

INTRODUCTION
CHARTER TOWNSHIP OF HARRISON
MACOMB COUNTY, MICHIGAN
AMENDMENT TO ZONING ORDINANCE NO. 308

ORDINANCE NO. 308.3

AN ORDINANCE TO AMEND ARTICLE XI; XIV; XVII; XXI OF THE CHARTER TOWNSHIP OF HARRISON ZONING ORDINANCE TO ALLOW FOR CERTAIN MEDICAL MARIHUANA FACILITY(S) AS PERMITTED USES WITHIN THE INDUSTRIAL (IND) DISTRICT; PROVIDE FOR ZONING REGULATIONS FOR MEDICAL MARIHUANA FACILITIES AND PRIMARY CARE GIVER ACTIVITIES

The Charter Township of Harrison hereby ordains:

Section 1. Article XI, Section 11.19 of the Charter Township of Harrison Zoning Ordinance is hereby amended to read as follows:

A. Intent.

1. Voters in the State of Michigan approved a referendum authorizing the use of marihuana for certain medical conditions, being the Michigan Medical Marihuana Act, MCL 333.26421, et seq. ("the Act").
2. The specified intent of the Act is to enable certain specified persons who comply with the registration provisions of the law to acquire, possess, cultivate, grow and use marijuana as well as to assist specifically registered individuals identified in the statute without being subject to criminal prosecution under state law in limited, specific circumstances.
3. Despite the specific provisions of the Act and the activities identified in the Act, marihuana remains a controlled substance (Schedule 1 drug) under Michigan law. The activities set forth the Act have a potential for abuse. Such activities should be closely monitored and, to the extent permissible, regulated by local authorities.
4. If not closely monitored or regulated, the presence of marihuana, even for the purposes specified by the Act, may present an increase for illegal conduct and/or activity which adversely affects the health, safety and welfare of the residents of Harrison Township.
5. Nothing in this ordinance shall be construed to allow persons to engage in conduct that endangers others or causes a public nuisance, or to allow use, possession or control of marijuana for non-medical purposes or allow any other activity relating to cultivation/growing, distribution or consumption of marijuana that is otherwise illegal.

B. Provisioning Facility. It shall be unlawful for any person or entity to own, manage, conduct, or operate a medical marijuana provisioning facility as defined by the Michigan Medical Marihuana Facility Licensing Act, PA 281 of 2016, or to participate as an employee, contractor, agent or volunteer, or in any other manner or capacity, in any provisioning facility in Harrison Township.

C. Registered primary caregiver. A registered primary caregiver, in compliance with the Act, the Administrative Rules promulgated by the State of Michigan (“Administrative Rules”) as amended from time to time and the requirements of this section, shall be permitted to grow marijuana as a Primary Caregiver in the IND industrial zone and Residential Zones R1; R1-A; R1-B; R1-C; R1-D; RM1; RM2, MHC_ as a home occupation pursuant to the requirements of Section 17.26(A1) of the Zoning Ordinance. Nothing in this section, or in any other regulatory provision, is intended to grant, nor shall they be construed as granting, immunity from criminal prosecution for growing, sale, consumption, use, distribution, or possession of marijuana not in strict compliance with the Act and the General Rules. Also, since federal law is not affected by the Act or General Rules, nothing in this section, or in any other regulatory provision, 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 the medical use of marijuana is occurring from federal prosecution, or from having their property seized by federal authorities under the federal Controlled Substances Act.

