

ORDINANCE NO. 72

AN ORDINANCE OF THE CHARTER TOWNSHIP OF LANSING, INGHAM COUNTY, MICHIGAN, PROVIDING THAT THE CODE OF ORDINANCES, CHARTER TOWNSHIP OF LANSING, MICHIGAN, BE AMENDED BY ADDING CHAPTER 71 ("MEDICAL MARIHUANA") TO TITLE VI ("LICENSING") IN ORDER TO: PROVIDE FOR A TITLE FOR THE ORDINANCE; DESCRIBE THE INTENT OF THE ORDINANCE; DEFINE TERMS USED IN THE ORDINANCE; IDENTIFY FINDINGS OF FACT SUPPORTING THE ENACTMENT OF THE ORDINANCE; PROVIDE FOR THE LICENSING OF CAREGIVERS AND CAREGIVER LOCATIONS; DESCRIBE THE REQUIREMENTS OF THE APPLICATION FOR A LICENSE; IDENTIFY THE REQUIREMENTS FOR APPROVAL OF A LICENSE; DESCRIBE RESTRICTIONS ON LICENSES; IDENTIFY THE PROCEDURES AND REQUIREMENTS FOR LICENSE RENEWAL; IDENTIFY THE CIRCUMSTANCES FOR LICENSE REVOCATION; PROVIDE FOR THE PROCEDURE FOR APPEALING A DECISION RELATED TO LICENSING; IDENTIFY FINDINGS OF FACT RELATED TO RESTRICTIONS ON THE DISTRIBUTION OF MEDICAL MARIHUANA; PROVIDE CERTAIN RESTIRCTIONS ON THE DISTRIBUTION OF MEDICAL MARIHUANAL; PROHIBIT VESTED RIGHTS RELATED TO THE SUBJECT OF THIS ORDINANCE; PROVIDE FOR PENALTIES FOR VIOLATING THE ORDINANCE AND LICENSES; DESIGNATE VIOLATIONS OF THE ORDINANCE AND LICENSES AS MUNICIPAL CIVIL INFRACTIONS; REPEAL ORDINANCES AND PORTIONS OF ORDINANCES INCONSISTENT WITH THIS ORDINANCE; AND PROVIDE AN EFFECTIVE DATE HEREOF.

THE TOWNSHIP BOARD OF TRUSTEES FOR THE CHARTER TOWNSHIP OF LANSING HEREBY ORDAINS:

1. Chapter 71 ("Medical Marihuana") of Title VI ("Licensing") is hereby added as follows:

Section 71-1. Title.

This chapter shall be known and may be cited as the "Charter Township of Lansing Medical Marihuana Ordinance".

Section 71-2. Intent.

It is the intent of this ordinance to give effect to the intent of the Michigan Medical Marihuana Act (Initiated Law 1 of 2008; MCL 333.26421, *et seq.*) (the "Act"), as approved by the electors of the State of Michigan, and not to determine or establish an altered policy with regard to marihuana. The Act authorizes a narrow exception to the general rule and state policy that the cultivation, distribution, and use of marihuana constitute criminal acts. It is the further intent of

this ordinance to protect the public health, safety and general welfare of persons and property, and to license certain locations as specified in this ordinance. This ordinance is intended to comply with the Act while concurrently attempting to protect the health, safety, and welfare of law enforcement officers and other persons in the community, and also to address and minimize reasonably anticipated secondary effects upon children, other members of the public, and upon significant areas of the community, which secondary effects would be reasonably anticipated to occur in the absence of the provisions of this ordinance. This ordinance is designed to recognize the fundamental intent of the Act to allow for a private and confidential patient-caregiver relationship to facilitate the statutory authorization for the limited cultivation, distribution, and medical use of marihuana, and to regulate around this fundamental intent in a manner that does not conflict with the Act so as to address issues that would otherwise expose the community and its residents to significant adverse conditions and secondary effects.

Nothing in this ordinance shall be construed as allowing persons to engage in conduct that endangers others or causes a public nuisance, or to allow the cultivation, distribution or use of marihuana contrary to the express authorizations of the Act and this ordinance. Further, nothing in this ordinance shall be construed to undermine or provide immunity from federal law as it may be enforced by the federal or state government relative to the cultivation, distribution, or use of marihuana. Thus, the authorization of activity, and/or the approval of a license, under this ordinance shall not have the effect of superseding or nullifying federal law applicable to the cultivation, distribution and use of marihuana.

Section 71-3. Definitions.

