



Planning Commission
App. No. 090-2016-TA

Zoning Text Amendment Sharon Township

Meeting:	December 7, 2016
Applicant:	Sharon Township Zoning Commission (STZC)
Hearing:	December 7, 2016 (Zoning Commission)
Amendments:	Add a new section in Article IV General Provisions, Section (§) 400-4 Medical Marijuana
Reviewer:	Rob Henwood

Proposed Amendments: The amendment proposed by the STZC, is to add a new section in Article IV General Provisions to prohibit Medical Marijuana uses. New text is underlined.

ARTICLE IV: GENERAL PROVISIONS

400-4 Medical marijuana cultivators, processors, retail and wholesale dispensaries or laboratories are prohibited in all zoning districts of Sharon Township.

Comments:

1. On June 8, 2016, Governor John Kasich signed into law House Bill 523, the so called “Medical Marijuana Control Bill,” which became effective September 8, 2016.
2. § 512.21 of the Ohio Revised Code (ORC) was amended to add a new section (D) as follows:
Nothing in this section prohibits a township zoning commission, board of township trustees, or board of zoning appeals from regulating the location of medical marijuana cultivators, processors, or retail dispensaries or from prohibiting such cultivators, processors, or dispensaries from being located in the unincorporated territory of the township.
3. In anticipation of questions that would arise pertaining to the authority of townships under this law, Prosecuting Attorney Dean Holman sent a letter to the townships dated August 25, 2016 discussing “... additional authority granted by the legislature dealing with the cultivation, processing and dispensing of medical marijuana” as well as how the law will affect township employment practices (see attached letter).
 - a. The letter stated that if townships do nothing, their current zoning codes “... will allow the cultivation of medical marijuana as agriculture, and the location of processing and dispensing facilities within the township.”
 - b. To prevent such a result, Holman’s letter states that “... a zoning change will be required following the normal zoning [amendment] process.”
 - c. The letter also points out that, “[i]n addition to ORC § 512.21, newly enacted ORC § 3796.29 confirms the authority of the Board of Township Trustees to adopt a resolution that would prohibit or limit the number of cultivators, processors, or retail dispensaries licensed under that chapter within the unincorporated territory of the township.”
4. A second letter clarifying the two methods that townships can take to control medical marijuana activities was sent by Holman on September 15, 2016 (see attached letter). The two methods discussed include:

- a. “Resolution to Prohibit or Limit: A township is authorized under ORC § 3796.29 to adopt a resolution to prohibit, or limit the number of cultivators, processors, or retail dispensaries licensed under ORC § 3796 within the unincorporated territory of the township.” A sample resolution is enclosed with the letter.
 - b. “Modify Zoning Resolution to Prohibit or Limit: Townships have separate authority under ORC § 519.21 to prohibit or regulate the location of medical marijuana cultivators, processors, or retail dispensaries in the unincorporated territory of the township.” In order to exercise this authority the township will need to modify its zoning resolution through the regular zoning amendment procedure.”
 - c. The Prosecutor’s Office recommends that if a township chooses to regulate or prohibit medical marijuana activities, the township should incorporate those limits using both methods.
5. The Sharon Township Trustees on September 13, 2016 passed a resolution prohibiting “the licensing of medical marijuana cultivators, processors, and retail dispensaries.”¹
 6. The subject text amendment proposed by Sharon Township will prohibit the location of medical marijuana activities through an amendment to their zoning resolution.
 7. The wording of their text amendment differs from the legislation. Staff, after discussion with the Prosecutor’s Office, suggests the following wording, to be consistent with ORC § 512.21(D) “Medical marijuana cultivators, processors, and dispensaries are prohibited from being located in all zoning districts of Sharon Township.

Recommendation: Staff recommends **APPROVAL WITH MODIFICATIONS** of the addition to Article IV General Provisions § 400-4 Medical Marijuana subject to the language listed above.

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¹ Official Minutes of the Sharon Township Board of Trustees: Regular meeting held at Sharon Township Administration Building, September 13, 2016.



