



Memo

To: Honorable Mayor Armitage; City Council
From: Bryan Myrkle, Community Development Director
Date: June 30, 2022
Re: Staff report on proposed revisions to Home Occupations standards and regulations, including medical marijuana growing under the caregiver model

Background – Home Occupations ordinance

The City of Charlotte formed an Ad Hoc Committee on Code Enforcement in 2021. As part of the work of that committee, it recommended the City of Charlotte Planning Commission and City Council work to update several sections of the Charlotte City Code. This included local regulations related to allowed home occupations in residential districts.

The committee, and subsequently the Planning Commission, determined that Charlotte’s existing regulations were too proscriptive and limiting, and not reflective of the diversity of economic opportunity presented to individuals by the modern, 21st Century economy. In simplest terms, the current standards have a short and outdated list of allowed home occupations, and a short list of prohibited occupations. Anything else is presumed to be prohibited unless special permission is granted by the Charlotte Planning Commission in the form of a Conditional Use approval.

After reviewing a range of ordinances adopted by other communities, the Planning Commission determined that a better approach is one relying on a set of home occupations standards that protect neighbors and neighborhoods from the potentially negative effects and nuisances resulting from nearby home occupations. This approach presumes that all legal economic activity that can be conducted from an individual residence is permitted, as long as it does not create off-site problems such as increased traffic and parking, noise, dust, smoke, vibration or unsightliness.

Background – Medical Marijuana Caregiving as a home occupation

A secondary element of the home occupations discussion was how to approach medical marijuana grow operations under the caregiver model. As Council members may know from previous staff communications, growing medical marijuana is legal as a patient or caregiver, and is currently unregulated in Charlotte. As a result, medical marijuana caregiver growing operations have started to proliferate in the community. In some cases, these operations can be quite large and hard to distinguish from a commercial operation. They have also begun to concentrate in certain neighborhoods or on certain blocks. This has the potential to change the character of these neighborhoods with the type of negative off-site effects described in the previous paragraph.

When the topic was originally broached several years ago, City Attorney Hitch was of the opinion that regulation of this industry was not legal, and so the City made no attempt to regulate it. Since that time,

however, the Michigan Supreme Court has weighed-in on the issue, and determined that some level of regulation is allowed. This was tested in the case *Byron Township vs. DeRuiter*.

Growing medical marijuana under the legal caregiver model allows a person to grow up to 12 individual marijuana plants for themselves, as well as 12 plants for up to 5 patients they are registered to serve. This means that any individual caregiver can be growing up to 60 marijuana plants at a time. If more than one caregiver is growing at a single property, the operation can reach a significant size and begin to have off-site impacts.

It has long been the opinion of City staff that legal, permissible caregiver grow operations should have to abide by the same standards as any other home occupation. For a neighbor or neighborhood, it is immaterial what sort of home occupation creates a nuisance, what matters is the negative and enduring effects of that nuisance.

Based on the Michigan Supreme Court determination, City Attorney Hitch now agrees that regulation of this activity is possible, and he has recommended adoption of the language from Byron Township that has already been reviewed by the courts. He has also recommended that this language not be added to Chapter 82 – Zoning, as it would ‘grandfather’ any existing operations in the City, limiting our ability to regulate them. He recommends adding the language elsewhere in the code. Instead, he recommends Chapter 15 – Businesses.

It is important to note for the benefit of City Council and for any residents or property owners who may be affected by these changes that there is no intention on the part of City staff to regulate caregiver operations out of existence. It is an attempt to ensure that residential neighborhoods are protected from the potential negative effects of caregiver growing operations, the same as they would be from any home occupation that creates negative offsite effects.

Recommendation

1. Approve the first reading of the proposed home occupations ordinance and set a public hearing before the Planning Commission for Tuesday, August 9, 2022 at 7 p.m.
2. Approve the first reading of the proposed medical marijuana caregiver ordinance and set a public hearing before the City Council for Monday, August 1, 2022 at 7 p.m.

Financial Impacts

There are no direct financial impacts to the City of Charlotte.

Suggested Motion

1. I move to approve the first reading of Ordinance No. 2022 – XX Chapter 82 – Zoning – and set a public hearing before the Charlotte Planning Commission for Tuesday, August 9, 2022 at 7 p.m.
2. I move to approve the first reading of Ordinance No. 2022 – XX Chapter 15 – Businesses – and set a public hearing before the Charlotte City Council for Monday, August 1, 2022 at 7 p.m.