

**INTRODUCTION
CHARTER TOWNSHIP OF HARRISON
MACOMB, MICHIGAN
ORDINANCE NO. 402**

AN ORDINANCE TO REGULATE PATIENT CAREGIVER ACTIVITIES PURSUANT TO THE MICHIGAN MEDICAL MARIHUANA ACT AND PERSONS OVER 21 ACTIVITIES PURSUANT TO THE MICHIGAN REGULATION AND TAXATION ACT; PROVIDE PENALTIES, REPEALER AND SEVERABILITY.

IT IS HEREBY ORDAINED BY THE CHARTER TOWNSHIP OF HARRISON:

Section 1. Article IV, Section 14.23 of the Zoning Code of Ordinances, Charter Township of Harrison, Michigan, is hereby created to read as follows:

(1) Intent and purpose.

On November 4, 2008, Michigan voters approved a ballot initiative that legalized medical marihuana and on December 4, 2008, Michigan's Medical Marihuana Act, MCL 333.26421, et seq. ("MMMA"), took effect allowing both patients and/or their caregivers to cultivate medical marihuana within an enclosed, locked facility in order for those individuals to be entitled to the MMMA protections. As such, these enclosed locked facilities have been located on various locations of varying zoning classifications within the Township.

The Stille-Derossett-Hale Single State Construction Code Act 230 of 1972 (MCL 125. 1501, et seq.) allows a local unit of government to legally adopt and enforce the state building code at the local level. The purpose of the building code is to ensure public health, safety, and welfare by protecting life and property from all hazards related to the design, erection, repair, removal, demolition, or use and occupancy of buildings, structures, or premises. This is in relation to structural strength, adequate egress facilities, sanitary equipment, light and ventilation, and fire safety. Building permits are required when construction or alteration of a structure is in order when a patient caregiver has made alterations to a structure to support the cultivation of marihuana.

Since the passage of the Act, a caregiver's cultivation of marihuana particularly, within residential districts within the Township, has resulted in problems with insufficient or improper electrical supplies, problems with ventilation leading to mold, offensive odors, other health hazards and/or other hazards which are associated with the cultivation of marihuana in residential settings.

The Michigan Zoning Enabling Act, MCLA 125.3101 et. seq., ("MZEA") provides the Township with statutory authority to regulate land use within the Township through its Zoning Ordinance. The Michigan Supreme Court in the recent case of DeRuiter v Byron Township, 505 Mich 130 (2020), found that a township's zoning ordinance that geographically restricted such caregiver marihuana cultivation to a particular zoning district did not directly conflict with the

MMMA and the township had the authority under the MZEA to require zoning permits and permit fees for the use of buildings and structures within its jurisdiction.

Therefore, this Article as proposed, is intended to permit those persons in need of marihuana for medicinal purposes as allowed under the State Acts as defined herein, to be afforded a reasonable opportunity to be treated and for those persons who are permitted to furnish medical marihuana, to furnish it within the limitations of the State Acts and the geographical restriction imposed by the Zoning Ordinance in order to protect public health, safety, and welfare.

This Article is also intended to protect and preserve the public health, safety and welfare of the community, the quality of life and the stability of property values including but not limited to the value of residential, commercial, and industrial districts.

This Article is intended to prohibit a caregiver's cultivation of marihuana in residential zoning district and continues to prohibit same in commercial districts, in order to protect and preserve peace, order, property and safety of persons as a result of issues associated with the growth of marihuana in residential and commercial districts including problems with insufficient or improper electrical supply, problems with ventilation leading to mold, offensive odors, or other health hazards and other hazards which are associated with the cultivation of marihuana in residential and commercial settings and which is otherwise often difficult to detect and regulate. The MZEA provides the Township with statutory authority to impose zoning limitations as set forth in this Article. The Township's zoning authority as it relates to Patient Care Giver Operations pursuant to the MMMA has also been upheld by the Michigan Supreme Court in the recent case of *DeRuiter v Byron Township*, 505 Mich 130 (2020).

