of a building and shall not be mounted upon appurtenances such as chimneys, towers, poles, or spires.

(3) *Regulations and standards.*

- a. The placement of any satellite dish antenna greater than 24 inches in diameter by any means in any zoning district is prohibited unless a site plan thereof is approved by the planning commission in accordance with the standards contained in division 1 of article VII of this chapter.
- b. Only one satellite dish antenna per residential dwelling unit shall be permitted.
- c. All satellite dish antennas and the construction and installation thereof shall conform to the building code.
- d. The surface of any satellite dish antenna shall be painted or treated so as not to reflect glare from sunlight or artificial lighting.
- e. No satellite dish antenna shall be:
  - 1. Linked physically to or with any structure which is not on the same lot.
  - 2. In excess of an overall diameter of 12 feet.
  - 3. Located such that any portion of a roof-mounted antenna is more than ten feet above the highest point of a roof.
  - 4. Located such that any portion of a roof-mounted antenna is less than four feet from the edge of the roof.
  - 5. Supported by structural supports other than corrosion-resistant metal.

6. Wired to a receiver, except by wires located at least four inches beneath the ground in a rigid conduit or other wiring configuration approved by the building official.

(d) *Wireless telecommunications towers and antennas.* The purpose of this section is to establish the procedures and guidelines for the siting of wireless communications towers and antennas. In furtherance of this purpose, the city shall give due consideration to the master plan, zoning map, existing land uses, and environmentally sensitive areas in approving sites for the location of towers and antennas, subject to the following definitions, review requirements, and criteria. The objectives of this section are to:

(1) Protect residential areas and land uses from potential adverse impacts of towers and antennas;

(2) Direct the location of towers to appropriate nonresidential areas;

(3) Minimize the total number of towers throughout the community;

(4) Encourage the joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers;

(5) Encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal;

(6) Encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas through careful design, positioning, landscape screening, and innovative camouflaging techniques;

(7) Enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently;

(8) Consider the public health and safety of communication towers;

(9) Avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures.

(10) Applicability. All towers or antennas in the city shall be subject to these regulations, except as provided in the following.

a. *Amateur radio station operators/receive-only antennas.* Other than the provisions of subsections 94-173(d)(11)e. and f., this chapter shall not govern any tower, or the installation of any antenna, that is under 70 feet in height and is owned by or operated by a federally licensed amateur radio station operator or is used exclusively for receive-only antennas.

b. *AM array.* For purposes of implementing this chapter, an AM array, consisting of one or more tower units and supporting ground system which functions as one AM broadcasting antenna, shall be considered one tower. Measurements for setbacks and separation distances shall be measured from the outer perimeter of the towers included

in the AM array. Additional tower units may be added within the perimeter of the AM array by right.

(11) *General requirements.*

a. *Principal or accessory use.* Antennas and towers may be considered either principal or accessory uses. A different existing use of an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot.

b. *Lot size.* For purposes of determining whether the installation of a tower or antenna complies with district development regulations, including setback requirements, lot-coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lot.

c. *Aesthetics.* Towers and antennas shall meet the following requirements:

1. Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.

2. At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings.

3. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

d. *Lighting.* Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views.

e. *State or federal requirements.* All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this chapter shall bring such towers and antennas into compliance with such revised standards and regulations within six months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.

f. *Building codes and safety standards.* To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in the state construction codes and the applicable standards for towers that are published by the Electronic Industries Association. If, upon inspection, the city concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the

tower, the owner shall have 30 days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said 30 days shall constitute grounds for the removal of the tower or antenna as a public nuisance at the owner's expense.

g. *Not essential services.* Towers and antennas shall be regulated and permitted pursuant to this chapter and shall not be regulated or permitted as essential services, public utilities, or private utilities.

h. *Signs.* No signs shall be allowed on an antenna or tower.

i. *Buildings and support equipment.* Buildings and support equipment associated with antennas or towers shall comply with the requirements of subsection 94-173(d)(13)b.

