

ARTICLE 14

SECTION R 14.01 MEDICAL MARIHUANA DISPENSARY ORDINANCE

AN ORDINANCE PROHIBITING MEDICAL MARIHUANA DISPENSARIES AND RELATED PENALTIES FOR VIOLATION OF THIS ORDINANCE.

THE TOWNSHIP OF FRUITLAND, MUSKEGON COUNTY, MICHIGAN, ORDAINS:

SECTION R 14.02 TITLE

This Ordinance shall be known as the “Fruitland Township Medical Marihuana Dispensary Ordinance.”

SECTION R 14.03 DEFINITIONS

For purposes of this Article, the following definitions shall apply:

- A. “Act” means the Michigan Medical Marihuana Act, Public Act 2008, Initiated Law 1, being MCL 333.26421 *et seq.*, as well as any and all amendments thereto, and also any legislation enacted into law to implement that statute.
- B. “Debilitating Medical Condition” means a debilitating medical condition as defined in the Michigan Medical Marihuana Act, MCL 333.26423(a).
- C. “Enclosed, locked facility” means a closet, room, or other enclosed area equipped with locks or other security devices that permit access only by a registered primary caregiver or registered qualifying patient.
- D. “Family” is defined as persons related by blood, marriage, or adoption, together with foster children.
- E. “Marihuana” means that term as defined in section 7106 of the public health code, 1978 PA 368, MCL 333.7106. Marihuana is also sometimes known as Marijuana or Cannabis.
- F. “Medical Marihuana” means marihuana that is grown, processed or possessed by a registered primary caregiver for the purpose of distributing to a registered qualified patient.
- G. “Marihuana Dispensary” is any operation, facility or location, regardless of what it is called, where marihuana is grown, processed or possessed for the purpose of distributing marihuana in any form or paraphernalia to visitors of the location where the marihuana is being grown, cultivated, or possessed; or any operation, facility or location where marihuana is grown, processed, or possessed, regardless of what it is called, where a means is provided for the purpose of distributing, or facilitating the distribution of, marihuana to more than a cumulative total of five (5) registered qualified patients. Such dispensaries go by different names and include but are not limited to collectives; clubs,

cooperative grow facilities, smokehouses, compassion centers and the like. A marihuana dispensary does not include the lawful dispensation of marihuana by a registered primary caregiver personally dispensing to not more than five (5) registered qualifying patients so long as the primary caregiver personally delivers the lawful amount of marihuana to the registered qualifying patient for medical use to the place where the registered qualifying patient resides and is done in full compliance with the Fruitland Township Zoning Ordinance, The Act, and all applicable Michigan and federal laws and regulations.

- H. “Medical Use” is 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 qualifying patient’s debilitating medical condition or symptoms associated with the debilitating medical condition, as defined by The Act.
- I. “Primary caregiver” means a person who is at least 21 years old and who has agreed to assist with a patient’s medical use of marihuana and who has never been convicted of a felony involving illegal drugs.
- J. “Qualifying patient” means a person who has been diagnosed by a physician as having a debilitating medical condition.
- K. “Residential Premises” is any building, its accessories and appurtenances, and the real property upon which such structures are located, which is occupied as a home, legal residence or sleeping place, either permanently or transiently and by reference includes the definition of “dwelling” as set forth in the Fruitland Township Zoning Ordinance.
- L. “Registered Primary Caregiver” means a primary caregiver who has been issued a registry identification card by the Michigan state department of community health pursuant to The Act and/or the administrative rules promulgated thereunder.
- M. “Registered Qualifying Patient” means a qualifying patient who has been issued a registry identification card by the Michigan state department of community health pursuant to The Act and/or the administrative rules promulgated thereunder.
- N. “Township” means Fruitland Township, Muskegon County, State of Michigan.

SECTION R 14.04 PURPOSE AND INTENT

- A. Voters in the State of Michigan approved a referendum authorizing the use of marihuana (“marihuana”) for certain medical conditions, being the Michigan Medical Marihuana Act, MCL 333.26421, *et seq.* (“The Act”).
- B. The specified intent of The Act is to enable certain identified persons who comply with the registration provisions of The Act to acquire, possess, cultivate, grow and use medical marihuana, as well as to assist specifically registered individuals identified in The Act without being subject to criminal prosecution under state law in limited, specific circumstances.