Section 2. Article XIV, Section14.06B5 of the Charter Township of Harrison Zoning Ordinance is hereby amended to read as follows:

5 Home occupation-Type 1 (section 17.26A.)

Section 3. Article XIV, Section14.06C5 of the Charter Township of Harrison Zoning Ordinance is hereby amended to read as follows:

5 Home occupation-Type II (section 17.26A.)

Section 4. Article XIV, Section14.07B5 of the Charter Township of Harrison Zoning Ordinance is hereby amended to read as follows:

5 Home occupation-Type 1 (section 17.26A.)

Section 5. Article XIV, Section14.07C5 of the Charter Township of Harrison Zoning Ordinance is hereby amended to read as follows:

5 Home occupation-Type II (section 17.26A.)

Section 6. Article XIV, Section14.08B4 of the Charter Township of Harrison Zoning Ordinance is hereby amended to read as follows:

4 Home occupation-Type 1 (section 17.26A.)

Section 7. Article XIV, Section14.08C5 of the Charter Township of Harrison Zoning Ordinance is hereby amended to read as follows:

5 Home occupation-Type II (section 17.26A.)

Section 8. Article XIV, Section 14.09B4 of the Charter Township of Harrison Zoning Ordinance is hereby amended to read as follows:

4 Home occupation-Type 1 (section 17.26A.)

Section 9. Article XIV, Section 14.09C5 of the Charter Township of Harrison Zoning Ordinance is hereby amended to read as follows:

5 Home occupation-Type II (section 17.26A.)

Section 10. Article XIV, Section 14.10B4 of the Charter Township of Harrison Zoning Ordinance is hereby amended to read as follows:

4 Home occupation-Type 1 (section 17.26A.)

Section 11. Article XIV, Section 14.10C5 of the Charter Township of Harrison Zoning Ordinance is hereby amended to read as follows:

5 Home occupation-Type II (section 17.26A.)

Section 12. Article XIV, Section 14.11B5 of the Charter Township of Harrison Zoning Ordinance is hereby amended to read as follows:

5 Home occupation-Type 1 (section 17.26A.)

Section 13. Article XIV, Section 14.12B4 of the Charter Township of Harrison Zoning Ordinance is hereby amended to read as follows:

4 Home occupation-Type 1 (section 17.26A.)

Section 14. Article XIV, Section 14.12C4 of the Charter Township of Harrison Zoning Ordinance is hereby amended to read as follows:

4 Home occupation-Type II (section 17.26A.)

Section 15. Article XIV, Section 14.13B4 of the Charter Township of Harrison Zoning Ordinance is hereby amended to read as follows:

4 Home occupation-Type 1 (section 17.26A.)

Section 16. Article XIV, Section 14.13C4 of the Charter Township of Harrison Zoning Ordinance is hereby amended to read as follows:

4 Home occupation-Type II (section 17.26A.)

Section 17. Article XIV, Section 14.20B of the Charter Township of Harrison Zoning Ordinance is hereby amended to add a new row in the table of permitted uses as follows:

23. Medical Marihuana Facilities: Grower; Processor; Secure Transporter, Safety Compliance Facility are permitted uses in Industrial Zoned Property north of Shook Road and subject to the Buffer District requirements set forth in Section 14.21.

Section 18. Article XIV Section 14.21 “Industrial Medical Marihuana Buffer District” of the Charter Township of Harrison Zoning Ordinance is hereby created to read as follows:

A. Intent.

The Industrial Medical Marihuana District is intended to provide opportunities for the development of certain Medical Marihuana Facilities that have been granted a Permit by the Township and have been granted a State license pursuant to the MMFLA. The Township desires to allow approved Medical Marihuana Facilities to operate exclusively within those properties zoned Industrial (IND) that are north of Shook Road and that comply with the requirements of the District, in order to limit any secondary effects of such operations.

B. Buffer District

The Buffer District is defined as the area within 500 feet of the following:

- a. any private or public preschool, elementary, secondary, vocational or trade school, college or university
- b. any public park
- c. existing licensed child care center associated with a school
- d. any existing place of worship or religious assembly
- e. any Residential Zone R1;R1-A; R1-B; R1-C; R1-D; RM1;RM2;MHC; excluding the property owned by the Federal Government and commonly known as Selfridge Air National Guard Base.

A Licensee shall not operate a Medical Marihuana Facility within the Medical Marihuana Buffer District.

C. General Provisions

1. A Licensee shall not operate a marihuana facility at any place in the Township other than the address provided in the application on file with the Township Clerk

2. A Licensee shall operate the Medical Marihuana Facility in compliance with all applicable State and Township regulations for that type of Medical Marihuana Facility.

