



AGENDA ITEM SUMMARY FORM

MEETING DATE: 09/12/22

PREPARED BY: Matt Lonnerstater, AICP

AGENDA ITEM CONTENT: Rezoning PRZN 22-03 (Ordinance 2187): 29022 Stephenson Hwy.- Removal from Primary Caregiver Marihuana Grow Overlay District, First Reading

AGENDA ITEM SECTION: Ordinances

BUDGETED AMOUNT: N/A

FUNDS REQUESTED: N/A

FUND: N/A

EXECUTIVE SUMMARY:

The applicant, The City of Madison Heights, requests to remove three (3) parcels of land at 29022 Stephenson Highway (PIN Numbers 44-25-11-377-015, 44-25-11-377-016, and 44-25-11-377-019) from the Primary Caregiver Marihuana Grow Overlay District. The subject properties are located at the northeast corner of Stephenson Highway and E. 12 Mile Road, immediately to the west of the I-75 interchange, and currently have an underlying zoning designation of B-3, General Business.

RECOMMENDATION:

Staff recommends that City Council adopt Ordinance # 2187 (PRZN 22-03) upon first reading and schedule a public hearing for the October 10th, 2022 City Council meeting.



MEMORANDUM

Date: August 25th, 2022
CC Meeting: September 12th, 2022
To: City of Madison Heights City Council
From: Matt Lonnerstater, AICP – City Planner
Subject: Rezoning Request PRZN 22-03 – 29022 Stephenson Hwy. – First Reading

Introduction

The applicant, The City of Madison Heights, requests to remove three (3) parcels of land at **29022 Stephenson Highway** (PIN Numbers 44-25-11-377-015, 44-25-11-377-016, and 44-25-11-377-019) from the Caregiver Marihuana Grow Overlay District. The subject properties are located at the northeast corner of Stephenson Highway and E. 12 Mile Road, immediately to the west of the I-75 interchange, and currently have an underlying zoning designation of B-3, General Business.

Background

In 2019 and 2020, the City of Madison Heights adopted the Medical Marihuana Facilities and Adult-Use Marihuana Facilities ordinances. These marihuana ordinances explicitly limit the establishment of medical and recreational marihuana facilities (Class C growers, processors, provisioning centers and retailers) to properties that are zoned M-1, Light Industrial, or M-2, Heavy Industrial and identified by an official map published by the city (referred to herein as the 'Allowed Parcels Map'). The Allowed Parcels Map, therefore, only includes parcels that have a base zoning district of M-1 or M-2.

Following the adoption of the Medical Marihuana Facilities and Adult-Use Marihuana Facilities ordinances and the associated Allowed Parcels Map, Madison Heights created a new zoning overlay district known as the Caregiver Marihuana Grow Overlay District (referred to herein as the 'Caregiver Overlay District'). The Caregiver Overlay District allows for the establishment of individual registered medical marihuana caregivers on parcels identified within the associated Overlay District map. While the boundaries of the Caregiver Overlay District were intended to mirror that of the Allowed Parcels Map, the Overlay District map is technically a stand-alone map with separate zoning regulations. The Caregiver Overlay District text does not state that caregivers must be located within an underlying M-1 or M-2 district, but only that, "*a registered primary caregiver shall not cultivate medical marihuana at a parcel that is not located within the Caregiver Marihuana Grow Overlay District.*"

The subject site pertaining to this case consists of three (3) parcels which contain a total area of approximately 1.14 acres. The site is improved with an existing 3,285 sq. ft. commercial structure currently occupied by Col's Place restaurant. At the property owner's request, City Council recently rezoned the subject parcels from the M-1, Light Industrial, zoning district to the B-3, General Business zoning district. By rezoning the parcels to B-3, City Council effectively removed the properties from the Allowed Parcels Map associated with the Medical Marihuana and Adult-Use Marihuana Facilities Ordinances. However, the subject parcels still technically remain in the stand-alone Caregiver Overlay District. City staff is requesting that the subject parcels be removed from the Caregiver Marihuana Grow Overlay District in

order to reflect their new underlying B-3 zoning designation and the fact that they are now ineligible for the establishment of Medical Marihuana and/or Adult-Use Marihuana facilities.

When reviewing a rezoning request, City Council should review the proposed district’s consistency and compatibility with adjacent land uses and the future land use map as laid out in the Master Plan.

Existing Land Use

Existing adjacent land uses and zoning designations are denoted in the table below:

	Existing Land Use	Existing Zoning
Site	Restaurant	B-3, General Business
North	Oakland County Water	M-1, Light Industrial
South (across 12 Mile)	Retail	General Business (City of Royal Oak)
East	--	I-75
West (across Stephenson)	Gas Station	M-1, Light Industrial

The subject site is located immediately to the west of the 12 Mile Road/I-75 interchange. Adjacent land uses consist primarily of auto-oriented uses, including a gas station across Stephenson Highway, an auto repair shop across 12 Mile Road, and a new drive-through fast food restaurant kitty-corner at the intersection of 12 Mile Road and Stephenson Highway (in Royal Oak).

Future Land Use

Adjacent future land uses, as envisioned by the 2021 Madison Heights Master Plan, are denoted in the table below:

	Future Land Use
Site	Industrial
North	Industrial
South (across 12 Mile)	General Commercial (City of Royal Oak)
East	I-75
West (across Stephenson)	Industrial

The future land use designation of the subject site is “Industrial.” Per the Master Plan, the Industrial designation is intended to accommodate manufacturing, processing, warehousing, storage of raw materials and intermediate and finished products, industrial service providers, industrial parks, and industrial research activities.

Staff Analysis

Based on the Planning Commission staff report from May 15th, 2020, the Caregiver Overlay District map was intended to be, *“identical to the map approved by City Council for Medical Marihuana Facilities and identical to the map that will be presented to City Council in defining where Adult-Use Marihuana Establishments can be located in the city.”* Further, per the Zoning Ordinance, *“the purpose and intent of [the Primary Caregiver Marihuana Grow Overlay District] is to identify suitable locations for primary caregivers to cultivate medical marihuana, in compliance with the MMMA and this article, to mitigate the potential adverse and detrimental effects on neighboring properties to protect the public health, safety and welfare.”*

While the Caregiver Overlay District is technically separate from the Allowed Parcels Map associated with the Adult-Use/Medical Marihuana ordinances, it is, for all intents and purposes, intended to match that of the Allowed Parcels Map. Staff also finds that the external effects of a 72-plant caregiver operation (e.g. odor) are not appropriate for, nor aligned with, the uses permitted within the B-3 General Business Zoning District. Staff finds that primary caregiver operations should be restricted to properties with underlying industrial zoning designations to match that of the Medical Marihuana Facilities and Adult-Use Marihuana Facilities ordinances and to ensure that the permitted uses in the B-3 zoning district are not negatively impacted by caregiver operations

The Planning Commission also instructed staff to explore a text amendment to the Primary Caregiver Marihuana Grow Overlay District to require an underlying zoning designation of M-1 or M-2 to match the language of the Medical Marihuana Facilities and Marihuana Establishments Ordinances.