(12) *Uses permitted by administrative review.* The zoning official may administratively approve a permit for any wireless communication facility for which all support equipment is screened from view and which complies with one of the following criteria:

a. A roof mounted antenna not exceeding ten feet in height and located on a nonresidential structure.

b. Antennas and supporting equipment cabinets and structures which are architecturally integrated with a principal building or structure so as not to be recognized as antennas.

c. Up to three whip antennas with a maximum height of 20 feet.

d. Collocation of a wireless communication antenna on an existing monopole support structure, on a public water tower, athletic field light standard, electrical utility transmission tower or distribution pole, or on an existing tower or pole within the right-of-way or easement of an electrical utility company in any district of the city, provided:

1. The antenna does not extend more than 30 feet above the highest point of the structure;

2. The antenna complies with all applicable FCC and FAA regulations; and

3. The antenna complies with all applicable building codes.

(13) *Uses permitted by special use permit.* No wireless communications facilities other than those permitted by administrative review by subsection 94-173(d)(12) of this chapter shall be permitted except subject to the granting of a special use permit after review and approval by the planning commission pursuant to article VI of this chapter, subject to the general standards applicable to a special use permit as set forth at subsection 94-191(f), the goals set forth at subsection 94-191(a), and the following additional standards:

a. Location criteria.

1. Facilities shall be sited to minimize views to the extent reasonably possible from residential areas or the public right-of-way.

2. Support structures will be located in all geographic districts to minimize their view from neighboring properties and public rights-of-way.
3. Mounted wireless communication facilities are permitted in all districts except single-family and two-family districts, except that roof-mounted antennas are not permitted in any residential district.
4. Monopoles and similar support structures are permitted as a principle or accessory use only in the M-2 general manufacturing district, and those portions of the M-1 light manufacturing district, and those commercial districts lying south of a line created by Kipp Road extended and north and west of lines created by North Street and Buhl Street extended.
5. Monopoles not to exceed 150 feet in height are also permitted in the C-1 central business district by special use permit, provided the structure is located on publicly-owned property and is constructed and maintained for joint use by three or more users, at least one of which shall be a local or state governmental agency operating communication facilities for public safety services as defined under the Homeland Security Act.
6. Monopoles and similar support structures are prohibited in parks, school grounds or other areas heavily trafficked by children.
7. Lattice or guyed towers or antennas or similar structures are prohibited in all districts.

b. *Development and design standards.*

1. Setbacks.

- i. Wireless communications facilities including all anchors or pads shall be sited so that the anchors and pads for the structure meet the minimum setback requirements of the zoning district where they are located and do not cross into another zoning district.
- ii. Separation requirements for towers shall comply with the minimum standards shown in table 100-3 in chapter 100.
- iii. Mounted wireless communication facilities shall meet the required setbacks for the structure upon which they are located and shall be situated to provide for maximum safety on the site.

2. Spacing requirements. Monopole tower structures shall be separated from all other towers by a minimum of 750 feet. For purposes of this subsection, the separation distance between towers shall be measured by drawing or following a straight line between the base of the existing or approved structure and the proposed base, pursuant to a site plan, of the proposed tower. The minimum tower separation distance shall be calculated and applied irrespective of city jurisdictional boundaries.

3. Height of the support structure must be the minimum necessary to support the required coverage; however, in no case shall the antenna or its support structure exceed:

- i. For a single user, 90 feet.
  - ii. For two users, 120 feet.
  - iii. For three or more users, 150 feet.
4. Support structures shall be painted in unobtrusive colors, unless in accordance with any other statutory or regulatory requirements.
5. Where an equipment building accompanying the support structure is erected, it shall be designed to be compatible with the adjacent architecture.
6. Landscaping and visual impact requirements.
- i. Landscaping shall be provided in sufficient quantity around the perimeter of the required security fencing, as well as adjacent to any buildings and anchors. Site access entrances shall also be landscaped. This information shall be presented on a landscape plan.
  - ii. When located on an otherwise undeveloped site, the existing natural vegetation of the property shall be maintained to the greatest extent possible. The applicants shall provide information on a landscape plan regarding existing vegetation which is proposed to be removed and methods for replacement. In no case shall an entire site be graded and/or cleared for installation of a wireless communication tower.
  - iii. Whether a freestanding or mounted wireless communications facility is proposed, the applicants shall demonstrate how the accessory building's design will limit adverse visual impacts to neighboring property owners.
  - iv. Lighting at the facility and accessory structures shall be designed so not to adversely affect adjacent property owners and shall be in compliance with FAA standards.

