

**Chester Planning & Zoning Commission**  
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The Chester Planning & Zoning Commission held a continued public hearing on Thursday, February 11, 2016, at the Chester Town Hall, 203 Middlesex Avenue, Chester, CT for the following:

Amendment to Zoning Regulations  
Add new Section 117 Medical Marijuana Dispensary and Production

Those members in attendance were Jon Lavy, Mel Seifert, Sally Murray, Steven Merola, Peter Zanardi, Doreen Joslow, Michael Sanders (seated for vacant position) and Jacqueline Stack (seated for H. Krempel). It is noted for the record Keith Scherber recused himself. Others present included Commission Counsel David Royston and in the audience Keith Scherber with Attorney Michael Cronin, First Selectwoman Lauren Gister and John Schroeder.

Chairman Lavy opened the continued hearing Section 117, Medical Marijuana Dispensary and Production at 7:36 PM. He noted last month the Commission was asked to consult with Commission Counsel as to the legality of banning medical marijuana under the Zoning Regulations.

Chairman Lavy read into the record the letter from Attorney Royston dated February 11, 2016. Attached to the letter were the 5 reasons that Harwinton adopted an outright ban in August 2015. Chairman Lavy also read the Harwinton reasons into the record.

Chairman Lavy asked members if this opinion has any effect on proceeding with the draft regulation.

Doreen Joslow noted she thought the Commission was proceeding under the thought that there should be some type of regulation and that banning wasn't allowed. She noted she would be in favor of banning.

Michael Sanders suggested leaving the regulation stand for the public hearing for now. This is potentially a business opportunity and tax paying entity. We should look at permissiveness or restrictiveness of our Zoning.

Mel Seifert noted his sentiments were the same as Mr. Sanders. We have received new information at this meeting. There are certain places where it would be okay, but its pretty limited. He didn't agree with the current regulation in a couple of things and he felt we should step back and work on it.

Sally Murray noted she agreed with Mr. Seifert. She was concerned with the fact the distance buffers were less than the State restrictions. If the Commission needs to

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stick with the State's buffers, the regulation should be rewritten and we should rethink which zones would be appropriate.

Steven Merola noted Attorney Royston's letter sheds new light on the matter and felt the Commission should take time to consider that information.

Peter Zanardi noted he was leary of outright restrictions and banning, but the Commission asked for this opinion and should consider it as a group and make changes if appropriate going forward.

Jacqueline Stack noted she agreed with Mr. Zanardi in that this new information should be considered in moving forward. She had concerns about the effect on the volume of homes and neighborhoods. There is an option to outright ban it. She was also concerned about it going over to recreational marijuana and not simply medical marijuana.

Chairman Lavy asked if the public had any comments.

Attorney Michael Cronin introduced himself noting he represents the Scherbers who live next to Airport Industrial Park Road. He indicated he was aware of Attorney Royston's opinion and didn't prepare a separate one. For the record, he stated he agreed with Attorney Royston's conclusion and all its issues.

Attorney Cronin submitted for the record the actual copy of the Town of Harwinton Zoning Regulations which prohibited Medical Marijuana Dispensaries and Production Facilities, effective August 28, 2015 (Exhibit E).

Attorney Cronin submitted for the record a copy of an article from Zip06.com in which the Guilford Planning & Zoning Commission voted (5 to 2) on January 6, 2016 to ban Medical Marijuana Dispensaries and Production Facilities and gave all the reasons (Exhibit F).

Attorney Cronin noted they are strongly in favor of an outright ban. As a fall back position, they thought the only zone appropriate for this type of use would be the CDD zone on Inspiration Lane. Any other zone would be inappropriate.

John Schroeder noted he just learned today this had been discussed at a public hearing last month. He appreciated the opportunity to talk about it. He further noted this is a big deal and should not be taken lightly. He was pleased with the fact Commission members were being open minded. That was a good thing.

Mr. Schroeder noted he heard on the news today, that a Bill was formally introduced

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in the State Legislature about recreational marijuana.

Schroeder appreciated the open mindedness from some of the members in being cautious in deliberations and discussions. He noted he has 3 kids and been working for 20 years to keep them on the straight and narrow. There are temptations out there and this is just another one especially if it goes to recreational use. He stated to have it within feet or a mile of his house “scares the crap out of me.”

Schroeder further noted Attorney Royston's report was compelling. In previous meeting discussions, the Commission wondered if it could prohibit a use and it seems there is legal precedent to do so. The worse case scenario would be that the Town would be sued and that bridge would be crossed when if it came to be. There are very compelling arguments. Every one of them is valid as far as Chester is concerned.

Schroeder asked Commission members if there were any other uses in town that are prohibited. Chairman Lavy noted nothing specific is prohibited, but if its not in the regulations, then it is prohibited. Schroeder asked if a strip club would be prohibited. The response was it is not in the regulations so it wouldn't be allowed in Town. Michael Sanders noted the only way to control something like that would be to specifically say where it could go and consider the effects on the neighborhood.

John Schroeder noted he was adamantly opposed and hoped the Commission thinks about this carefully.

Jon Lavy noted the Commission has 3 choices -

- Continue this hearing until next month and think about it.
- If the Commission decides to make changes recommended by the public, then withdraw and recraft the regulation as it would be a major change.
- If the Commission decided to do an outright ban, then withdraw and redraft a new regulation.