Planning Commission Action

At their August 16th, 2022 meeting, the Planning Commission **recommended approval** of the requested rezoning based upon the following findings:

1. City staff requests that the three (3) subject parcels be rezoned to remove them from the Primary Caregiver Marihuana Grow Overlay District.
2. City Council recently rezoned the underlying districts of the subject parcels from M-1, Light Industrial, to B-3, General Business, but did not remove them from the Caregiver Overlay District.
3. Per the Medical Marihuana Facilities and Adult-Use Marihuana Establishment ordinances and the associated Allowed Parcels Map, B-3-zoned parcels are not eligible for the establishment of medical marihuana or adult-use marihuana facilities. However, the Primary Caregiver Marihuana Grow Overlay District contains a stand-alone map and the associated district text does not refer to underlying zoning districts.
4. Upon its adoption, the Primary Caregiver Marihuana Grow Overlay District map was intended to be identical to the Allowed Parcels Map, and therefore was intended to only apply to M-1 and M-2-zoned parcels.
5. Primary medical marihuana caregivers are not aligned with the intent of the B-3, General Business, zoning district nor compatible with uses permitted in the B-3 district.

The Planning Commission has directed staff to develop a zoning text amendment to limit medical marihuana caregivers to parcels that are denoted on the Overlay District Map and contain an underlying M-1 or M-2 zoning designation

Next Step

Based on the Planning Commission's findings and recommendation, staff recommends that City Council adopt Ordinance # 2187 (PRZN 22-03) upon first reading and schedule a public hearing for the October 10th, 2022 City Council meeting.

ORDINANCE NO. 2187

AN ORDINANCE TO AMEND ORDINANCE NUMBER 571, BEING AN ORDINANCE CODIFYING AND ADOPTING A NEW CODE OF ORDINANCES FOR THE CITY OF MADISON HEIGHTS BY AMENDING THE ZONING MAP IN CONNECTION THEREWITH.

THE CITY OF MADISON HEIGHTS ORDAINS:

SECTION 1. That the Zoning Map in connection with the Zoning Ordinance of the City of Madison Heights shall be amended so that the zoning on the following described properties, to-wit:

T1N, R11E, SEC 11 PART OF SW 1/4 BEG AT PT DIST S 88-11-35 W 544.34 FT & N 01-48-25 W 267.10 FT FROM S 1/4 COR, TH N 01-48-25 W 60.00 FT, TH N 87-11-21 E 191.48 FT, TH S 08-02-22 W 61.31 FT, TH S 87-15-35 W 180.99 FT TO BEG 0.26 A

PIN 44-25-11-377-015. 29022 STEPHENSON HWY.

T1N, R11E, SEC 11 PART OF SW 1/4 BEG AT PT DIST S 88-11-35 W 544.34 FT & N 01-48-25 W 75.00 FT FROM S 1/4 COR, TH N 52-16-00 E 265.16 FT, TH N 17-41-59 E 106.98 FT, TH S 87-15-35 W 59.00 FT, TH S 08-02-22 W 61.31 FT, TH S 87-15-35 W 180.99 FT, TH S 01-4.

PIN 44-25-11-377-016. 29022 STEPHENSON HWY.

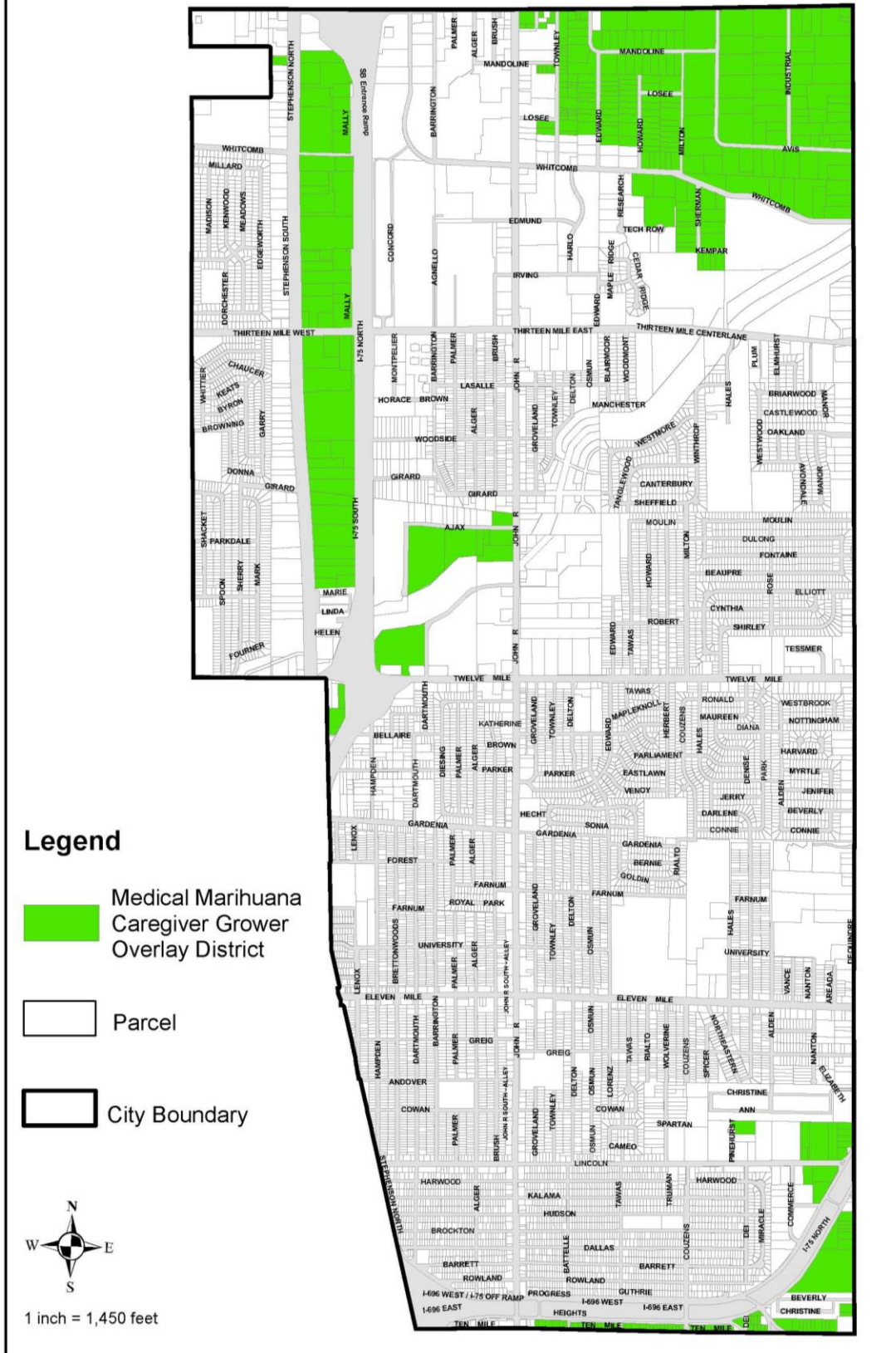
T1N, R11E, SEC 11 ELY 40 FT OF STEPHENSON HWY R/W ADJ TO THAT PART OF SW 1/4 DESC AS BEG AT PT DIST S 88-11-35 W 544.34 FT & N 01-48-25 W 75.00 FT FROM S 1/4 COR, TH N 52-16-00 E 265.16 FT, TH N 17-41-59 E 106.98 FT, TH S 87-15-35 W 59.00 FT, TH S 08-02

PIN 44-25-11-377-019. 29022 STEPHENSON HWY.