3. The distance requirements described in the Buffer District shall be computed by direct measurement in a straight line from the nearest property line of the land used for the purposes

stated in Section 14.21B to the nearest portion of the building, structure, or unit in which a medical marihuana facility is located.

Section 19. Article XVII, Section 17.26 (A) of the Charter Township of Harrison Zoning Ordinance is hereby amended to read as follows:

A. Home occupations Type I may be permitted in a residential district. Home offices that do not result in more traffic than is normal for residential districts shall be considered a permitted use and do not require special land use approval. Type I home occupations must register the location of the home occupation with the Township Building Department. All other home occupation requests shall be subject to the requirements of section 17.26B. No person other than members of the family residing on the premises shall be engaged in such occupation.

A1. Primary Caregiver Activities are permitted as home occupations as set forth in Section 11.19 of the Zoning Ordinance and are required to register the location of the grow activity with the Harrison Township Building Department and comply with the following requirements:

1. The medical use of marihuana shall comply at all times and in all circumstances with the Act and the General Rules of the Michigan Community Health or the Michigan Department of Licensing and Regulatory, as they may be amended from time to time;

2. A registered primary caregiver located within any Residential Zone or MHC Zone must be located outside of a 1,000-foot radius from any school or child care or day care facilities operated by a school; to insure community compliance with federal “drug-free school zone” requirements, playground, or housing facility owned by a public housing authority or public library or private library open to the public, nor within 100 feet of a public or private youth center, public swimming pool, or video arcade facility.

3. All medical marijuana shall be contained within 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.

4. All necessary building, electrical, plumbing and mechanical permits shall be obtained for any portion of the structure in which electrical wiring, lighting and/or watering devices that support the production of marijuana are located;

5. That portion of the structure where energy usage and heat exceeds typical use, such as a grow room, and the storage of any chemicals such as herbicides, pesticides, and fertilizers shall be subject to inspection and approval by the Harrison Township Fire Department to insure compliance with the Michigan Fire Protection Code.

6. The separation of plant resin from a marihuana plant by butane extraction in any public place, a motor vehicle, inside a residential structure or the curtilage of a residential structure is prohibited.

7. If a room with windows is utilized as a marihuana-growing location, any lighting methods that exceed usual residential use between the hours of 11:00 p.m. and 6:00 a.m. shall employ

shielding methods, without alteration to the exterior of the residence, to prevent ambient light spillage that causes or creates a distraction or nuisance to adjacent residential properties.

8. If the primary caregiver is not the owner of the premises, then either 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 or the primary caregiver shall maintain written proof that the use of the property as a home occupation under this section is not prohibited by the property owner.

9. No person other than the primary caregiver shall be engaged or involved in the growing, processing, dispensing, delivery, or handling of marijuana, except to the extent that the primary caregiver lawfully transfers medical marijuana to a qualifying patient to whom the primary caregiver is linked through the state registration system.

10. Use of the primary caregiver's residential dwelling for medical marijuana related purposes shall be clearly incidental and subordinate to its use for residential purposes. Not more than 25% of the gross finished floor area of the dwelling including the basement if any in single family dwellings, or 200 square feet of floor area of the dwelling, whichever is less, shall be used for the growing, processing, and handling of medical marijuana. Any modifications to the dwelling made for the purpose of cultivating medical marijuana 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 marijuana 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. Use of the accessory building, detached garage, pole barn or similar building used for the growing, processing and handling of medical marijuana shall be limited to no more than 25% of the gross floor area of same.

11. There shall be no visible change to the outside appearance of the primary caregiver's residential property or accessory structure or other visible evidence of the conduct of the medical marijuana operation occurring on the property.

12. No equipment or process shall be used in growing, processing, or handling medical marijuana which creates noise, vibration, glare, light, fumes, odors, or electrical interference detectable to the normal senses at or beyond the property line of the primary caregiver'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.