Office of the Prosecuting Attorney Medina County, Ohio

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DEAN HOLMAN
Prosecuting Attorney

August 25, 2016

To All Township Trustees and
Zoning Commission Members

*Re: Township Zoning and Employment Authority
and Medical Marijuana*

Dear Sir or Madam:

While the Ohio Township Association has provided legislative alerts covering substitute House Bill 523, the so called Medical Marijuana Control Bill, we felt that it would be beneficial to emphasize additional authority granted by that legislation dealing with its cultivation, processing and dispensing, as well as how the new law will effect township employment practices.

ZONING

Section 512.21 of the Revised Code was amended to add a new section (D) which provides:

NOTHING IN THIS SECTION PROHIBITS A TOWNSHIP ZONING COMMISSION, BOARD OF TOWNSHIP TRUSTEES, OR BOARD OF ZONING APPEALS FROM REGULATING THE LOCATION OF MEDICAL MARIJUANA CULTIVATORS, PROCESSORS, OR RETAIL DISPENSORIES OR FROM PROHIBITING SUCH CULTIVATORS, PROCESSORS, OR DISPENSORIES FROM BEING LOCATED IN THE UNINCORPORATED TERRITORY OF THE TOWNSHIP.

Simply put, if you do nothing, your zoning code as now written will allow the cultivation of medical marijuana as agriculture, and the location of processing and dispensing facilities within the township. To prevent such a result, a zoning change will be required following the normal zoning process. While state licensure for cultivators, processors and distributors is required, and the law grants the Department of Commerce for example, 240 days to establish

effective date, September 8th, 2016, those townships desiring to eliminate, or control cultivation, distribution and processing, must still act expediently. In addition to 512.21, newly enacted section 3796.29 confirms the authority of the Board of Township Trustees to adopt a resolution that would prohibit, or to limit the number of cultivators, processors or retail dispensaries licensed under that chapter within the unincorporated territory of the township.

We would also point out that even a cultivator to whom a license is granted by the state, does not have authority to cultivate medical marijuana for personal, family or household use or on public land, including a state park. In addition, there is currently a restriction on medical marijuana cultivators, processors, retail dispensaries, or laboratories that test medical marijuana, restricting them from being located within 500 feet of the boundaries of a parcel of real estate having situated on a school, church, public library, public playground, or public park.

EMPLOYMENT PRACTICES

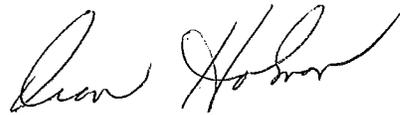
Nothing in the amended law requires the following:

1. An employer to permit or accommodate an employees' use, possession, or distribution of medical marijuana;
2. Prohibit an employer from refusing to hire, discharging, disciplining, or otherwise taking adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment because of that persons use, possession, or distribution of medical marijuana;
3. Prohibit an employer from establishing and enforcing a drug testing policy, drug free workplace policy, or zero tolerance drug policy;
4. Interferes with any federal restriction on employment;
5. Permits a person to commence a cause of action against an employer for refusing to hire, discharging, disciplining, or discriminating, retaliating or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment relating to medical marijuana;
6. Effects the authority of the administrator of workers' compensation to grant rebates or discounts on premium rates to employers that participate in a drug free workplace program established in accordance with rules adopted by the administrator under Chapter 4123.

A person who is discharged from employment because of that person's use of medical marijuana shall be considered to have been discharged for just cause for the purpose of unemployment compensation if the person's use of medical marijuana was in violation of employer's drug free workplace policy, zero tolerance policy or other formal program or policy regarding the use of medical marijuana.

If upon review of the above, you have any questions or would like to discuss any of the issues further, please do not hesitate to contact the office.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dean Holman". The signature is fluid and cursive, with the first name "Dean" and last name "Holman" clearly distinguishable.