Shall be removed from the Primary Caregiver Marihuana Grow Overlay District as contained within Section 10.349 of the Zoning Ordinance.

SECTION 2. It was the original intent of City Council in designating the Primary Caregiver Marihuana Grow Overlay District that parcels within said district would only consist of those with an underlying zoning of M-1 or M-2. The map of the Primary Caregiver Marihuana Grow Overlay District as contained within Section 10.349 of the Zoning Ordinance shall thus be amended as provided for and shown within this Ordinance:

Medical Marihuana Caregiver Grower Overlay District



SECTION 3. All ordinances or parts of ordinances in conflict with this ordinance are repealed only to the extent necessary to give this ordinance full force and effect.

SECTION 4. This ordinance shall take effect ten (10) days after its adoption and upon publication.

Roslyn Grafstein
Mayor

Cheryl E. Rottmann
City Clerk

CERTIFICATION:

I, Cheryl Rottmann, the duly appointed City Clerk of the City of Madison Heights, County of Oakland, State of Michigan, do hereby certify that the foregoing is a true and correct copy of an Ordinance adopted by the Madison Heights City Council at their Regular Meeting held on _____, 2022.

Cheryl E. Rottmann
City Clerk

FIRST READING: September 12th, 2022

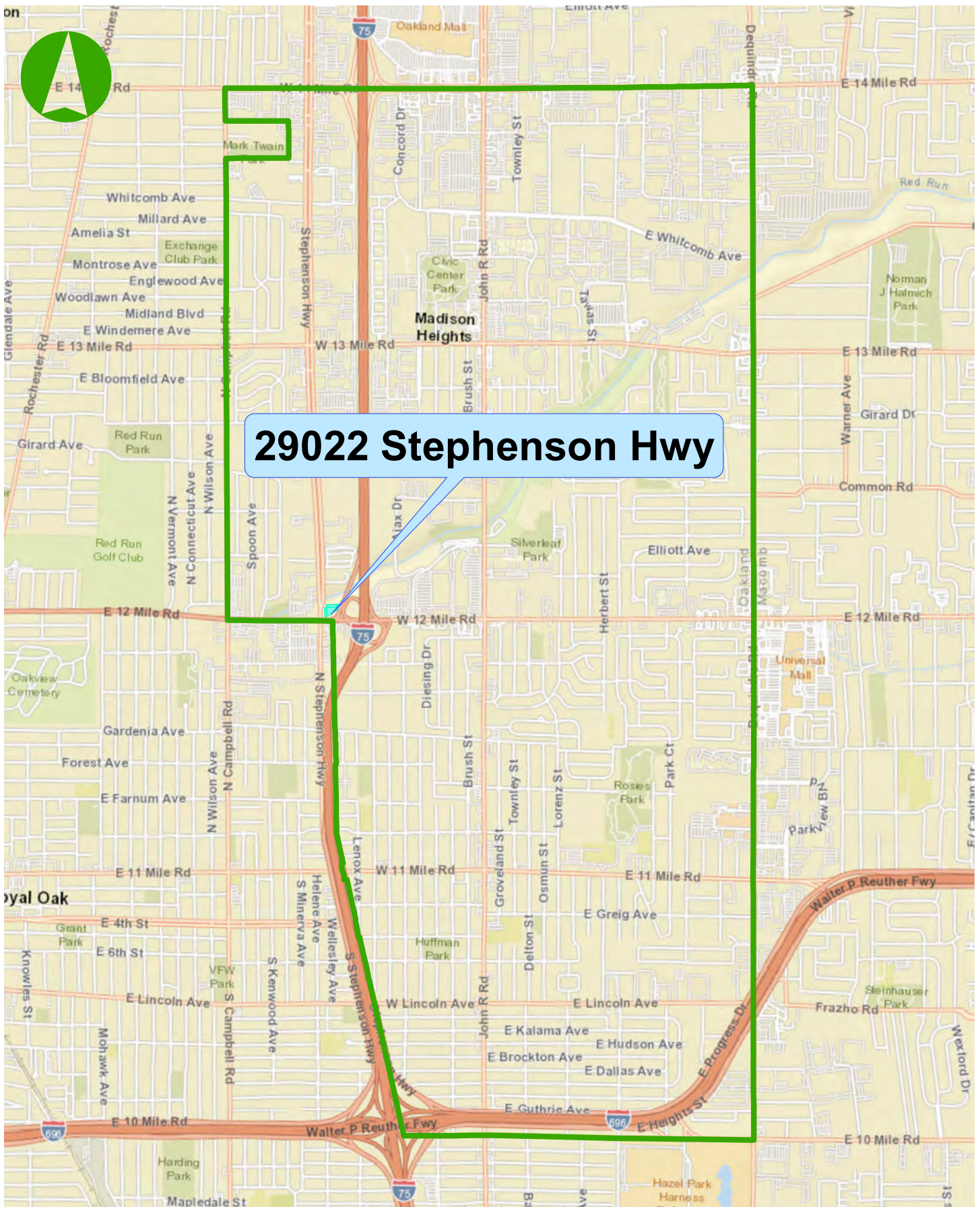
PUBLIC HEARING: ,2022

ADOPTED: ,2022

PUBLISHED: ,2022

EFFECTIVE: ,2022

PRZN CASE: 22 - 03



Site Address: 29022 Stephenson Hwy



[Click for maps](#)

Aerial



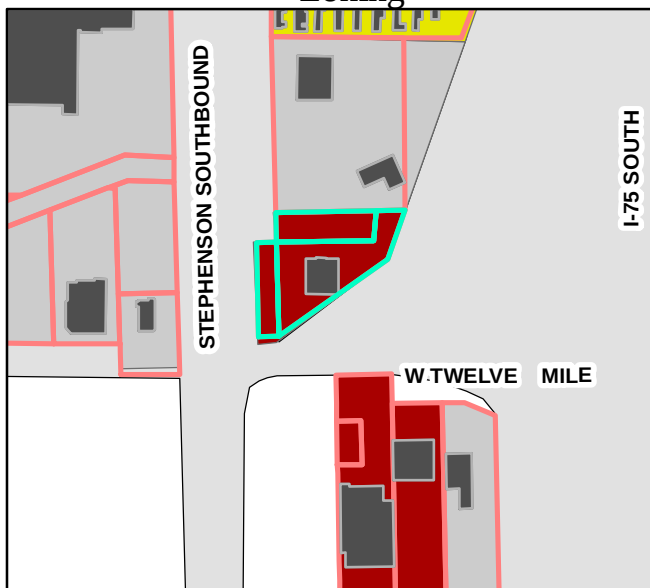
- 29022 Stephenson Hwy
- Parcels

Existing Land Use



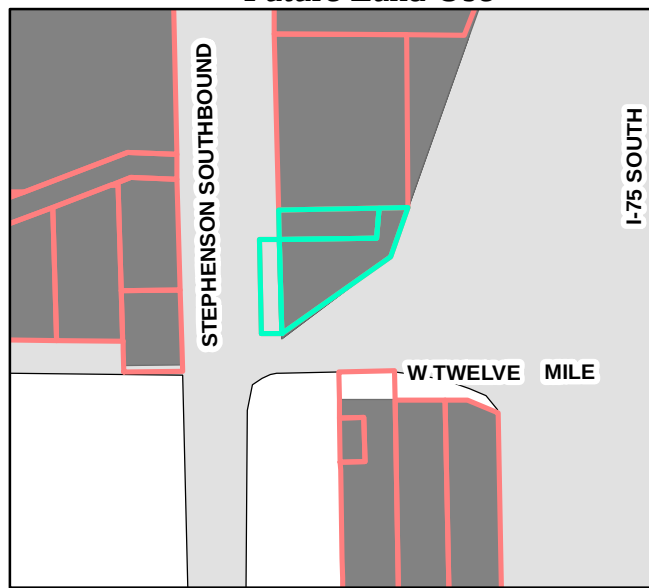
- 29022 Stephenson Hwy
- Buildings
- Parcels
- Industrial
- Vacant
- Mobile Home Park
- Office
- Commercial
- Public