*c. Safety and security requirements.*

- 1. All new wireless communication facilities shall be designed within the applicable ANSI/EIA standards (RSA-22, Revision E), and so as not to be in conflict with existing airport locations and flight patterns.
- 2. The applicant shall, in conjunction with the application, submit a statement that is certified and sealed by a licensed architect or engineer indicating that the proposed wireless communication facility is in compliance with all Federal Communications Commission (FCC) regulations and all building code requirements.
- 3. All wireless communication facilities shall maintain comprehensive general liability insurance issued by a company authorized to do business in Michigan with combined limits of not less than \$1,000,000, and the applicant shall supply the city with proof of same prior to construction.

4. Security fencing shall be installed completely around freestanding facilities, any accessory utility structures and guy anchors. Access shall be provided only by a locked gate. Security fencing shall not be required for mounted facilities.

5. All towers or similar facilities, antenna structures, accessory utility structures and guy anchors and pads shall be equipped with anti-climbing devices.

d. *Collocation.*

1. In order to maximize the efficiency of the provision of wireless communication services, while also minimizing the impact of such facilities on the community, collocation shall be encouraged. All applicants for wireless communication facilities shall be required to provide information regarding the feasibility of collocation at proposed or existing sites. Furthermore, all applicants shall be required to provide a notarized letter of intent to lease excess space on the proposed facility and commit itself to the following:

- i. Respond to any requests for information from another potential shared use applicant;
- ii. Negotiate in good faith and allow for leased shared use if an applicant demonstrates that it is technically feasible; and
- iii. Make no more than a reasonable charge for a shared use lease.

2. Should collocation be proposed at a wireless communication facility, accessory mechanical buildings shall either be situated directly adjacent to or abutting each other and separated by a firewall, shall be placed underground, or shall be designed in a manner which limits the number and size of the building(s) on the site. On-site constraints, such as existing topographical and other natural features, may be considered when reviewing a proposed collocation design. Accessory mechanical buildings shall be designed to be consistent in design, style and exterior appearance. Review and approval of accessory mechanical building(s) at a collocation-site shall be made by the planning commission.

e. *Abandonment.*

1. Wireless communication facilities which have been abandoned or are unused or disconnected from the network for a period of 12 months shall be immediately removed from the site at the cost of the facility applicant or successor.

2. Upon removal of a tower from a site, the foundation shall also be removed to a depth of at least six feet. Additionally, the fencing and accessory structure(s) shall be demolished and removed from the site at the cost of the facility applicant or successor.

f. *Application requirements.* Applications for a special use permit as set forth in this section shall contain the following in addition to the requirements or article VI of this chapter:

1. An explanation of the need of the applicant's clientele for this communications capacity.

2. Site and landscape plans drawn to scale.
  3. The method of fencing and finished color and, if applicable, the method of camouflage and illumination.
  4. A report including a description of the tower with technical support for the tower design.
  5. Documentation establishing the structural integrity of the tower for the proposed uses.
  6. The general capacity of the tower, and information necessary to assure that ANSI standards are met.
  7. A statement of intent on whether excess space will be leased.
  8. Proof of ownership or authorization to utilize the proposed site.
  9. Copies of any easements necessary.
  10. An analysis of the area containing existing topographical contours.
  11. A presentation size map which shows an inventory of existing and proposed tower installations within the city and within one mile of the border thereof, including specific information about the location, height and design of each tower. The zoning official may share such information with other applicants applying for administrative approvals or seeking special use permits under this chapter or other organizations seeking to locate antennas within the city, provided, however, that the zoning official is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.
  12. An affidavit attesting to the fact that the applicant made diligent, but unsuccessful, efforts to install or collocate the applicant's telecommunications facilities on towers or usable antenna support structures owned by the city or other persons located within a one-mile radius of the proposed tower site.
  13. A written statement from a registered professional engineer that the proposed tower or telecommunications facilities cannot be installed or collocated on another person's tower or usable antenna support structure located within a one-mile radius of the proposed tower site.
- (e) Swimming pools. "Pools used for swimming or bathing shall not be located in any front yard and shall conform to the applicable yard and setback requirements for an accessory structure. In no instance shall a swimming pool be located closer than ten feet from any property line. Any fencing, barriers, and structures shall comply with the state construction code and county health department specifications. Any lights used for illumination of a swimming pool shall be arranged or shaded so as to reflect light away from adjoining premises."
- (f) *Junk storage, inoperable vehicles, restorable vehicles.*

(1) *Junk storage.*

a. No person shall store, place, abandon or permit to be stored, placed, abandoned, or allow to remain, in any district, a dismantled, partially dismantled, unlicensed, unrestorable, or inoperable motor vehicle, junk, rubbish, trash, old furniture, used lumber, unused or discarded machines or equipment, or litter upon any premises, except in an approved and licensed salvage or junk yard or in the case of motor vehicles unless confined in a wholly enclosed structure.

b. No person shall store, place, abandon or permit to be stored, placed, abandoned, or allow to remain, in any district, wrecked or inoperable farm machinery, unless hidden from all vantage points from the general public.

(2) *Restorable vehicles.*

a. A junk vehicle is considered an inoperable vehicle that is not a "restorable vehicle". A "restorable vehicle" is defined as a vehicle actively being restored in connection with a hobby.

b. The restorable vehicle must be in active use as the object of the restoration effort.

c. All junk vehicles or inoperable vehicles that do not qualify as restorable vehicles shall not be parked or stored in the open in any zoning district of the city. The only exception is vehicles parked in connection with a business legitimately using such vehicles, such as a body shop or wrecking yard, in zoning districts where such businesses are authorized. In such cases vehicle storage must meet the screening requirements in division 2 of article VII of this chapter.

(3) *Standards.*

a. No inoperative, restorable vehicle shall be parked or stored in the front yard or within the required setback of the side yard of property in any zoning district.

b. No more than one restorable vehicle may be stored in the open in inoperable condition on any residential lot. A cover or wrap is to be provided to conceal the vehicle parked in the open.

c. All doors, hatches, and trunk lids shall be secured against entry by small children.

d. Inoperable vehicles described in this section are not permitted in the RS-1, RS-2, and RS-3 districts unless such vehicles qualify as restorable vehicles.

e. Open storage of parts, tools, and materials is forbidden.

(g) *Accessory structures.* Any garage or other structure used for motor vehicle storage or as an accessory structure shall satisfy the following:

(1) Authorized accessory structures may be erected as a part of the principal structure, may be connected to the principle structure by a roofed over porch, patio, breeze way, or similar structure, or may be completely detached from the principle structure. If

connected to the principal structure, an accessory structure shall be made an integral part of it, and shall comply in all respects with the requirements applicable to the principal structure. An accessory structure not attached and not made a part of the principal structure shall not be nearer than ten feet from any other structure on the same lot and shall also comply with the front, rear and side yard requirements of this chapter.

(2) In all residential zoning districts, the storage of commercial vehicles in accessory structures shall be limited as provided in subsection 94-292(d) of this chapter.

(3) Space in a garage accessory to a multiple-family unit or a motel shall not be rented out except to occupants of the principal dwelling.

(4) The total lot coverage of all accessory structures shall not exceed 35 percent of the area of any rear yard.

