

VALLEY TOWNSHIP
ALLEGAN COUNTY, MICHIGAN
ORDINANCE _246___

AMENDMENT TO THE ZONING ORDINANCE OF VALLEY TOWNSHIP

Adopted: December 13, 2011

Effective: December 30, 2011

An Ordinance to amend the Valley Township Zoning Ordinance by the addition of Chapter XXI, Medical Marihuana, to regulate primary caregivers for medical marihuana within the Township; and to provide for an effective date of said Ordinance.

The Valley Township Zoning Ordinance shall be amended by the addition of Chapter XXI, Medical Marihuana, to read as follows:

CHAPTER XXI, MEDICAL MARIHUANA

SECTION 21.01: Purpose and General Provisions

In November of 2008, voters in the State of Michigan approved Proposal 08-1, a referendum authorizing the use of marihuana for certain medical conditions. The intent of the referendum was to enable certain specified persons who comply with the provisions of Initiated Act 1 of 2008 being MCL 333.26421, et. seq., known as the Michigan Medical Marihuana Act (MMMA) to legally, possess, cultivate, use and/or distribute marihuana without fear of criminal prosecution and civil sanctions under state law in limited, specific circumstances.

The purpose of this ordinance is to recognize the fundamental intent of the Act to allow the creation and maintenance of an intimate and confidential patient-caregiver relationship to facilitate the limited cultivation, distribution, and use of marihuana for medical purposes and to regulate in a manner that does not conflict with the Act.

SECTION 21.02: Terms and Words Defined.

General Rules of the Michigan Department of Community Health: General Rules of the Michigan Department of Community Health, Michigan Admin Code, R 333.101 through R 333.133, issued in connection with the Michigan Medical Marihuana Act, as amended.

Home occupation: A home occupation is any occupation or profession carried entirely within the home (not including accessory structures) by one or more members of the family residing on the premises plus not more than one person other

than a member of the immediate family.

Marihuana, also known as *Medical Marihuana*, also known as *Marijuana*, also known as *Cannibis*: That term shall have the meaning given to it in Section 7601 of the Michigan Public Health Code, 1978 PA 368, as amended, MCL 333.7106 *et seq.*, as is referred to in the Michigan Medical Marihuana Act. Any other term pertaining to marihuana used in this ordinance and not otherwise defined shall have the meaning given to it in the Michigan Medical Marihuana Act and/or in the General Rules of the Michigan Department of Community Health issued in connection with that Act.

Marihuana Collective or Cooperative also known as *Compassion Club*: Any facility, structure, dwelling or other location where medical marihuana is grown, cultivated, processed, stored, transmitted, dispensed, consumed, used, given, delivered, provided, made available to and/or distributed by two or more of the following: a registered primary caregiver or a registered qualifying patient, as defined by the Michigan Medical Marihuana Act (the "Act"), or a person in possession of an identification card issued under the Act or in possession of an application for such an identification card. The term "collective" or "cooperative" shall not apply to a registered primary caregiver that provides assistance exclusively to his/her five (5) or fewer designated qualifying patients in strict accordance with the Michigan Medical Marihuana Act or the General Rules of the Michigan Department of Community Health. A "marihuana collective or cooperative" shall not include the following uses: a State-licensed health care facility; a State-licensed residential care facility for the elderly or infirmed; or a residential hospice care facility, as long as any such use complies strictly with applicable laws and rules of the State of Michigan. It is unlawful to establish or operate a profit or nonprofit medical marihuana dispensary, compassion club, collective or cooperative within Valley Township.

Marihuana Dispensary or Dispensary: Any facility, structure, dwelling or other location where medical marihuana is grown, cultivated, processed, stored, transmitted, dispensed, consumed, used, given, delivered, provided, made available to and/or distributed by two or more of the following: a registered primary caregiver or a registered qualifying patient, as defined by the Michigan Medical Marihuana Act (the "Act"), or a person in possession of an identification card issued under the Act or in possession of an application for such an identification card. The term "dispensary" shall not apply to a registered primary caregiver that provides assistance exclusively to his/her five (5) or fewer designated qualifying patients in strict accordance with the Michigan Medical Marihuana Act or the General Rules of the Michigan Department of Community Health. A "marihuana dispensary" shall not include the following uses: a State-licensed health care facility; a State-licensed residential care facility for the elderly or infirmed; or a residential hospice care facility, as long as any such use complies strictly with applicable laws and rules of the State of Michigan. It is unlawful to establish or operate a profit or nonprofit medical marihuana dispensary, compassion club, collective or cooperative within Valley Township.

Medical Use of Marihuana: The acquisition, possession, cultivation, manufacture,

use, internal possession, delivery, transfer or 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 defined under the Michigan Medical Marihuana Act.

Michigan Medical Marihuana Act: PA 2008, Initiated Law 1, MCL 333.26421 *et seq.*, as amended.

SECTION 21.03: Permitted Uses.

No building shall be erected, converted, enlarged, reconstructed, or structurally altered, nor shall any building or land be used, designed, or arranged for any purpose other than is permitted in the district in which the building or land is located. Where a use is defined or listed as a permitted use or a special use in a given zoning district, such use shall not be permitted in any zoning district where it is not listed. This is true even if such use might be similar to a listed permitted use.

SECTION 21.04 Home Occupations.