Zoning



- 29022 Stephenson Hwy
- Buildings
- Parcels
- H-M Mobile Homes
- B-3 General Business
- M-1 Light Industrial

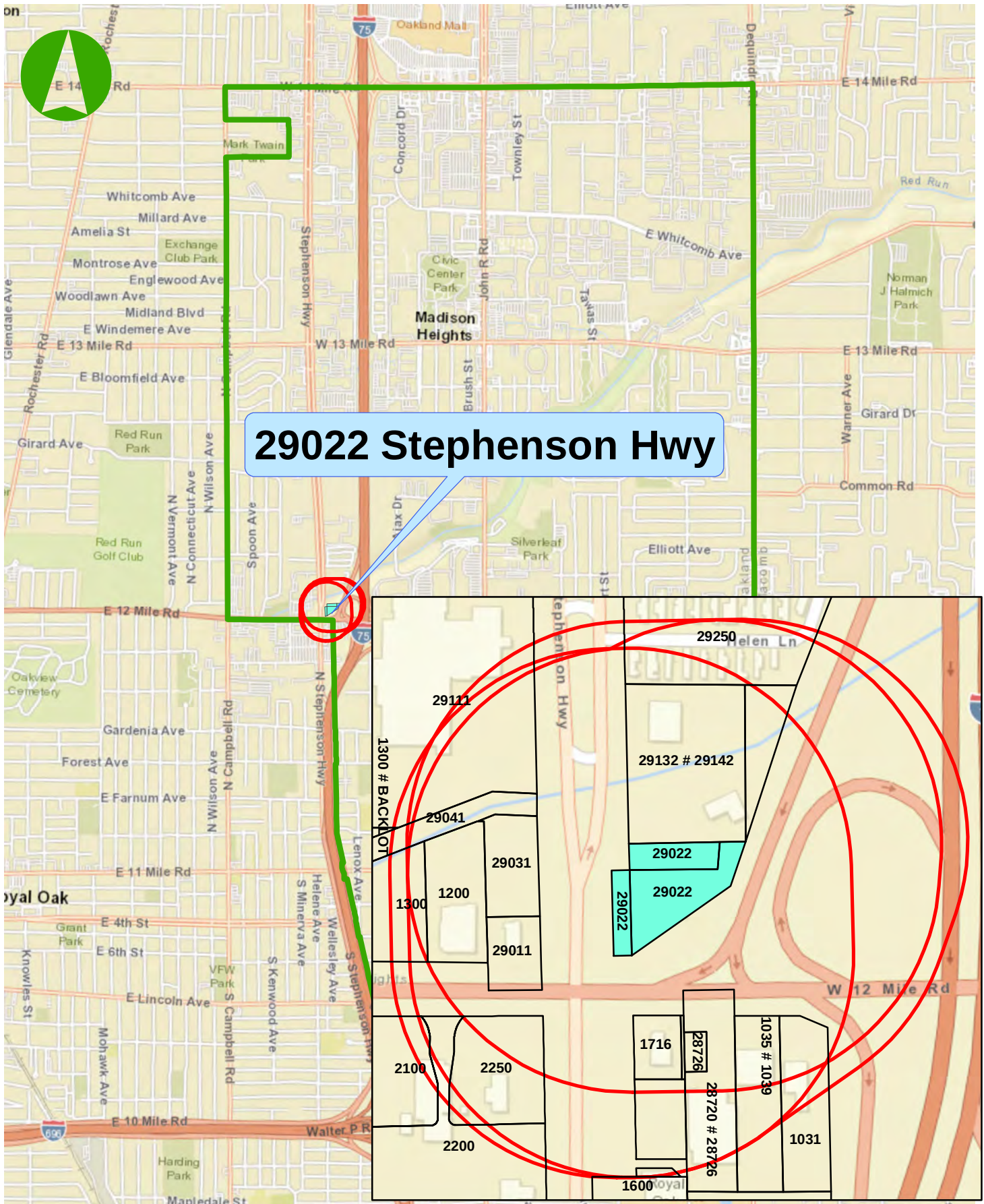
Future Land Use



- 29022 Stephenson Hwy
- Single Family
- Multiple Family
- Office
- Commercial
- Industrial
- Public and Schools
- Recreation
- Conservation
- Mixed Use Innovation

~~ZBA~~ CASE: 22 - 03

BUFFER 500 FT



NOTICE OF PUBLIC HEARING

Notice is hereby given that the Madison Heights Planning Commission will hold a public hearing on **Tuesday, August 16th, 2022 at 5:30 p.m.** in the **Training Room at Fire Station #1 located at 31313 Brush Street, Madison Heights, Michigan 48071** to consider the following rezoning requests:

Rezoning Request No. PRZN 22-0003 by the City of Madison Heights to rezone three (3) parcels of land described as 29022 Stephenson Hwy (TMs: 44-25-11-377-015; 44-25-11-377-016; and 44-25-11-377-019). The request is to remove the subject parcels from the Primary Caregiver Marijuana Grow Overlay District.

The application and any supporting documents can be viewed during regular business hours at the Community and Economic Development Department. In addition, the agenda item can be viewed after 4:00 p.m. on Friday, August 12th, 2022 online at www.madison-heights.org in the Agenda Center.

For further information, please contact the Community & Economic Development Department at (248) 583-0831 or MattLonnerstater@madison-heights.org.

CITY OF MADISON HEIGHTS



COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT
300 W. THIRTEEN MILE RD.
MADISON HEIGHTS, MI 48071
(248) 583-0831

Application to Rezone Land

I (we) the undersigned do hereby respectfully apply and petition the City of Madison Heights to amend the Zoning Ordinance by changing the zoning map as hereinafter requested. As part of this application, the following facts are shown:

1. Request is hereby made that the following property be rezoned from: REMOVAL FROM PRIMARY CAREGIVER MARIHUANA GROW OVERLAY DISTRICT
2. The property address is 29022 STEPHENSON HIGHWAY and the parcel is located on the EAST side of STEPHENSON HIGHWAY between E. TWELVE MILE ROAD and E. THIRTEEN MILE ROAD.
3. The legal description of said property is as follows: (attach separately if necessary)
SEE SEPARATE SHEET.
4. The sidwell numbers for the property are: 44-25-11-377-015; 44-25-11-377-016; and 44-25-11-377-019
5. The owner of said property is:
Name: SOKOL AND ANGJELINA NDREJAJ
Street Address: 29022 STEPHENSON HIGHWAY
City, State, Zip: MADISON HEIGHTS, MI 48071
Phone: _____ Email: _____
6. The Applicant is:
Name: CITY OF MADISON HEIGHTS, MICHIGAN
Street Address: 300 W. THIRTEEN MILE ROAD
City, State, Zip: MADISON HEIGHTS, MI 48071
Phone: (248) 583-0829 Email: MELISSAMARSH@MADISON-HEIGHTS.ORG
7. The applicant is the:
☐ Owner ☐ Legal Representative ☐ Purchaser ☒ Other MUNICIPALITY
8. Description of proposed use: N/A
9. Attached two (2) copies of the plot plan prepared in compliance with the requirements shown in item number three (3) of the "Procedure for Filing Rezoning Application" and the \$1,500.00 application fee.