- C. Despite the specific provisions of The Act, MCL 333.26421, *et seq.* fails to regulate many aspects associated with the possession and use of medical marihuana, including, but not limited to, locations and methods of distribution, sale, processing, use and ingestion of medical marihuana.
- D. If not closely monitored or regulated, the presence of marihuana, even for the purposes specified by The Act, may present an increase of illegal conduct and/or activity which adversely affects the health, safety and welfare of the residents of Fruitland Township.
- E. Furthermore, the unregulated distribution, sale, processing, use and ingestion of medical marihuana can create many problems in areas adjacent thereto, including threats to public peace.

SECTION R 14.05 SCOPE

- A. This ordinance is meant to proscribe marihuana dispensaries, collectives, clubs, cooperative grow facilities, smokehouses, compassion centers and the like, whether fixed or mobile and whether for-profit or non-profit, from being operated within the Township.
- B. So long as performed in a location and manner authorized by this ordinance, nothing herein shall be read to prevent the dispensation of marihuana by a registered primary caregiver who is personally dispensing to not more than five (5) registered qualified patients in strict accordance with The Act; nor to prevent smoking, consuming or ingesting marihuana by a registered qualified patient in strict accordance with The Act; nor to prevent a person authorized by The Act from possessing in an enclosed, locked facility an amount of medical marihuana authorized by The Act.

SECTION R 14.06 PROHIBITION OF MARIHUANA DISPENSARIES

- A. It shall be unlawful for any person or entity to operate any marihuana dispensary, collective, club, cooperative growing facility, smokehouse, compassion center and the like, or other similar facility that meets the definition of Marihuana Dispensary in Section 14.03, G., above.
- B. It shall be unlawful for any person or entity to join as a member, employee, contractor, agent, volunteer, or participate in any other manner or capacity, in any facility or operation identified in section 14.06, A., above.
- C. It shall be unlawful for any person or entity to frequent, patronize, obtain or purchase marihuana from any facility or operation identified in Section 14.06, A., above.

SECTION R 14.07 LOCATION AND MANNER OF USE AND DISTRIBUTION OF MEDICAL MARIHUANA FOR MEDICAL USE

- A. Unless the registered qualifying patient legally resides with the registered primary caregiver, no use, sale, delivery nor distribution of marihuana in any form shall be conducted on or within the residential premises of the registered primary caregiver.

- B. The growing, processing, distribution, sale and handling of medical marihuana for medical use shall comply at all times and all circumstances with The Act and any applicable regulations or requirements by the Michigan Department of Community Health or any other Michigan agency.
- C. Not more than one (1) primary caregiver shall be permitted to grow, process, handle or distribute medical marihuana at or from a given residential premises.
- D. All medical marihuana shall be contained within the primary caregiver's residential premises (except when being delivered by the primary caregiver to a qualifying patient off site) and 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. Any person under eighteen (18) years old shall not have any access to any medical marihuana.
- E. No on-site consumption or smoking of marihuana is allowed within the residential premises (or on the lot or parcel) of a primary caregiver except for any medical marihuana consumption by the primary caregiver himself/herself if he/she is a qualifying patient and in full compliance with The Act.
- F. No medical marihuana shall be grown, processed or handled at, from or through the residential premises of the primary caregiver beyond that which is needed or allowed by law (whichever is less) for the qualifying patients of that particular primary caregiver.
- G. No sign identifying the dwelling as being a place where medical marihuana is grown, sold, processed, kept, or distributed shall be visible outside of the residential premises or within any of the windows of the residential premises.
- H. A registered primary caregiver may grow and process medical marijuana only upon or within his or her residential premises and only for his or her registered qualified patients so long as performed in compliance with this ordinance and The Act.
- I. Only residential premises may be utilized for the cultivation, use, sale, delivery, processing, and distribution of marihuana for medical use. Residential premises upon or within which marihuana is grown or processed for medical use must meet the following requirements. The registered primary caregiver shall be responsible (and shall be deemed to be in violation of this Ordinance) for any violation of this Ordinance or The Act. A registered primary caregiver residential premises hereunder must:
 - 1. Be the registered primary caregiver's residential dwelling, defined as a detached single-family residential dwelling. No apartment building, multi-family residential building or similar housing building or development may be utilized to grow or process marihuana by a registered primary caregiver;