Act means Initiated Law 1 of 2008, MCL 333.26421, *et seq.*, and the applicable Michigan Administrative Rules, R 333.101, *et seq.*

Caregiver or *primary caregiver* means a person as defined in Section 3(g) of the Act [MCL 333.26423(g)].

Chief Law Enforcement Official means the Chief of Police of the Lansing Township Police Department.

Department means the State of Michigan Department of Community Health.

Patient or *qualifying patient* means a person as defined in Section 3(h) of the Act [MCL 333.26423(h)].

Registry identification card means the document defined Section 3(i) of the Act [MCL 333.26423(i)].

Distribution means the physical transfer of any amount of marihuana in any form by one person to any other person or persons, regardless of whether any consideration is paid or received.

Marihuana means the substance or material defined in Section 7106 of the Public Health Code, Public Act 368 of 1976, as amended (MCL 333.7106).

Principal residence means the place where a person resides more than half of the calendar year.

Section 71-4. Findings of fact warranting a license requirement.

- (a) Under the Act, law enforcement officers are prevented from securing the information necessary to determine whether or not the cultivation, distribution and use of marihuana are being conducted by persons authorized under the Act. Accordingly, the licensure of a particular location as the site of cultivation and distribution, which need not undermine the privacy and confidentiality of the parent-caregiver relationship, could be critical to law enforcement in order to identify and distinguish sites of lawful activity from sites of unlawful activity.
- (b) The experience in the State of California, a state that approved the medical use of marihuana in 1996, is that concentrations of marihuana distribution activity lead to serious secondary effects including: resales of products just obtained inside – since marihuana dispensaries regularly attract marihuana growers, drug users, and drug traffickers, sharing just purchased marihuana outside dispensaries, street dealers lurking about dispensaries to offer a lower price for marihuana to arriving patrons, marihuana smoking in public and in front of children in the vicinity of dispensaries, acquiring marihuana and/or money by means of robbery of patrons going to or leaving dispensaries, loitering and an increase in burglaries at or near dispensaries and a loss of trade for other commercial businesses located near dispensaries.
- (c) Children are not capable of making distinctions between the lawful and unlawful use and possession of marihuana by individuals based upon the intricacies of the Act. Therefore, there is a need to insulate children from the narrowly permitted use and possession of marihuana permitted under the Act.
- (d) Unauthorized installations of plumbing and electrical equipment relating to the cultivation of marihuana plants may create mold conditions and/or a fire risk.

Section 71-5. License requirement.

No cultivation, distribution or other assistance to patients by a caregiver or other person permitted under the Act shall be lawful at a location until such location has been licensed under this ordinance. By way of exception, it is not the intent of this ordinance to require a license for the principal residence of a patient where marihuana is cultivated or used exclusively for such patient's personal consumption. However, a location other than a patient's principal residence where a patient cultivates or uses marihuana shall be subject to the licensure requirements of this ordinance.

Section 71-6. Application for license.

- (a) The application shall require the applicant's name, home address, email address, telephone number, date of birth and proof of caregiver status. The information acquired by the Township through the application and licensing procedure shall be deemed *per se* confidential, and shall not be subject to public disclosure.
- (b) An application for a license shall be submitted to the Chief Law Enforcement Official, or a designee thereof, and provide the following:
 - (1) The address and legal description of the precise premises, other than a patient's principal residence, at which there shall be cultivation, distribution or other assistance in the use of marihuana. The fact that a caregiver or other person providing assistance to patients also has registry identification card as a patient shall not relieve the obligation to provide this information.
 - (2) A notarized statement that the applicant is the owner of record for the property, accompanied by proof of ownership, or, if the applicant is not the record owner for the property, a notarized statement from the owner authorizing the application for the license.
 - (3) The full name, mailing address, email address, and telephone number of the owner of record for the property if the applicant is not the record owner for the property.
 - (4) Payment of an applicable fee established by resolution of the Township Board.
 - (5) Provide a floor plan, with dimensions, illustrating the enclosed and locked location in the building where marihuana will be cultivated and stored, and detailing the security measures related to that location and the building.
 - (6) Specify the number of patients to be assisted, including the number of patients for whom marihuana is proposed to be cultivated, and the number of patients to be otherwise assisted on the premises.
 - (7) For safety and other code inspection purposes, provide a description detailing the electrical and plumbing improvements and all other means proposed to facilitate the cultivation of marihuana plants.
 - (8) Such additional information as the Chief Law Enforcement Official may deem necessary.

Section 71-7. Requirements for approval of a license.