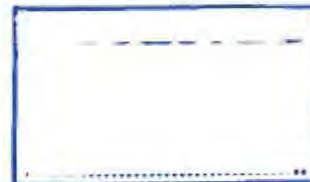
Signature of Owner: MUNICIPALITY-INITIATED REZONING

Signature of Applicant: Melissa Marsh

Date: 7-20-22

Notary's Signature: Amy L. Bessler
Notary's Print Name: AMY L. BESSLER
Notary Public, State of Michigan, County of: OAKLAND
My Commission Expires on: 9/27/28
Acting in the County of: OAKLAND

Note: All owners of the property must sign this application and all signatures must be notarized, or legal proof of authority to apply, such as a Power of Attorney, must be attached. MUNICIPALITY-INITIATED REZONING





COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT
300 W. THIRTEEN MILE RD.
MADISON HEIGHTS, MI 48071
(248) 583-0831

PARCEL 1

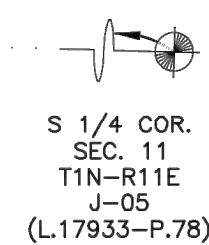
T1N, R11E, SEC 11 PART OF SW 1/4 BEG AT PT DIST S 88-11-35 W 544.34 FT & N 01-48-25 W 267.10 FT FROM S 1/4 COR, TH N 01-48-25 W 60.00 FT, TH N 87-11-21 E 191.48 FT, TH S 08-02-22 W 61.31 FT, TH S 87-15-35 W 180.99 FT TO BEG 0.26 A
PIN 44-25-11-377-015. 29022 STEPHENSON HWY.

PARCEL 2

T1N, R11E, SEC 11 ELY 40 FT OF STEPHENSON HWY R/W ADJ TO THAT PART OF SW 1/4 DESC AS BEG AT PT DIST S 88-11-35 W 544.34 FT & N 01-48-25 W 75.00 FT FROM S 1/4 COR, TH N 52-16-00 E 265.16 FT, TH N 17-41-59 E 106.98 FT, TH S 87-15-35 W 59.00 FT, TH S 08-02
PIN 44-25-11-377-019. 29022 STEPHENSON HWY.

PARCEL 3

T1N, R11E, SEC 11 PART OF SW 1/4 BEG AT PT DIST S 88-11-35 W 544.34 FT & N 01-48-25 W 75.00 FT FROM S 1/4 COR, TH N 52-16-00 E 265.16 FT, TH N 17-41-59 E 106.98 FT, TH S 87-15-35 W 59.00 FT, TH S 08-02-22 W 61.31 FT, TH S 87-15-35 W 180.99 FT, TH S 01-4.
PIN 44-25-11-377-016. 29022 STEPHENSON HWY.



DECIDUOUS TREE, CONIFEROUS TREE, SHRUB
 TREE LINE/ CANOPY
 DITCH/ DRAINING COURSE
 UG TELE, MH, TELE PED, CABLE PED
 UG FIBER, PED, LINE MARKER, VAULT
 UG ELEC, MH, TRANSFORMER, AC UNIT, METER, BOX
 OH ELEC, UTIL POLE, GUY WIRE
 GROUND LIGHT, POLE, POLE W/ ARM LT
 LIGHT MH, LT CTRL BOX, PARK, METER, CAR CHARGER
 ELEC HAND HOLE, OUTLET, SIGNAL MH, SIGNAL BOX
 UG GAS, MH, VALVE, LINE MARKER
 GAS WELL, METER, VENT
 WATER MAIN, MH, VALVE IN BOX, HYDRANT, FDC
 WATER WELL, METER, STOP BOX, POST INDICATOR VALVE
 IRRIGATION CONTROL VALVE, SPRINKLER HEAD
 STORM SEWER, MH, CB, INLET, YARD DRAIN, DOWN SPOUT
 CULVERT/ END SECTION
 SANITARY SEWER, MH, CLEAN OUT
 COMBINED SEWER, MH
 STEAM LINE, MH
 MISC. MANHOLE, HAND HOLE, HAND BOX
 PARKING BLOCK, SIGN, FLAG POLE, POST, ROCK, MAIL BOX
 SECTION LINE, SECTION CORNER
 FOUND IRON ROD (FIR), FD MON, FD PK
 SET IRON ROD (SIR), SET PK, MAG NAIL
 FINISH FLOOR ELEVATION, SPOT ELEVATION
 CONTOUR
 FENCE
 GUARD RAIL
 RAILROAD SIGNAL, SIGNAL BOX
 SOIL BORING

EX. ASPHALT
 EX. CONCRETE
 EX. GRAVEL

DATUM: NAVD88

BM A:
TOP OF SOUTHEAST ANCHOR BOLT OF LIGHT POLE, 324'± NORTH OF CENTERLINE TWELVE MILE ROAD & 48'± EAST OF CENTERLINE STEPHENSON HIGHWAY.
ELEV = 636.75

BM B:
TOP OF NORTHEAST ANCHOR BOLT OF LIGHT POLE, 54'± NORTH OF CENTERLINE TWELVE MILE ROAD & 51'± EAST OF CENTERLINE STEPHENSON HIGHWAY.
ELEV = 639.21

AT THE TIME OF THIS SURVEY, EVIDENCE WAS OBSERVED OF POTENTIAL ENCROACHMENTS. OTHER ENCROACHMENTS MAY OR MAY NOT STILL EXIST ON OR OFF THE SUBJECT PROPERTY.

THE FOLLOWING OBSERVATIONS WERE MADE AT THE TIME OF SURVEY:

 PAVING AND PARKING FOR PARCEL "3" LIES ON TO PARCEL "2".

 CORNER OF PARKING LOT LIES UP TO 10.5' OFF THE PARCEL.

EX. STORM SEWER		
STRUCTURE	RIM ELEV.	PIPES
(25277) CBR	636.17	10" W IE= 626.15 10" NE IE= 626.16 8" SE IE= 630.29
(25294) COMH	637.63	10" W IE= 625.24 10" E IE= 625.26 8" SE IE= 625.88
(25314) CBR	636.34	NO PIPES OBSERVED SEDIMENT = 633.14
(25491) CBR	635.99	10" SW IE= 631.71
(200000) CBS	636.87	NOT INVENTORIED AT TIME OF SURVEY

EX. STORM SEWER		
STRUCTURE	RIM ELEV.	PIPES
(25277) CBR	636.17	10" W IE= 626.15 10" NE IE= 626.16 8" SE IE= 630.29
(25294) COMH	637.63	10" W IE= 625.24 10" E IE= 625.26 8" SE IE= 625.88
(25314) CBR	636.34	NO PIPES OBSERVED SEDIMENT = 633.14
(25491) CBR	635.99	10" SW IE= 631.71
(200000) CBS	636.87	NOT INVENTORIED AT TIME OF SURVEY

DRAFT

CLIENT :
DEVELOPMENT MANAGEMENT ASSOCIATES LLC
JON PELLEGRENE
PH: 312-605-9290
jpellegrene@dmassociates.com

ALTA/NSPS LAND TITLE SURVEY

29022 STEPHENSON HWY - MADISON HTS.
TAX ID: 44-25-11-377-015, -016, -019
PART OF SW 1/4, SEC. 11, T1N-R11E
ROYAL OAK TOWNSHIP, OAKLAND COUNTY, MICHIGAN

[illegible]

ORIGINAL ISSUE DATE:
2/4/2022

PROJECT NO: 21-428

SCALE: 1" = 20'



0 1/2" 1"

FIELD: AJS
DRAWN BY: DC
DESIGN BY:
CHECK BY: MB

V1.1

NOT FOR CONSTRUCTION

ARTICLE XII. PRIMARY CAREGIVER MARIHUANA GROW OVERLAY DISTRICT

Sec. 10.346. Findings, purpose and intent.