(2) Definitions. [The following words, terms and phrases, when used in this subsection, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

a. MMMA means to the Michigan Medical Marihuana Act, MCL 333.26421 et seq. currently, or as amended. ("Act or "MMMA")

b. Registered primary care giver means to a person meeting the definition of caregiver under the MMMA and who has been issued and possesses a registry identification card and possesses the documentation that constitutes a valid registry under the MMMA.

c. Marihuana means that term as defined in Section 7106 of the Public Health Code, 1978 PA 368, MCL 333.7106.

d. Medical use means the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transportation of marihuana, or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition, or symptoms associated with the debilitating medical condition, as further defined under the MMMA.

e. Registered qualifying patient means a person meeting the definition under state law and who has been issued and possesses a registry identification card which is valid under the MMMA, as amended.

f. Enclosed locked facility means a closet, room, or other comparable stationary and fully enclosed area equipped with secure locks or other functioning security devices that permit access only by a registered primary care giver, or registered qualifying patient. Marihuana plants grown outdoors, are considered to be in an enclosed, locked facility if :they are not visible to the unaided eye from an adjacent property when viewed by an individual at ground level, or from a permanent structure and are grown within a stationary structure that is enclosed on all

sides, except for the base, by chain-link fencing, wooden slats, or a similar material that prevents access by the general public and that it is anchored, attached, or affixed to the ground; located on land that is owned, leased, or rented by either the registered qualifying patient, or a person designated through the department registration process, as the primary giver, for the registered qualifying patient, or patients for whom the marihuana plants are grown; and equipped with functioning locks or other security devices that restricts access to only the registered qualifying patient, or the registered primary caregiver, who owns, leases, or rents the property on which the structure is located. Enclosed, locked facility includes a motor vehicle if both of the following conditions are met:

1. The vehicle is being used temporarily to transport living marihuana plants from one location to another with the intent to permanently retain those plants at the second location.

2. An individual is not inside the vehicle unless he or she is either the registered qualifying patient to whom the living marihuana plants belong, or the individual designated through the Department of Registration process as the primary caregiver for the registered qualifying patient.

g. Transfer means to convey, sell, give, deliver, or allow the possession by another person or entity

h. MRTMA means to the Michigan Regulation and Taxation of Marihuana Act Initiated Law 1 of 2018, MCL 333.27952 et. seq currently, or as amended. (“MRTMA”)

i. Zoning Ordinance means the Zoning Ordinance of the Charter Township of Harrison.

j. Other provisions and terms. The other provisions and terms of the MMMA and MRTMA for purposes of deferential context are incorporated by reference as though more fully restated herein.

(3) Medical marihuana for registered qualifying patients or any individual over the age of twenty-one (21).

Registered qualifying patients, or visiting qualified patients and individuals over the age of twenty-one years old, may use, possess, and store medical marihuana as provided in the MMMA, MCL 333.26421 et seq as amended, and marihuana as provided in the MRTMA, MCL 333.27952 et. seq as amended, and as further regulated herein.

a. A registered qualifying patient and individuals over the age of twenty-one years of age:

1. May use, possess and store marihuana in their principal residence within the Township for personal use only, and shall comply at all times and in all circumstances with the Act, MRTMA and the General Rules of the Michigan Community Health or the Michigan Department of Licensing and Regulatory Affairs, as they may be amended from time to time.

2. May only cultivate marihuana for him or herself in compliance with the MMMA and the MRTMA, on a residentially zoned parcel or otherwise authorized for residential use and on a parcel zoned within the Industrial Medical Marihuana District, in an enclosed locked facility, inaccessible on all sides and equipped with locks or other security devices that permit access only by the registered qualifying patient and individuals twenty-one years or older.

3. All necessary building, electrical, plumbing, and mechanical permits shall be required and obtained prior to any alterations of any portion of the structure in support of or in association with the cultivation of marihuana, or for the erection of an accessory structure meeting the definition of an enclosed locked facility located on the residential premises.

4. The storage of any chemicals such as herbicides, pesticides, and fertilizers, shall be subject to inspection and approval by the Harrison Township Building Department.

5. The separation of plant resin from a marihuana plant by butane extraction or any other method that utilizes a substance with a flashpoint below 100 degrees Fahrenheit in any public place, a motor vehicle, inside a residential structure or the curtilage of a residential structure is prohibited.

6. If a room with windows is utilized as a marihuana-cultivation location, any lighting methods that exceed usual residential use between the hours of 11:00 p.m. and 67:00 a.m. shall employ shielding methods, without alteration to the exterior of the residence or dwelling unit, to prevent ambient light spillage that causes or creates a distraction or nuisance to adjacent residential properties.

7. If the registered patient, or individual twenty-one years or older, is not the owner of the premises, then written consent must be obtained from the property owner to ensure the owner's knowledge of the use of the premises as permitted by this section, and the registered patient and individual twenty-one years or older shall maintain written proof that the use of the property under this section is approved by the property owner.