13. Nothing in this section, or in any companion regulatory provision adopted in any other provision of the Code of Ordinances, is intended to grant, nor shall they be construed as granting immunity from criminal prosecution for growing, sale, consumption, use, distribution, or possession of marihuana not in strict compliance with the Act, since federal law is not affected by the Act or the General Rules of the Michigan Department of Community Health, nothing in this section, or in any companion regulatory provision adopted in any other provision of this Code, is intended to grant, nor shall they be construed as granting, immunity from criminal

prosecution under federal law. Neither this Zoning Ordinance nor the Act protects user, caregivers or the owners of properties on which the medical use of marihuana is occurring from federal prosecution, or from having their property seized by federal authorities under the Federal Controlled Substance Act.

14. The location and operation of a marihuana facility pursuant to the provisions of the Michigan Medical Marihuana Facilities Licensing Act, Public Act 281 of 2016, MCL 333.27101 et seq., as a home occupation is prohibited.

Section 20. Article XXI, Section 21.02 of the Charter Township of Harrison Zoning Ordinance is hereby amended to add the following definitions in proper alphabetical order:

“Licensee” means a person holding a state operating license under the MMFLA.

“Marihuana” shall have the meaning given to it in Section 7106 of the Michigan Public Health Code, 1978 PA 368, MCL 333.7106.

“Medical Use of Marihuana” means that term as defined in the Medical Marihuana Act, MCL 333.26423S

“MMMA” means the Michigan Medical Marihuana Act, MCL 333.26421 et. seq. as amended from time to time.

“MMFLA” means the Medical Marihuana Facilities Licensing Act, MCL 333.2701, et. seq. as amended from time to time.

“MTA” means the Marihuana Tracking Act, MCL 333.27901 et.seq. as amended from time to time.

“Marihuana Board” means the Medical Marihuana Licensing Board created pursuant to Part 3 of the MMFLA.

“Medical Marihuana Facility” or “Facility” means one of the following:

- a. “Grower”. As that term is defined in the MMFLA
- b. “Processor”. As that term is defined in the MMFLA
- c. “Provisioning Facility”. As that term is defined in the MMFLA
- d. “Safety Compliance Facility”. As that term is defined in the MMFLA
- e. Secure Transporter. As that term is defined in the MMFLA

“Marihuana Infused Product” means that term as defined in the Medical Marihuana Facilities Licensing Act, PA 281 of 2016, MCL 333.27102.

“Patient” means a “registered qualifying patient or a “visiting qualifying patient as those terms are defined by the Michigan Medical Marihuana Act, MCL 333.26423.

"Primary Caregiver Operation” means a location where a Primary Caregiver can lawfully operate as permitted by the Medical Marihuana Act and this Ordinance. A Primary Caregiver Operation is not a Medical Marihuana Facility.

Motion by Adam Wit, Clerk and second by Bill Bitonti, Trustee to introduce the Zoning Ordinance Amendment recommended by the Planning Commission re: Medical Marijuana, MMFLA permitted uses and Patient Caregiver Home Occupations. This draft includes the following change recommended at by the Planning Commission: A limitation of 25% of the gross floor area when utilizing the use of the accessory structure on residential properties as a Patient Caregiver home occupation for medical marijuana related purposes. The Planning Commission suggested limiting the number of patient caregiver per residence. We did not include this amendment as we are of the opinion that such a limitation directly conflicts with the MMMA and the square footage limitation is a sufficient restriction on the size of any home occupation for patient caregivers. The Attorney also deleted the previous restriction requiring a Patient Caregiver operating within the industrial district to comply with the MMFLA buffer district. Again, such a restriction conflicts with the MMMA and recent case law. To publish a Notice of Introduction at the Charter Township of Harrison and that the full text may be reviewed in the Clerk's Office during business hours (8:00-4:30 p.m.).

**ROLL CALL: AYES: Wit, Bitonti, Batkins, Tomenello, Verkest
 NAYS: Servial, York
 EXCUSED: None
 MOTION CARRIED**