(5) Side yard. In all districts accessory structures shall not be erected nearer to a side lot line than the permitted setback distance for the district unless otherwise permitted by this chapter. In the RS-1, RS-2, RS-3, and R2F districts, an accessory structure may be erected not closer than two feet from the side lot lines if the following requirements are satisfied:

a. The accessory structure is not attached to, and is located completely behind, the associated principal structure.

b. The interior and/or exterior surfaces of the wall facing a side lot line are constructed of fire-resistant material as approved by the building official if any portion of that wall is closer than five feet from a side lot line.

(6) Rear yard. In all districts accessory structures shall not be erected nearer to a rear lot line than the permitted setback distance for the district unless otherwise permitted by this chapter. In the RS-1, RS-2, RS-3 and R2F districts, an accessory structure may be erected nearer to a rear lot line than the permitted setback distance for the district provided the accessory structure is not attached to, and is located completely behind, the associated principal structure, and pursuant to the following:

a. Where there is a public alley abutting the rear of a lot for the full width of that lot, an accessory structure may be erected not closer than ten feet from a rear lot line.

b. Where there is not a public alley abutting the rear of a lot for the full width of that lot, an accessory structure may be erected not closer than five feet from a rear lot line.

(7) Corner lot. Where the rear line of a corner lot coincides with the side line of an adjoining lot in a residential district, an accessory building shall not be closer than the side yard setback requirement of said adjoining lot.

(8) Accessory structures shall not include structures, fabrications, items, or enclosures originally designed for other purposes. The following are specifically prohibited from being used as accessory structures in the city.

a. Mobile home.

- b. Travel trailers.
- c. Former vehicles such as buses and ambulances.
- d. Motor homes.
- e. Semi-trailer.
- f. Other similar structures, fabrications, items, or enclosures.

(h) *Adult businesses.*

(1) *Intent.* The intent of this section is to regulate the location of, but not to exclude, adult businesses in the city by preventing the concentration of such uses in close proximity to each other and to minimize the negative impacts of their operation by separating such uses from residential, office/commercial and other areas of public congregation. This regulation is done with the understanding that the city recognizes that there are some uses which, because of their very nature, have serious objectionable operational characteristics, particularly if several of them are concentrated under circumstances having a deleterious effect upon adjacent residential, office and commercial areas. The city recognizes that the regulation of such uses is necessary to ensure that adverse effects will not contribute to the blighting or downgrading of surrounding residential neighborhoods, nonresidential areas or other places of public congregation.

(2) *Definitions.* As used in this chapter, the following terms shall have the meanings set forth below:

a. *Adult bookstore* means an establishment which has, as a significant portion of its stock in trade, books, periodicals, magazines, newspapers, pamphlets, pictures, photographs, motion picture films and/or videotapes, or novelty items or paraphernalia which are distinguished or characterized by their emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas as defined herein, or an establishment with a segment or section devoted to the sale or display of such material which exceeds 35 percent of the floor area of the establishment.

b. *Adult business* means adult bookstores, adult movie theaters, adult personal service businesses, adult cabarets, adult novelty businesses, massage parlors and nude modeling studios, or any combination thereof, as defined in this section.

c. *Adult business, significant portion* means a business where the stock in trade or services provided meets one or more of the following criteria:

1. Thirty-five percent or more of the stock, materials, novelties or services provided are classified as adult materials and/or services as defined in subsection 94-173(h)(2).
2. Thirty-five percent or more of the usable floor area of the building in which the adult business is located, is used for the sale, display and/or provision of services classified as adult materials and/or services, as defined in subsection 94-173(h)(2).

3. Thirty-five percent of the gross revenues of the business are derived from the sale or payment of an admission fee for adult materials and/or services as defined in subsection 94-173(h)(2).