- A. Medical Marihuana as defined in this ordinance shall be an approved home occupation. Applications are filed with the Zoning Administrator for review and approval specifying the home occupation, its use, size, and the specific measures by which compliance with this Section will be maintained.
- B. The use of the dwelling for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than twenty percent (20%) of the square footage of the dwelling shall be used in the conduct of the home occupation (not including basement area). No part of the home occupation shall be conducted in any accessory building.
- C. There shall be no change in the outside appearance of the building that would indicate the presence of a home occupation or depart from the residential character of the dwelling or the immediate neighborhood.
- D. There shall be no sale of products or services except as are produced on the premises or those products which may be directly related to and incidental to the home occupation. There shall be no outdoor, on-site storage of materials, equipment, or accessory items and/or display of materials, goods or supplies used in the conduct of the home occupation.
- E. The home occupation must not require parking spaces in excess of two (2) spaces, located in the driveway or on the street directly adjacent to the property.
- F. No equipment or process shall be used in the home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the premises. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises or causes

fluctuations in the line voltage off the premises.

- G. No more than two customers, clients, students or patients shall be on the premises in which a home occupation is located at any one time.
- H. Visits by customers, clients, students or patients to a home occupation shall be limited to between the hours of 7:00 am to 8:00 pm, local time. A relative on premises for purposes other than availing him or herself of the services of a home occupation shall not be required to adhere to the requirements of this subsection (H).
- I. All applicable building, housing, fire and other local or state codes and ordinances shall be adhered to for home occupations.

SECTION 21.05: Compassion Club or Organization; Dispensaries; Smoke Houses; Other Prohibitions

- A. Dispensaries are strictly prohibited.
- B. Smoke houses are strictly prohibited.
- C. Compassion Clubs and Organizations are strictly prohibited.
- D. Distribution by a primary caregiver to anyone other than his or her own designated patient(s) is strictly prohibited.
- E. Except as otherwise provided in this Ordinance, no other forms of medical marihuana cultivation, use, consumption, or distribution is allowed in Valley Township.
- F. No person can claim legal non-conforming status for any activities or action taken prior to the enactment of this ordinance.
- G. No person, even if authorized to use medical marihuana under this Ordinance, may violate the MMMA Act, or any other provision of state or local law.

SECTION 21.06.: Registered Primary Caregiver as a Home Occupation

A registered primary caregiver, as defined by and in compliance with the General Rules of the Michigan Department of Community Health (the "General Rules"), the Michigan Medical Marihuana Act (the "Act"), and the requirements of this section, shall be allowed as a home occupation. Nothing in this section, or in any companion regulatory section adopted in any other provision of this Ordinance, is intended to grant, nor shall they be construed as granting immunity from prosecution for growing, sale, consumption, use, distribution or possession of marihuana not in strict compliance with the Act and the General Rules. Also, since federal law is not

affected by the Act or the General Rules, nothing in this section, or in any companion regulatory section adopted in any other provision of this Ordinance, is intended to grant, nor shall they be construed as granting immunity from criminal prosecution under federal law. The Act does not protect users, caregivers or the owners of properties on which medical use of marihuana is occurring from federal prosecution, or from having their property seized by federal authorities under the Federal Controlled Substances Act. The following requirements for a registered primary caregiver shall apply:

1. The medical use of marihuana shall comply at all times and in all circumstances with the Michigan Medical Marihuana Act and the General Rules of the Michigan Department of Community Health, as they may be amended from time to time.
2. A registered primary caregiver must be located outside of a 1,000-foot radius from any school or library, as defined by the Michigan Public Health Code, 1978 PA 368, as amended, MCL 333.7410, to insure community compliance with federal "Drug-Free School Zone" requirements and outside a 500 foot radius of any church or township park.
3. Not more than one primary caregiver shall be permitted to service qualifying patients on a parcel.
4. Not more than five qualifying patients shall be assisted with the medical use of marihuana within any given calendar week.
5. All medical marihuana shall be contained within the main building in an enclosed, locked facility inaccessible on all sides and equipped with locks or other security devices that permit access only by the registered primary caregiver or qualifying patient, as reviewed and approved by the Zoning Administrator of Valley Township.
6. All necessary building, electrical, plumbing and mechanical permits shall be obtained for any portion of the residential structure in which electrical wiring, lighting or watering devices that support the cultivation, growing or harvesting of marihuana are located.
7. If a room with windows is utilized as a growing location, any lighting methods that exceed usual residential periods between the hours of 11:00 pm to 7:00 am, local time, shall employ shielding methods, without alteration to the exterior of the residence, to prevent ambient light spillage that may create a distraction for adjacent residential properties.
8. That portion of the residential structure where energy usage and heat exceeds typical residential use, such as a grow room, or where the storage of any chemicals such as herbicides, pesticides and fertilizers occurs, shall be subject to inspection and approval by the Fire Department to ensure compliance with applicable provisions of the fire code.
9. A registered primary caregiver, as defined by and in compliance with the

General Rules of the Michigan Department of Community Health (the “General Rules”) and the Michigan Medical Marihuana Act (the “Act”), assisting, exclusively, one (1) registered qualifying patient, as defined by and in compliance with the General Rules and the Act, in the medical use of marihuana shall not be required to comply with the home occupation requirements of this section, provided that each of the following conditions are continuously met:

- (a). The registered primary caregiver and the registered qualifying patient reside in the same residential dwelling.
- (b). The registered qualifying patient is the spouse, child, sibling, parent or immediate family member of the registered primary caregiver.
- (c). The medical use of marihuana complies at all times and in all circumstances with the Michigan Medical Marihuana Act and the General Rules of the Michigan Department of Community Health, as they may be amended from time to time.
- (d). All medical marihuana shall be contained within the main building in an enclosed, locked facility inaccessible on all sides and equipped with locks or other security devices that permit access only by the registered primary caregiver or registered qualifying patient.

SECTION 21.07: Effective date and conflicting ordinances.

This ordinance shall take effect eight days following proper publication of notice of its adoption in accordance with and subject to Michigan Public Act 297 of 1996. All ordinances or parts of ordinances in conflict herewith are hereby repealed.