The Michigan Medical Marihuana Act (MMMA), Initiated Law 1 of 2008, MCL 333.26421 et seq., as amended, does not nullify a municipality's inherent authority to regulate land use under the Michigan Zoning Enabling Act (MZEa), MCL 125.3101 et seq. as long as (1) the municipality does not prohibit or penalize the cultivation of medical marihuana and (2) the municipality does not impose regulations that are unreasonable and inconsistent with regulations established by state law. MCL 333.26424(b)(2) states that primary caregivers and qualifying patients must keep their plants in an enclosed, locked facility in order for those individuals to be entitled to the MMMA protections in MCL 333.26424(a) and (b). Because an enclosed, locked facility may be found in various locations on various types of property, this ordinance, limiting where a primary caregiver can cultivate medical marihuana within the city, does not directly conflict with the MMMA's requirement that marihuana plants be kept in an enclosed, locked facility. The city finds that the average residence in the city is not aptly suited to the safe and favorable cultivation of 72 marihuana plants that a primary caregiver is permitted to grow under the MMMA. The city further finds that the cultivation of 72 marihuana plants by primary caregivers in residential districts creates potential hazards and potential adverse and detrimental effects on the neighboring properties that endanger the public health, safety and welfare. The purpose and intent of this ordinance is to identify suitable locations for primary caregivers to cultivate medical marihuana, in compliance with the MMMA and this article, to mitigate the potential adverse and detrimental effects on neighboring properties to protect the public health, safety and welfare.

(Ord. No. 2158 , § 1, 7-13-20)

Sec. 10.347. Definitions.

For the purpose of the provisions of this article, all words and phrases herein shall be construed to have the meanings as provided for in the Michigan Medical Marihuana Act (MMMA), Initiated Law 1 of 2008, MCL 333.26421 et seq., as amended.

(Ord. No. 2158 , § 1, 7-13-20)

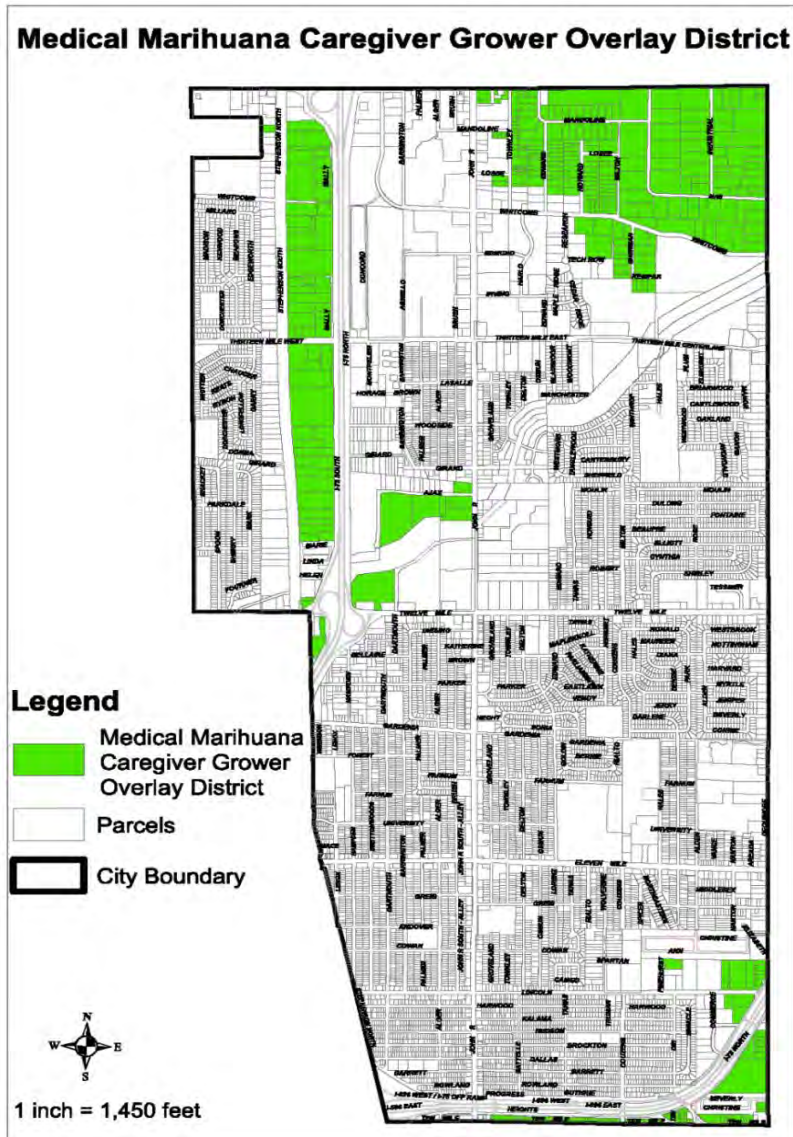
Sec. 10.348. No effect on patients.

This article does not apply to or regulate any qualifying MMMA patient activities or conduct that is in compliance with the MMMA. A qualifying patient, operating in compliance with the MMMA, shall be permitted to cultivate, at the patient's primary residence, who shall also be full-time resident of the dwelling, no more than the 12 allowed marihuana plants as permitted by the MMMA for the patient's personal use to treat their debilitating medical condition.

(Ord. No. 2158 , § 1, 7-13-20)

Sec. 10.349. Caregiver Marihuana Grow Overlay District.

The Caregiver Marihuana Grow Overlay District boundaries shall be the parcels indicated as established in the following overlay district map:



(Ord. No. 2158 , § 1, 7-13-20)

Sec. 10.350. Caregiver Marihuana Grow Overlay District requirements.

The following standards and requirements shall apply to any location at which the cultivation of medical marihuana is conducted by a primary caregiver.

- (a) A registered primary caregiver shall not cultivate medical marihuana at a parcel that is not located within the Caregiver Marihuana Grow Overlay District.
- (b) The cultivation of medical marihuana by a caregiver shall comply at all times with the MMMA and the MMMA General Rules, as amended.
- (c) Not more than one registered primary caregiver shall be permitted to operate at any one parcel located with the Caregiver Marihuana Grow Overlay District.