4. The advertising (signs, publications, television, radio, and other media) associated with the business depicts, describes or relates to specified sexual activities and/or specified anatomical areas.

d. *Adult cabaret* means an establishment (which may or may not include the service of food or beverages) having as an activity the presentation or display of male or female impersonators, dancers, entertainers, waiters, waitresses or employees who display specified anatomical areas as defined herein.

e. *Adult motion picture theater* means an establishment which offers for sale the viewing of motion picture films, videotapes, pictures or photographs, television, or other visual media, which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activity or specified anatomical areas, as defined herein, for the observation of patrons therein.

f. *Adult novelties* means objects, items, and/or devices offered for sale which are designed for sexual stimulation or which stimulate human genitals.

g. *Adult personal service business* means a business having as its principal activity a person, while nude or while displaying specified anatomical areas, as defined herein, providing personal services for another person. Such businesses include modeling studios, body painting studios, wrestling studios, personal dance rooms, and conversation parlors.

h. *Massage* means offering for sale through the use of physical, mechanical or other devices, the manipulation of body muscle or tissue by rubbing, stroking, kneading, tapping or vibrating of the body of another.

i. *Massage parlor* means an establishment wherein private massage is practiced, used or made available as a principal use of the premises.

j. *Nude modeling studio* means a place which offers as its principal activity the providing of models to display specified anatomical areas, as defined herein, for artists and photographers for a fee.

k. *Offered for sale* means offered in exchange for money, a membership fee or any other valuable consideration.

l. *Sexual intercourse* includes genital coitus, fellatio, cunnilingus, anal intercourse or any other intrusion, however slight, of any person's body.

m. *Sodomy* means sexual intercourse with a member of the same sex or an animal.

n. *Specified anatomical areas* means:

1. Human male genitals in a discernible turgid state, even if completely and opaquely covered.

2. Less than a fully opaque covering of:

i. A female individual's breast below a point immediately above the top of the nipple and areola.

ii. Any individual's genitals.

iii. Any individual's anus.

o. *Specified sexual activities* means:

1. Acts of human masturbation, sexual intercourse or sodomy.

2. Fondling or other erotic touching of specified anatomical areas.

3. Human genitalia in a state of sexual stimulation or arousal.

(3) *Location of uses.* Any existing building or land, or new building hereinafter erected, converted or structurally altered or used for an adult business, shall meet all of the following conditions:

a. An adult business shall only be permitted in the C-2 general commercial district with the approval of a special use permit.

b. No adult business, as defined herein, shall be permitted within a 600-foot radius of an existing adult business. Measurement of the 600-foot radius shall be made from the outermost boundaries of the lots or parcels upon which the existing and proposed adult uses are situated.

c. No adult business, as defined herein, shall be permitted within a 600 foot radius of any residentially used or zoned land as depicted on the official zoning map and defined in this chapter. Measurement of the 600-foot radius shall be made from the outermost boundaries of the lots or parcels upon which the proposed adult use and the residential use are situated.

d. No adult business, as defined herein, shall be permitted within a 1,000-foot radius of a school, library, park, playground, licensed group day care center, church, convent, monastery, synagogue or similar place of worship or public congregation. Measurement of the 1,000-foot radius shall be made from the outermost boundaries of the lots or parcels upon which the proposed adult use and the place of worship or public congregation are situated.

(4) *Miscellaneous requirements.*

a. No person shall reside in or permit any person to reside in the premises of an adult business.

b. The provisions of this section regarding massage parlors shall not apply to hospitals, sanitariums, nursing homes, medical clinics or the offices of a physician, surgeon, chiropractor, osteopath, psychologist, clinical social worker or family counselor who is licensed to practice his or her respective profession in the State of Michigan, or who is permitted to practice temporarily under the auspices of an associate or an establishment duly licensed in the state of Michigan, clergymen, certified members of the American Massage and Therapy Association and certified members of the International Myomassethics Federation who have a current massage therapist license.

(i) *Hotel, motel, transient lodging facilities.*

(1) *Intent.* The following shall set forth the requirements for construction and site development of transient housing accommodations within the city.