DEAN HOLMAN
Medina County Prosecutor

DH:bms



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DEAN HOLMAN
Prosecuting Attorney

September 15, 2016

To All Township Trustees and
Zoning Commission Members

Re: Township Regulation of Medical Marijuana

Dear Sir or Madam:

Since my August 25, 2016 letter my office has received a number of questions related to a township's authority to prohibit and/or restrict medical marijuana cultivation, processing and retail sale. To be clear, there are two avenues a township can take in controlling these activities:

1. Resolution to Prohibit or Limit: A township is authorized under R.C. § 3796.29 to adopt a resolution to prohibit, or limit the number of, cultivators, processors, or retail dispensaries licensed under R.C. Chapter 3796 within the unincorporated territory of the township. Enclosed with this letter is a sample resolution our office has prepared for townships to exercise the authority granted in R.C. § 3796.29.
2. Modify Zoning Resolution to Prohibit or Limit: Townships have separate authority under R.C. § 519.21 to prohibit or regulate the location of medical marijuana cultivators, processors, or retail dispensaries in the unincorporated territory of the township. In order to exercise this authority the township will need to modify its zoning resolution through the regular zoning amendment procedure under R.C. chapter 519.

Each board of township trustees will need to determine how extensively it wishes to limit cultivation, processing and retail sale of medical marijuana in its jurisdiction. Exercise of authority under R.C. § 3796.29 through adoption of the enclosed resolution can function as a moratorium on these activities to allow your review. The resolution can then be modified or left in place permanently if you opt to prohibit the activities entirely.

If your township ultimately chooses to either prohibit or regulate medical marijuana cultivation, processing and/or dispensing in the unincorporated areas of the township our office recommends those limits be incorporated into both a resolution adopted under R.C. § 3739.29 and into your zoning resolution. Adoption of zoning regulations will require an amendment to

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Zoning Commission Members
September 15, 2016
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your resolution and this will be somewhat different for each township based on the structure of your zoning resolution and the nature of the regulations you decide to adopt. If you choose to prohibit these activities from locating anywhere in the township you could add the following language in an appropriate spot in your zoning resolution:

Medical marijuana cultivators, processors, and dispensaries are prohibited from being located in the unincorporated territory of _____ Township.

Your township also has the option of limiting these operations to certain districts or making them conditionally permitted, etc. Regulations of this sort will require a more detailed analysis of your zoning resolution and development of additional regulatory language. We will be pleased to assist you in formulating and/or reviewing proposed zoning regulations.

If you have any questions or comments, please contact me at (330) 723-9536. Thank you for your consideration in this matter.

Very truly yours,



DEAN HOLMAN
Medina County Prosecutor

The Board of Trustees of _____ Township, Ohio, met in regular session on _____, 2016, commencing at _____ p.m., at _____, _____, _____, Ohio, with the following members present:

_____ moved for the adoption of the following Resolution, seconded by _____:

RESOLUTION NO. 16-_____

A RESOLUTION TO PROHIBIT LICENSING OF MEDICAL MARIJUANA CULTIVATORS, PROCESSORS AND RETAIL DISPENSARIES IN _____ TOWNSHIP

WHEREAS, the legislature of the State of Ohio has adopted legislation that provides for medical marijuana to be cultivated, processed, and sold with a license obtained under Chapter 3796 of the Ohio Revised Code (R.C.); and

WHEREAS, R.C. § 3796.29 permits a Board of Township Trustees to adopt a resolution to prohibit, or limit the number of, marijuana cultivators, processors, and dispensaries licensed within the unincorporated territory of the township; and

WHEREAS, _____ Township wishes to prohibit the cultivation, processing, and retail sale of medical marijuana within the unincorporated territory of the township.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of _____ Township, Medina County, Ohio, two-thirds of all members elected thereto concurring that:

Section 1. The Trustees of _____ Township hereby prohibit licensing the cultivation, processing, and retail sale of medical marijuana within the unincorporated territory of the township pursuant to Subsection 3796.29 of the Ohio Revised Code.

Section 2. The Fiscal Officer is hereby authorized and directed to mail a certified copy of this resolution to the Ohio Department of Commerce.

Upon roll call on the adoption of the Resolution, the vote was as follows:

Adopted the _____ day of _____, 2016

_____, Fiscal Officer
_____ Township
Medina County, Ohio

CLERK'S CERTIFICATION

The State of Ohio, Medina County, ss.

I, _____, Fiscal Officer of _____ Township do hereby certify that the foregoing is taken and copied from the Record of the Proceedings of said meeting; that the same has been compared by me with the Resolution on said Record and that it is a true and correct copy thereof.

Witness my signature this ____ day of _____, 2016

Fiscal Officer, _____ Township
Medina County, Ohio