- (a) Locations used for the cultivation and distribution of marihuana or other assistance by caregivers or other persons permitted under the Act, to engage in the medical use of marihuana, not including a patient's principal residence which is used to cultivate marihuana or assist in the patient's medical use of marihuana, shall be prohibited:
 - (1) Within a multiple dwelling, including, but not limited to, an apartment building.
 - (2) Within 1,000 feet of (A) a school property, as defined by Public Act 368 of 1978, as amended, including any facility with after school programs, (B) a child care center as defined and licensed by Public Act 116 of 1973, as amended, to ensure compliance with federal "Drug-Free School Zones"; or (C) any other child care and/or day care facility licensed by the State of Michigan.
 - (3) Within 1,000 feet of a location or building at which another caregiver or any other person is permitted under the Act or this ordinance to cultivate marihuana, not including a patient's principal residence which is used by the patient to cultivate marihuana or assist in the medical use of marihuana.
 - (4) Distances specified in this section shall be measured from property line to property line.
- (b) The location at which a caregiver or any other person permitted under the Act cultivates marihuana, or assists a patient in the medical use of marihuana shall not be the same location at which any other caregiver or person cultivates marihuana, or assists a patient in the medical use of marihuana. The maximum number of marihuana plants cultivated at a patient or caregiver location shall be as stipulated by the Act.
- (c) The cultivation of marihuana and assistance of a patient in the use of marihuana by a caregiver shall occur within the confines of a building and such activities shall occur only in locations not visible to the public, provided, this subsection shall not prohibit a caregiver from assisting a patient at the patient's principal residence.
- (d) The necessary electrical, plumbing and other permits shall be granted for all improvements used to facilitate the cultivation of marihuana plants if the applicable requirements are met.
- (e) Since the location and identity of a caregiver is known to patients, signage identifying a caregiver's location is prohibited.

- (f) Prior to license approval, the Chief Law Enforcement Official, or a designee thereof, and the Township's building inspector, shall inspect the facility at which a caregiver or any other person permitted under the Act cultivates, distributes or assists a patient in the medical use of marihuana. The inspection shall include, at a minimum, review of the proposed cultivation and storage areas and security measures.
- (g) If approved, all use of property shall be in accordance with an approved application, including all information submitted by the applicant in reliance on which the application shall be deemed to have been approved.
- (h) A caregiver location that exists on the effective date of this ordinance must file an application for a license within 30 days of the effective date of this ordinance.

Section 71-8. Additional license restrictions.

- (a) A license granted under Section 71-7 shall be effective and valid for a period of one year from the date of issuance.
- (b) Only one caregiver may cultivate, distribute or provide other assistance in the use of marihuana per licensed location.
- (c) No license may be sold, transferred or assigned to another caregiver, person, property or location.
- (d) If a location proposed for a license is zoned or used for residential purposes, the caregiver must either (1) be the owner of the property, or (2) reside on the property in order for the location to be eligible for a license.
- (e) Lighting for medical marihuana growing operations shall not be visible from the building exterior.
- (f) All medical marihuana shall be contained within a secure, enclosed, locked facility.
- (g) The caregiver shall comply at all times and under all circumstances with all requirements of the Act, this ordinance, and all other applicable federal, state and local laws and regulations.
- (h) No license shall be issued for a location/building that:
 - (1) Is not in compliance with the building codes enacted by the township by reference and the International Fire Code; or
 - (2) Has not been issued a valid certificate of occupancy, if applicable.

In the event of any noncompliance with this provision after a license has been issued, the license may be revoked by order of the Chief Law Enforcement Official, a designee thereof, or the Township's building inspector, until the noncompliance has been corrected as determined by said agent(s).

Section 71-9. License renewal.

- (a) Prior to the expiration of the original one year license, a license renewal application, and applicable fee as established by resolution of the Township Board, shall be filed with the Chief Law Enforcement Official or a designee thereof. Any changes to the information provided on the original application shall be indicated on the license renewal application.
- (b) Prior to license renewal approval, the Chief Law Enforcement Official, or a designee thereof, and the Township's building inspector, shall inspect the facility at which a caregiver or any other person permitted under the Act cultivates, distributes or assists a patient in the medical use of marihuana. The inspection shall include, at a minimum, review of the proposed cultivation and storage areas and security measures.
- (c) In order to be eligible for renewal, all of the requirements established in Section 71-7 and Section 71-8 of this ordinance must be satisfied.
- (d) If it is determined by the Chief Law Enforcement Official or a designee thereof that the caregiver location is in compliance with the applicable requirements, a one year license renewal shall be issued.
- (e) A license renewal application shall be submitted requesting renewal annually thereafter.
- (f) Property that is subject to a license that is not renewed for any reason shall be subject to inspection by the Chief Law Enforcement Official, or a designee thereof, and the Township's building inspector, to ensure compliance with this ordinance and the Act.