8. No person other than the registered patient or individual twenty-one years or older shall be engaged or involved in the growing, processing, handling of marihuana.

9. Use of the registered patient's residential dwelling unit for medical marihuana or an individual twenty-one years or older for recreational marihuana related purposes, shall be clearly incidental and subordinate to its use for residential purposes. Not more than one hundred fifty (150) square feet of any residential dwelling unit and/or accessory structure on a residential lot, shall be used for the growing, processing, and handling of medical or recreational marihuana. Any modifications to the dwelling unit made for the purpose of cultivating medical or recreational Marihuana shall comply with all applicable building, electrical, mechanical, and fire safety code requirements, including all requisite permit applications and related inspections. No part of an accessory building, detached garage, pole barn, or similar building or structure shall be used for the growing, processing, or distribution of medical or recreational marihuana unless such building or structure has been inspected and approved for the building, electrical, mechanical, and fire safety requirements of such use and fits the definition of an enclosed, locked facility.

10. No equipment or process shall be used in growing, processing, or handling medical or recreational Marihuana which creates noise, vibration, glare, light, fumes, odors, or electrical interference detectable to the normal senses at or beyond the property line of the registered patient's or individuals over the age of twenty-one's residential property. In case of electrical interference, no equipment or process shall be used which creates visual or audible interference with any radio, television, or similar receiver off the premises or causes fluctuation of line voltage off the premises.

11. Marihuana plants grown in an outdoor enclosed lock facility shall be further subject to the requirements of Section 5.02(c) and (d) of the Zoning Ordinance

12. The registered qualifying patient, individuals over the age of twenty-one and the owners, agents, and employees of the parcel at which marihuana for personal or medical use is present are responsible jointly and severally for compliance with this section.

(4) Registered Primary Caregiver Operations. Any registered primary caregiver may acquire, possess, cultivate, manufacture, transfer, or transport medical marihuana compliant with the MMMA, MCL 333.26421 et seq. as amended. Cultivation of medical Marihuana by a

registered primary care giver as defined under the MMMA, is prohibited in any zoning district, except the Industrial Medical Marihuana District, section 14.22 of this ordinance and further subject to the following:

(a) A registered primary caregiver may only grow, cultivate, manufacture, process, and store marihuana on a parcel in the IND-Industrial Medical Marihuana District; sections 14.22 of this ordinance and in an enclosed locked facility.

(b) The registered primary caregiver is responsible for utilizing an enclosed locked facility upon the industrial zoned parcel, compliant with the MMMA for cultivating, growing, manufacturing, processing, and storing marihuana for medical use only. The enclosed locked facility utilized by the primary registered caregiver, shall provide separation by fully enclosed walls, or fences, for plants that are grown on behalf of each registered qualifying patient, on whose behalf the registered primary caregiver is furnishing Marihuana for medical use, so it is accessible only to the primary caregiver and registered patient. The processing and storing of medical marihuana is permitted only by registered primary caregivers and registered qualifying patients.

(c) The registered primary caregiver may grow up to a maximum of 72 plants, but no more than 12 plants for each individual registered qualifying patient as set forth in the MMMA.

(d) The registered primary caregiver is responsible for providing the security necessary to assure that the growing marihuana and usable product are accessible for use only by the primary registered caregiver for transfer to, only to registered qualifying patients who are registered to the registered primary caregiver and must fully comply with the provisions of the MMMA.

(e) A Certificate of Occupancy is required and must be obtained from the Township before the presence of marihuana is allowed on the parcel.

(f) Marihuana plants grown outdoors in an enclosed, locked facility shall be subject to the requirements of this Article as well as Section 5.01 of the Zoning Ordinance.

(g) The consumption, transfer, or use of Marihuana, in public, or a place opened to the public is prohibited.

(5) Certificate Required. The operations of a registered primary caregiver within the Industrial Medical Marihuana Zoning district shall only be permitted upon the issuance of a Zoning Certificate to Cultivate Medical Marihuana. Such certificate is required to be renewed annually and is subject to inspections by the building and fire department as well as the and police department for compliance with the provisions of this Ordinance and for the issuance of the certificate and its renewals.

(a) A complete and accurate application shall be submitted on a form provided by the Township along with submission of the application fee. The application fee and renewal fee shall be an amount determined by resolution of the Township Board.