Sally Murray noted a number of sources and citizens have cited a concern that marijuana is a Class 1 controlled substance. Isn't opium classified the same? Physicians prescribe this all the time. Why is this different. Is it because the State Legislature decided to treat it differently?

Attorney Royston noted under Federal law, marijuana is an illegal substance. However, Congress passed a funding law which prohibited funding for any enforcement of the illegal substance against any State allowed production or dispensary facilities. The States then considered whether or not to allow production

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facilities, dispensaries and recreational marijuana as a non-criminal offense. CT is one of those states that said it will allow the medical dispensaries and production facilities and passed that law. Royston noted he also looked at an amendment to allow towns to outright ban it. That law didn't pass, but there was no history of reasons for the non-passage. The State Legislature allows the facilities where, how and under what protections.

Attorney Royston noted the growing of opium and marijuana are allowed under agriculture or farming. That is a concern and the impetus for regulating it in some fashion. The simple answer to the question is that passing the law and then passing on to the towns the ability or need to regulate it under Zoning to protect towns from unintended consequences of State law and Federal inconsistency. Royston reiterated this particular use could be considered legal under the Zoning Regulations as an agricultural plant.

Attorney Royston noted the first basic decision is do you want to ban it outright. In general, the reasons in the Harwinton and Ridgefield decisions are very similar and things you should consider (proximity of the services, zones that would be appropriate, proximity of other uses). Banning is a difficult question. Other people have banned it and it was supported. The Supreme Court case says the regulation includes "up to and including outright ban." That's significant. The good news is if someone challenges this, it would probably be more of a national question and you can believe those people that are supportive of the concept of banning will come out.

John Schroeder noted Attorney Royston indicated one would be hard pressed to identify what use a strip club would fall under. Schroeder noted, however, medical marijuana could fall under medical centers, farming, retail and the Commission would be hard pressed to say no unless it outright prohibits it or regulates it. He further noted the arguments in Harwinton are very logical and reasonable unless the Commission wants to allow and regulate it and doesn't mind having it in Chester.

Chairman Lavy asked if the Commission bans it, how does the State respond to that. Could they override local Zoning? Attorney Royston noted the facilities would need to be permitted first by the State. The local Zoning Permit would come later. Mel Seifert asked if a proposed location was needed before going to the State.

Attorney Royston noted the State application materials require the applicant to submit a site plan identifying places of religious worship, public or private schools, hospitals or veterans' homes, etc. that are within 1000 feet of the proposed facility location. Sally Murray noted the State Statute specifically says 1000 feet. Attorney Royston noted a town can be more restrictive, but not less than the State.

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John Schroeder noted if farms and productions are allowed, who cares if its 20, 500 or 1000 feet from a Church. Chairman Lavy replied the State. Sally Murray noted that verbiage is based upon the original liquor laws. Mel Seifert noted even if we said a production facility would be okay in a particular zone, it would be by Special Exception and Section 130 requiring a public hearing. It would still be a tough burden. Attorney Royston noted if you regulate it, you deal with general standards under Section 130. You can also have special standards applicable to a specific use as a supplement under Section 130.

Mel Seifert noted the propane farm had a burden of proof. As the regulation was phrased, we didn't allow anything that was hazardous, fire, or explosive, etc. The Commission modified the regulation and its even harder now. Section 130 was specifically made applicable. Attorney Cronin noted he was present for the propane hearings. That facility was found to be dangerous, but it took a lot of concern and arguments before making that final determination. Michael Sanders noted the Commission spent a lot of time going over the National Fire Code and did a lot of research.

Chairman Lavy noted there is a moratorium in place which hopefully will get extended this evening.

John Schroeder noted once a regulation is written, it will come in and be allowed.

Chairman Lavy noted the Commission has heard from Attorney Royston, the public and Commission members. Do we want to withdraw this regulation, revisit it and come back to the public at a later date?

**Motion by Murray, second by Zanardi, to recess at 8:40 PM Continued Public Hearing to add Section 117 to the Zoning Regulations. Unanimously Approved.**

The second public hearing was opened at 8:41 PM. Sally Murray read the Notice of Public Hearing into the record, said notice having been published in the Hartford Courant on January 28 and February 4, 2016.

Notice is hereby given that the Chester Planning & Zoning Commission will hold a public hearing on Thursday, February 11, 2016, at 7:30 PM at the Chester Town Hall, 203 Middlesex Avenue, Chester, Connecticut for the purpose of extending the current moratorium on marijuana producers and dispensaries within the Town of Chester until August 31, 2016.

John Schroeder noted he was in favor of extending the moratorium. No one else

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spoke at this time.

**Motion by Sanders, second by Joslow, to close Public Hearing for Medical Marijuana Moratorium Extension at 8:45 PM. Unanimously Approved.**

**Motion by Murray, second by Sanders, to approve Extension of Marijuana Moratorium for Production and Dispensary Facilities until August 31, 2016. Unanimously Approved.**

The continued public hearing for Section 117, Medical Marijuana Production and Dispensary Facilities was reconvened.

**Motion by Murray, second by Zanardi, to withdraw Petition for proposed new Section 117 Medical Marijuana Dispensary and Production to give Commission an opportunity to review information provided to it from the public, Commission Counsel and Commission members and to recraft a regulation. Unanimously Approved.**

Respectfully submitted,

*Sally Murray*      /jrb

Sally Murray, Secretary