Section 71-10. License revocation.

- (a) The Chief Law Enforcement Official, a designee thereof, or the Township's building inspector may revoke any license issued under the provisions of this ordinance upon any of the following findings:
 - (1) A violation of the Act, any state or local regulations, the provisions of this ordinance, or the provisions of a license.
 - (2) Operation of a location at which a caregiver or any other person permitted under the Act cultivates, distributes or assists a patient in the medical use of marihuana

in an unlawful manner or in a manner contrary to the public health, safety and welfare.

- (3) Any attempt to transfer, assign or sell the license to another location or to use the same improperly.
- (4) The information provided with the license application was falsified, incomplete, and/or inaccurate.
- (b) Upon serving notice of a license revocation by the Chief Law Enforcement Official, a designee thereof, or the Township's building inspector, the caregiver or any other person permitted under the Act to cultivate marihuana or assist a patient in the medical use of marihuana shall cease such activities immediately.
- (c) No property at which a license has been revoked for the cultivation of marihuana or assistance to a patient in the medical use of marihuana by a caregiver or any other person permitted under the Act to conduct such activities shall be eligible to receive another license at any location within the Township for three years from the date of license revocation.

Section 71-11. License appeal.

An application for an original or renewal license which has been denied, or an existing license which has been revoked, by the Chief Law Enforcement Official, a designee thereof, or the Township's building inspector, may be appealed to a court of competent jurisdiction.

Section 71-12. Findings of fact warranting restrictions on distribution of medical marihuana.

- (a) The Act reflects the intent to a private and confidential patient-caregiver relationship to facilitate the lawful cultivation, distribution, and use of marihuana strictly for medical purposes, that is, an authorization for confidential and private use of marihuana by patients, and for confidential and private assistance in such use by caregivers to individual patients. It is reasonable to expect and require that all undertakings of caregivers and other persons in assisting a patient are intended to occur on a confidential and private one-to-one basis.
- (b) The confidentiality provisions of the Act reflect the intent for all caregivers and patients to remain anonymous in terms of their name and address, thus further reflecting the private and confidential nature of the activities contemplated between a caregiver and the patient he or she is assisting.
- (c) It is deemed necessary to maintain, by licensure, an environment promoting the protection, efficiency, and effectiveness of law enforcement officers and their work performed in connection with the cultivation, distribution or use of marihuana.

(d) All of the findings stated in Section 71-4 herein, in support of the requirement for licensure are incorporated by reference to this section of the ordinance.

Section 71-13. Restrictions on the distribution of medical marihuana.

A caregiver, and any other person authorized under the Act to assist patients, if any, shall distribute medical marihuana only on a confidential, one-to-one, basis.

Section 71-14. No vested rights.

A property owner shall not have vested rights or nonconforming use rights that would serve as a basis for failing to comply with this ordinance or any amendment thereto.

Section 71-15. Penalty for violation; Municipal civil infraction.

A person who violates any provision of this chapter, or the terms, conditions or provisions of a license, is responsible for a municipal civil infraction, and shall be subject to civil fine as established from time to time by resolution of the Township Board. Nothing in this section shall be construed to limit the remedies available to the township in the event of a violation by a person of this chapter and/or a license. Each act of violation, and each day upon which a violation exists or continues, shall constitute a separate offense.

2. Severability. If a court of competent jurisdiction declares any provision of this Ordinance, or a statutory provision referred to or adopted by reference herein, to be unenforceable, in whole or in part, such declaration shall only affect the provision held to be unenforceable and shall not affect any other part or provision. Provided, however, that if a court of competent jurisdiction declares a penalty provision to exceed the authority of the Township, the penalty shall be construed as the maximum penalty that is determined by the court to be within the authority of the Township to impose.

3. Repeal. All ordinances or parts of ordinances in conflict or inconsistent with the provisions of this Ordinance are hereby repealed; provided that any violation charged before the effective date of this Ordinance under an ordinance provision repealed by this Ordinance shall continue under the ordinance provision then in effect.

4. Effective Date. This Ordinance shall take effect immediately following its adoption and publication as required by law.

John Daher, Supervisor
Charter Township of Lansing

I, Susan L. Aten, Clerk of Charter Township of Lansing, hereby certify that the foregoing is a true copy of the original of Ordinance No. 72, enacted by the Charter Township of Lansing Board of Trustees at a regular meeting on _____, 2011.

Susan L. Aten, Clerk
Charter Township of Lansing