(2) *Standards.*

a. Minimum floor area for each guest unit shall contain not less than 250 square feet.

b. The minimum lot area shall be one acre with a minimum width of 150 feet, provided that there shall be at least 800 square feet of lot area for each guest.

c. The maximum lot coverage of all buildings, including accessory building shall not exceed more than 25 percent of the area within the boundary lines of land developed at any one time.

d. Minimum yard dimensions. All buildings shall observe a setback of not less than 75 feet from any road right-of-way, and not less than 40 feet from any side or rear property line.

e. The maximum building height shall not exceed two stories or 35 feet.

f. Site screening. The site may be enclosed by open structure wood or wire fences, shrubs and/or trees which, along any yard line, shall not exceed six feet in height. No screening shall impair safe vertical or horizontal sight distance for any moving vehicles. Screening at least four feet high shall be erected to prevent headlight glare on adjacent residential or agricultural property. No screening shall be closer than 50 feet to any street line, except headlight screening shall not be closer than 30 feet.

g. Lighting. All outdoor lighting shall be arranged so that it is deflected from adjacent properties, streets and thoroughfares, and shall not impair the safe movement of traffic.

(3) *Accessory uses.* Accessory uses such as meeting rooms, taverns, bars, or similar uses are permitted provided such shall be conducted within the same building as the principal use. A caretaker or proprietor's residence shall be permitted as an accessory use.

(4) *Motor vehicle access.*

a. *Site plans.* All site plan proposals submitted for this use shall provide for the proper handling of traffic on the highway, frontage road, or street giving access to the district.

No access by motor vehicles, other than stated herein, shall be permitted to a minor or residential street. All points of entrance or exit shall be no closer than 50 feet from the intersection of the right-of-way lines of two streets.

b. *Interstate or interchange site location.* Whenever a proposed use is located adjacent to or within one-half mile of an existing, or planned state or interstate limited access highway interchange, it shall be incumbent upon the applicant to show that the proposed site location shall not cause unsafe traffic congestion resulting at or in conjunction with said limited access interchange, and the applicant shall request and submit with the application a written recommendation from the Traffic Division of the Michigan Department of State Highways. In no case, shall private access drives be less than 200 feet from an interchange.

(5) Signs shall be those identifying any of the permitted uses within the zoning district and shall be in accordance with the provisions of any applicable city chapter.

(6) Off-street parking and loading requirements shall be in accordance with the provisions of article IX of this chapter except that required parking shall be furnished on the immediate premises.

(7) The storage of refuse and space required for the accumulation and out loading of garbage, trash, scrap, waste, and containers therefore shall comply with the standards in section 94-173(b).

(j) *Outdoor food and drink service areas.* It is the intent of this section to set forth the requirements for establishing outdoor food and drink service areas at a pub, tavern, or restaurant.

(1) General standards.

a. Provide a drawing to scale showing the seating plan and the layout of the outdoor dining space to be used in relation to adjacent properties and other public and private fixtures and amenities.

b. Trash receptacles shall be provided in food and drink service areas where table service is not provided. Trash receptacles shall be emptied when full and maintained in a clean and sanitary condition at all times.

c. Seating may not be placed in a way that obstructs pedestrian circulation or interferes with the opening of doors of buildings or parked vehicles.

d. An opaque fence or wall six feet in height shall be erected along all property lines abutting residentially zoned or used property.

e. Lighting shall be deflected away from abutting residentially zoned or used property.

(2) Establishments utilizing the public right-of-way shall do so only under a license granted by the city council which shall be revocable at the will of the council and shall include the following minimum standards in addition to the general standards of this section:

a. Establishments shall agree to defend, indemnify, and hold the city and its elected and appointed officers, agents, and employees harmless from all liability for damages or personal injuries resulting from any occurrence on the licensed property as a result of the establishment's use or occupancy of the public right-of-way and shall provide public liability insurance naming the city as an additional named insured in a form and with limits acceptable to the city.

b. Establishments must maintain a minimum of four feet of unobstructed sidewalk within the public right-of-way.

**Effective Date.** Notice of this ordinance shall be published in a newspaper of general circulation in the city within 15 days after its adoption and mailed in accordance with the requirements of MCL 125.3401. This ordinance shall take effect upon the expiration of 20 days after its adoption.