(b) The certificate application shall include the name and address of the applicant; the address of the property; a copy of the current state registration card issued to the primary caregiver; a full description of the nature and types of equipment which will be used in marihuana cultivation and processing; and a description of the location at which the use will take place. The planning and zoning administrator may require additional information necessary to demonstrate compliance with all requirements. The planning zoning administrator shall review the application to determine compliance with this Ordinance, the MMMA and the MRTMA and

any applicable Michigan Regulatory Agency General Rules. A certificate shall be granted if the application demonstrates compliance with this Ordinance and the MMMA

(c) The use shall be maintained in compliance with the requirements of this Ordinance and the MMMA. Any departure shall be grounds to revoke the certificate and take other lawful action. If a certificate is revoked, the applicant shall not engage in the activity unless and until a new Zoning Authorization to Cultivate Medical Marihuana certificate is granted.

(d) Information treated as confidential under the MMMA, including the primary caregiver registry identification card and any information about qualifying patients associated with the primary caregiver, which is received by the Township, shall be maintained separately from public information submitted in support of the application. It shall not be distributed or otherwise made available to the public and shall not be subject to disclosure under the Freedom of Information Act.

(6) Nonconforming Status. Registered Patient Caregivers that have applied for and have obtained building, electrical, plumbing and/or mechanical permits for the cultivation of medical marihuana within any zoning district other than the IND-Industrial Medical Marihuana District, prior to the enactment of this Ordinance, shall enjoy nonconforming use status from the provisions of this Ordinance and shall be permitted to continue subject to section 16.01 of this Ordinance.

(7) Violations Penalty.

Any person, persons, firm or corporation, or anyone acting on behalf of said person, persons, firm or corporation, convicted of a violation of any of the provisions of this Article shall be a misdemeanor and, shall, upon conviction thereof, be subject to a fine of not more than \$500.00 or 90 days in jail or both and the costs of prosecution at the discretion of the court. Each day such violation continues shall be deemed a separate offense. The imposition of any sentence shall not exempt the offender from compliance with the requirements of this Article.

Section 2. Article XI, Section 11.19 of the Zoning Code of Ordinances, Charter Township of Harrison, Michigan, is hereby deleted in its entirety.

Section 3. Article XVII, Section 17.26A1 of the Zoning Code of Ordinances, Charter Township of Harrison, Michigan, is hereby deleted in its entirety.

Section 4. Article XIX, Section 19.01 of the Zoning Code of Ordinances, Charter Township of Harrison, Michigan, is hereby amended to read as follows:

The provisions of this ordinance shall be administered and enforced by the township board through the building official or any other employees, police officers, inspectors and officials as the township board may delegate to enforce the provisions of the ordinance.

Section 5. Article XIX, Section 19.09 of the Zoning Code of Ordinances, Charter Township of Harrison shall be amended to read as follows:

Any use of land or of a dwelling, building or structure, including a tent, trailer coaches, mobile homes or recreational vehicle, used, erected, altered, razed or converted in violation of any of the provisions of this zoning ordinance section or a regulation adopted under it, is declared to be a public nuisance per se. and shall be abated by order of a court of competent jurisdiction. The court shall order such nuisance abated and the owner and/or agent in charge of such dwelling, building, structure, tent, trailer, coach, mobile home or land shall be adjudged guilty of maintaining a nuisance per se.

The township supervisor or his or her designate shall administer and enforce the zoning ordinance.

Uses of land and dwellings, buildings or structures, including tents, trailer coaches and mobile homes, used, erected, altered, razed or converted in violation of any provision of this Article, are hereby declared to be a nuisance per se. The court shall order such nuisance abated and the owner and/or agent in charge of such dwelling, building, structure, tent, trailer, coach, mobile home or land shall be adjudged guilty of maintaining a nuisance per se.

Section 6. SEVERABILITY

If any section, subsection, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion of this Ordinance, and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 7. REPEAL

All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

Section 8. EFFECTIVE DATE

This Ordinance shall be effective seven (7) days from the date of publication hereof.

Motion by Larry Tomenello, Treasurer and second by Brian Batkins, Trustee to introduce an ordinance to regulate patient caregiver activities pursuant to the Michigan Medical Marihuana Act and persons over 21 activities pursuant to the Michigan Regulation and Taxation Act; provide penalties, repealer and severability and for the Clerk to publish a notice of introduction and that a copy be made available for review at the Township Offices during normal business hours.

**ROLL CALL: AYES: Tomenello, Batkins, Bratto, Olgiati, Rose, Wit
 NAYS: None
 EXCUSED: Verkest
 MOTION CARRIED**