-
- (d) The cultivation of medical marihuana by a primary caregiver shall be conducted entirely within an "enclosed, locked facility" (as that phrase is defined by the MMMA), up to 12 marihuana plants for each registered qualifying patient with whom the registered primary caregiver is connected through the registration process established by the Department of Licensing and Regulatory Affairs, and up to 12 additional marihuana plants for personal use, if the primary caregiver is also registered as a qualifying patient under the MMMA. The number of marihuana plants shall not exceed the number of marihuana plants permitted by the MMMA in total aggregate at any location or multiple locations whether located in the city or outside of the city.
 - (e) No sign identifying the location by word, image or otherwise, or indicating that the cultivation of medical marihuana is taking place on the premises, shall be permitted; nor shall any vehicle having such a sign be parked anywhere on the premises.
 - (f) Distribution of marihuana or use of items in the administration of marihuana shall not occur at or on the parcel where medical marihuana is cultivated. A qualifying patient shall not visit, come to, or be present at the parcel where medical marihuana is cultivated to purchase, smoke, consume, obtain or receive possession of any marihuana.
 - (g) No on-site consumption or smoking of marihuana shall be permitted within the parcel (or on the property) where medical marihuana is cultivated, except for lawful medical marihuana consumption by the primary caregiver if registered as a qualifying patient under the MMMA.
 - (h) Medical marihuana shall not be grown, processed, handled or possessed at the location where medical marihuana is cultivated beyond that which is permitted by law.
 - (i) A certificate of occupancy, together with a required site plan review, shall be obtained from the city and all necessary building, electrical, plumbing and mechanical permits shall be obtained for any portion of a building or structure in which equipment and devices that support the cultivation, growing or harvesting of marihuana are located or used.
 - (j) If marihuana is grown or located in a room with windows, all interior lighting shall be shielded to prevent ambient light from creating a distraction for adjacent properties.
 - (k) Related merchandise or products shall not be sold or distributed from the property.
 - (l) There shall be no exterior storage or parking of materials or equipment.
 - (m) No nuisance shall be generated by any heat, glare, noise, smoke, vibration, noxious fumes, odors, vapors, gases or matters at any time.
 - (n) The entire parcel and all enclosed, locked facilities shall be available for inspection upon request by the zoning administrator, building official, fire official or law enforcement official during reasonable business hours.

(Ord. No. 2158 , § 1, 7-13-20)

Sec. 10.351. Principal uses permitted.

All principal uses permitted in the Underlying Zoning District(s) are permitted by right in the Overlay Districts, provided they comply with all applicable requirements of the Underlying Zoning District.

(Ord. No. 2158 , § 1, 7-13-20)

MEMO

TO: Madison Heights Planning Commission

FROM: Niccolas Grochowski, Assistant City Attorney

RE: Planning Commission Agenda Packet Comments Regarding Proposed Zoning Ordinance Amendment for Caregiver Marihuana Grow Overlay District

DATE: May 15, 2020

Discussion of Proposed Zoning Ordinance Amendment relating to the creation of a Caregiver Marihuana Grow Overlay District.

On April 27, 2020, the Michigan Supreme Court issued a decision in the case of *DeRuiter v Township of Byron*, (attached) and held that municipalities may lawfully establish locations where medical marihuana "caregivers" must be located in a municipality. Prior to this decision, the relevant case law in Michigan had been that a municipality could not regulate or dictate where medical marihuana caregivers could establish a grow operation within a municipality. Thus, prior to this recent Michigan Supreme Court decision, registered Michigan medical marihuana caregivers could essentially operate from any location they desired in any municipality in the state.

Because the Michigan Supreme Court has ruled that municipalities can place limitations on where a medical marihuana caregiver can cultivate marijuana within a municipality, we are presenting for your consideration a proposed zoning ordinance that restricts the locations of medical marihuana caregiver grows to the already established "green zones" in the City. The "green zone" map takes into consideration and is based on maintaining adequate separation distances of these areas from school buildings, churches, family child care homes, group child care homes and Residential Districts where residential units are located. This map is identical to the map approved by City Council for Medical Marihuana Facilities and is identical to the map that will be presented to City Council in defining where Adult-Use Marihuana Establishments can be located in the City.

The proposed zoning ordinance amendment presented for your deliberation, utilizes a common planning tool of an "overlay district" to restrict the locations of where a medical marihuana caregiver can be located in the City. The overlay district is simply a map that overlays a current zoning district that imposes additional or different zoning regulations that are particular to that overlay. The underlying, or original, zoning provisions and uses are still applicable to each zoning district, with the addition of the overlay provisions. In this proposed zoning ordinance amendment, the overlay defines, parcel by parcel, the only locations that a caregiver can establish a medical marihuana grow operation in the

City. In addition, the proposed amendment adds several other conditions that must be adhered to by caregivers if they locate to one of the approved parcels. These conditions are consistent with and complement the Michigan Medical Marihuana Act (MMMA), Initiated Law 1 of 2008, MCL 333.26421, et. seq., as amended, and are thus permissible conditions pursuant to the decision in *DeRuiter v Township of Byron*.

Following initial discussion of the proposed *zoning* ordinance amendment, the next step would be for the Planning Commission to schedule a Public Hearing. The Public Hearing will be at a Special Meeting set by the Planning Commission and would be scheduled for Tuesday, June 16, 2020 at 5:30 via ZOOM video conference. To set a Special Meeting to conduct the required Public Hearing on the proposed *zoning* ordinance amendment, State Law and the Planning Commission By-Laws both provide that a Special Meeting of the Planning Commission may be called by the Chairperson or two (2) or more commission members. In addition, because the Public Hearing requires 15 day's notice, under the law, a Special Meeting could take place no sooner than June 12, 2020. Thus, a motion by the Planning Commission to set the public hearing on Tuesday, June 16, 2020 at 5:30 via ZOOM video conference would be appropriate to provide sufficient time for the required notice.

Pursuant to State Law, City Ordinance and Charter, the Planning commission makes a recommendation to the City Council regarding any *zoning* ordinance amendment and ultimately, City Council then determines whether or not to adopt the proposed *zoning* ordinance. Thus, once the Planning Commission holds the public hearing on the proposed *zoning* ordinance amendment, the Planning Commission would then vote on a motion containing a recommendation to City Council on the adoption of the proposed amendments.

Medical Marihuana Caregiver Grower Overlay District

Legend



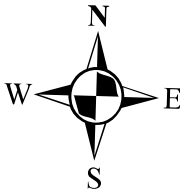
Medical Marihuana
Caregiver Grower
Overlay District