The foregoing Ordinance was moved for adoption by Council Member \_\_\_\_\_ and supported by Council Member \_\_\_\_\_ with a vote thereon being: YES ( ) NO ( ), at a regular meeting of the City Council held pursuant to public notice in compliance with the Michigan Open Meetings Act, on the \_\_\_ day of \_\_\_\_\_, 2012.

Mason Codes declared adopted this \_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Leon Clark, Mayor

\_\_\_\_\_  
Deborah J. Cwierniewicz, City Clerk

# City of Mason


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## MEMORANDUM

TO: Planning Commission

FROM: David E. Haywood, Zoning & Development Director 

RE: Michigan Medical Marihuana Act

DATE: January 6, 2012

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### **TIMELINE**

On December 5, 2011, the City Council acted to approve Resolution No. 2011-45 declaring an additional temporary moratorium on the issuance of licenses for primary caregivers operations and dispensaries for an additional 180 days through July 12, 2012. We should keep in mind that there are only six meetings, at best, before the Planning Commission makes its recommendation on an ordinance to the City Council. The following timeline is provided to demonstrate that there are a fixed number of meetings where the Planning Commission and Council will be able to discuss the issue under the current moratorium:

- January 10, 2012 – Planning Commission meeting #1
- February 14, 2012 - Planning Commission meeting #2
- March 13, 2012 – Planning Commission meeting #3
- April 10, 2012 – Planning Commission meeting #4
- May 15, 2012 – Planning Commission meeting #5
- June 12, 2012 – Planning Commission meeting #6 – last available meeting for the Planning Commission to make recommendations on ordinance to City Council
- June 18, 2012 – introduction and first reading of ordinance – City Council
- July 2, 2012 – second reading and adoption of ordinance - City Council
- July 12, 2012 – 180 day moratorium expires

### **OPTIONS**

Below are the options for consideration that are still in play. Commissioners are encouraged to discuss openly other options that may arise from discussion.

1. **Do nothing – option removed from the table.** This option has been eliminated from further discussion and will not be recommended to the City Council.
2. **Ban Medical Marihuana** – This option is linked to Federal law and preemption. Adopting this option could potentially subject the City to legal challenge, because the use is permitted by State law. However, there have been two circuit court cases that found the State law to be unconstitutional. Because these case laws are at the circuit level, they do not have any direct affect on us until they are upheld by the appeals court.

In this option, a very simple clause would be added to the zoning ordinance that would state something to the effect that “uses not expressly permitted under this article are prohibited in all districts and that uses that are contrary to federal law, state law, or local ordinance are prohibited”. There is some risk to challenge under this option, though. A caregiver or dispenser could challenge the ordinance under the argument that it is not consistent with state law. Our attorney has indicated in a recent workshop that the risk of litigation is low due to many test cases already underway in the court system. In addition, we have experienced very little demand for the allowance of dispensaries or primary caregiver operations in the city.

3. **Permit Medical Marihuana in a Home Occupation** – this option would eliminate the allowance of dispensaries and could limit the size of a facility to one caregiver (five patients, 12 plants per patient).
4. **Permit Dispensaries** – this option would allow a “cooperative” facility as defined under the State Attorney General, that each caregiver in a dispensary/cooperative would need to be distinctly separate and inaccessible to each other with separate entrances each with their own lock. In this option, the City Attorney cautions that the facility should be registered with the City and not issued a license.

**The Planning Commission may consider preparing draft ordinances for each of these options to present to City Council, with one they recommend. In this manner, the City Council could pursue the recommended option or introduce as many as they wish and hold a public hearing to get the public’s reaction/input. This method takes the pressure off of the Commission and Council by affording the public an option to “kick the tires” of each ordinance.**

**RECOMMENDED ACTION:**

**For discussion only, no action is necessary at this time. However, the Planning Commission may direct staff to develop concurrent ordinances as described above.**