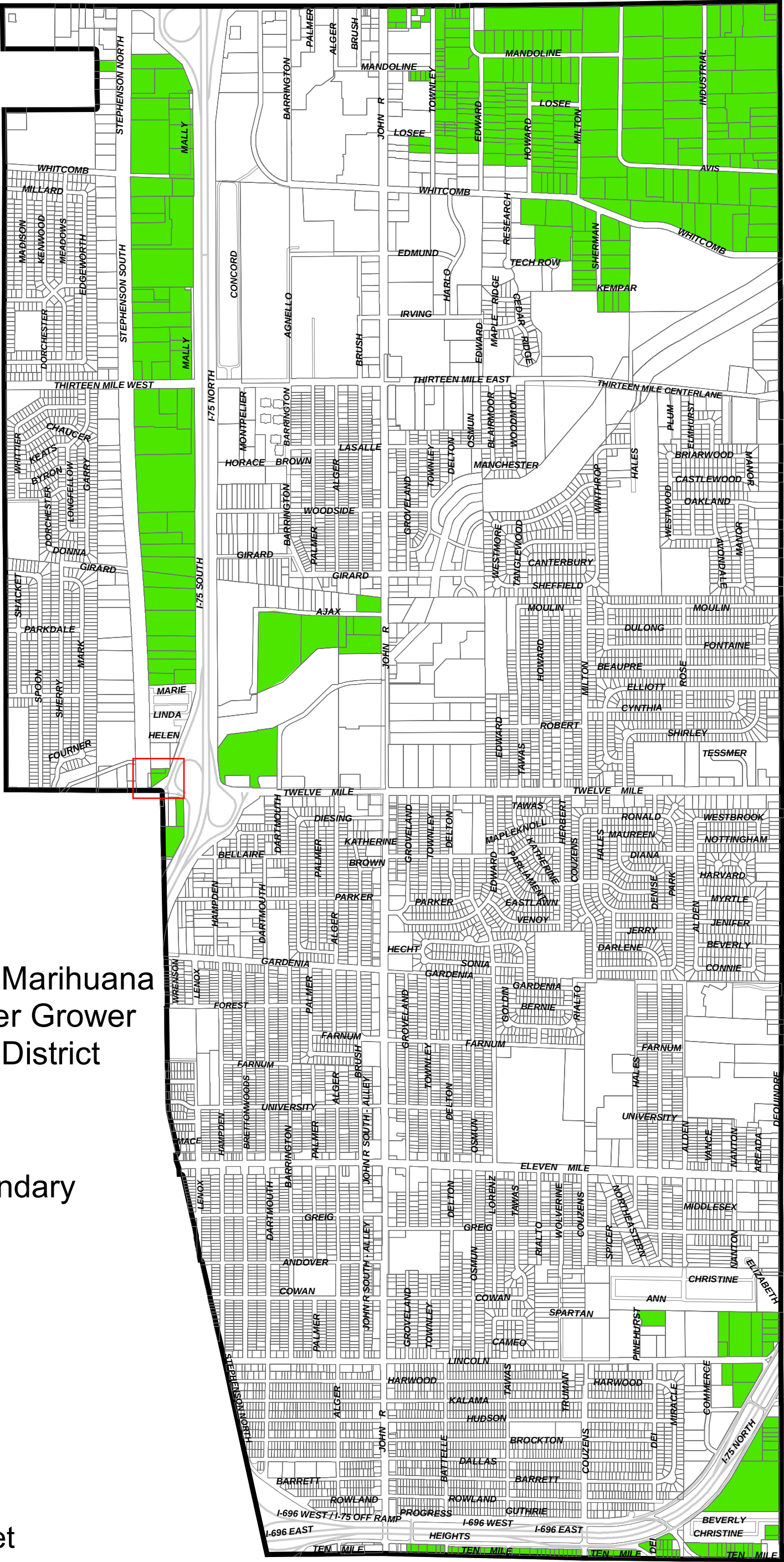
Parcels



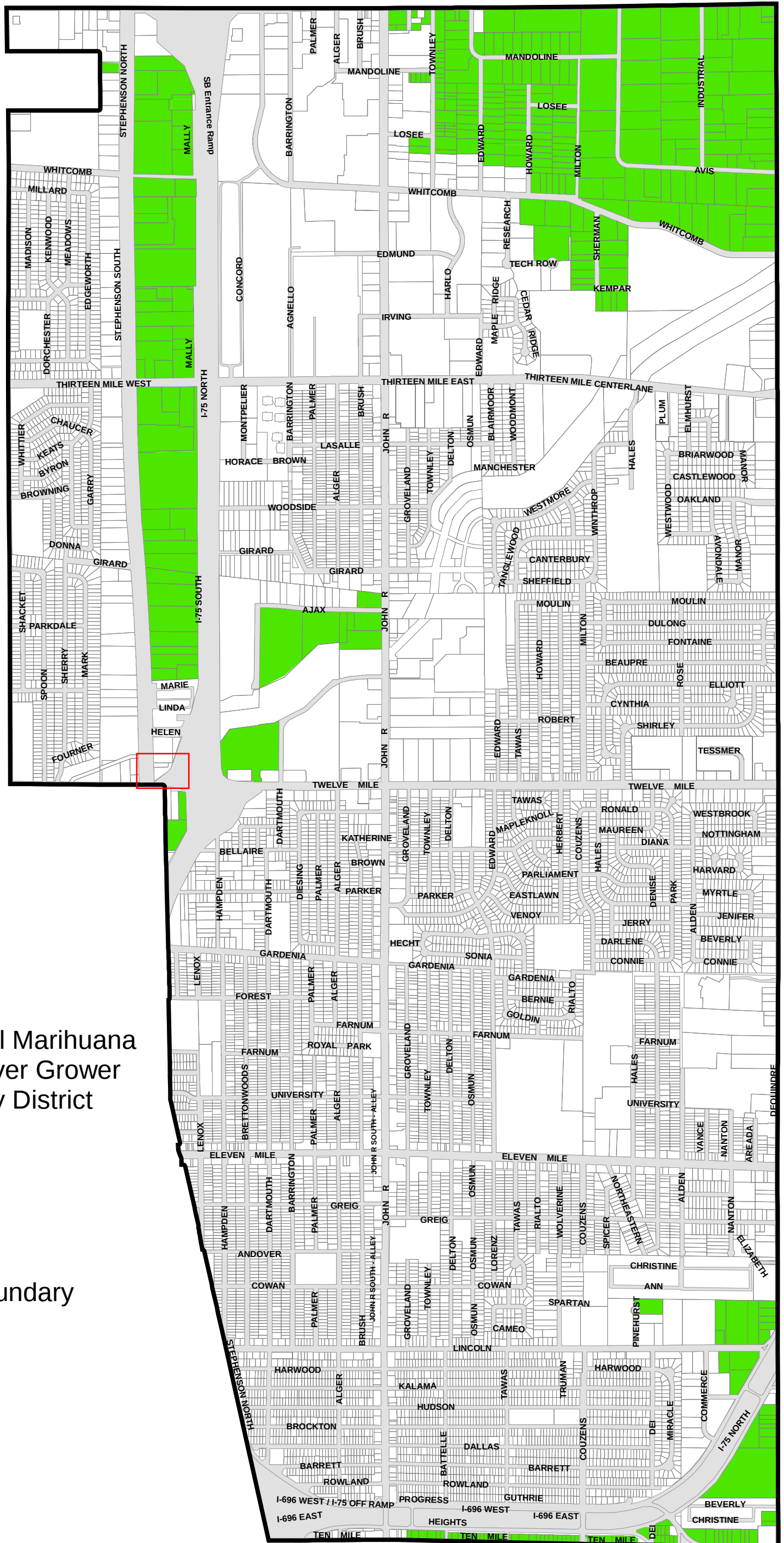
City Boundary



1 inch = 1,450 feet



PROPOSED AMENDMENT PRZN- 22-03 DRAFT

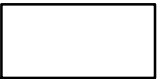


Allowed Parcels For Medical Marihuana

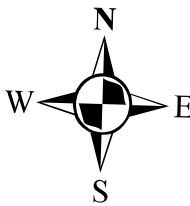
Updated For Rezoning Approved 7/11/22

Legend

 Allowed parcels
Medical Marihuana

 Parcel

 City Boundary



1 inch = 1,450 feet