2. Be occupied only by the registered primary caregiver and family of the registered primary caregiver. No persons outside of immediate family may reside upon a residential premises used to grow and process marihuana for registered qualified patients;
3. Be used primarily as a dwelling. Use of the residential premises for marihuana growth and processing shall be clearly incidental and subordinate to its use for single-family residential purposes, with no more than 25% of the gross finished area of the dwelling utilized for marihuana growth and processing;
4. No qualifying patient shall visit, come to or be present at the residence of the primary caregiver to purchase, smoke, consume, obtain or receive possession of any marihuana; rather, the primary caregiver must personally deliver any marihuana to a qualifying patient at the residence of that qualifying patient;
5. No person shall deliver marihuana to a qualifying patient other than the primary caregiver for that qualifying patient. The primary caregiver must personally deliver the marihuana to his/her qualifying patient;
6. There shall be no visible change to the outside appearance of the primary caregiver's residence or other visible evidence of the conduct of the medical marihuana operation occurring inside the dwelling;
7. Show no signs or visible indications that medical marihuana is grown or processed therein; lighting, marihuana plants, paraphernalia, signage and growing apparatuses may not be visible from outside the residential premises;
8. Be equipped with an enclosed, locked facility inaccessible on all sides and equipped with locks or other security devices that permit access only to the registered primary caregiver. Except when being delivered or ingested in accordance with this ordinance and The Act, any and all marihuana in any stage of growth or form whatsoever must be contained within said enclosed, locked area and accessed only by the registered primary caregiver;
9. Not interfere in any way with the use and enjoyment of surrounding property. No equipment or processes utilized in growing, processing or handling medical marihuana which creates noise, vibration, glare, light, fumes, odors or electrical interference may be detectable to the normal senses from outside the residential premises. No equipment or process shall be used which creates visual or audible interference with any radio, television or similar receiver off the premises or which causes fluctuation of line voltage off the premises;
10. Be located more than 1,000 feet from any half-way house, correctional facility, college, trade or vocational school, public park, child daycare center, foster care center, school, church or library as defined by Michigan law. This ensures

community compliance with federal “Drug-Free School Zone” requirements and minimizes negative impacts to the health, safety, and welfare of the community. Measurements shall be taken from the outside parameter of the residential dwelling (or accessory building) within which medical marihuana is being grown and the surrounding property lines.

- J. A registered primary caregiver must personally deliver any medical marihuana to his or her registered qualifying patient(s) at the residence of the registered qualifying patient(s). Under no circumstances may anyone other than the registered primary caregiver of the registered qualifying patient deliver medical marihuana to a registered qualifying patient; nor may a registered qualifying patient leave his or her place of residence for the purpose of receiving marihuana from the registered primary caregiver.

SECTION R 14.08 REGISTERED QUALIFYING PATIENTS

- A. Medical marihuana may not be used or ingested outdoors or in any public place.
- B. A registered qualifying patient who relies on a registered primary caregiver for his or her supply of medical marihuana may only receive medical marihuana by delivery to the registered qualifying patient’s legal residence and only from his or her registered primary caregiver. It is unlawful to purchase or otherwise obtain medical marihuana from any source not registered and authorized under The Act to dispense medical marihuana to that particular person.
- C. A registered qualifying patient who has not specified that a primary caregiver will be allowed to grow or process marihuana on his or her behalf, as authorized by The Act, may grow and process marihuana for his or her personal use within his or her residential premises so long as:
 - 1. The residential premises is equipped with an enclosed, locked facility inaccessible on all sides and equipped with locks or other security devices that permit access only to the registered qualifying patient. Except when being ingested in accordance with this ordinance and The Act, any and all medical marihuana in any stage of growth or form whatsoever must be contained within said enclosed, locked area and accessed only by the registered qualifying patient;
 - 2. There are no outward signs or visible indications that medical marihuana is grown or processed therein; lighting, marihuana plants, paraphernalia, signage and growing apparatuses may not be visible from outside the residential premises;
 - 3. There is not any interference in any way with the use and enjoyment of surrounding property. There can be no equipment or processes utilized in growing, processing or handling medical marihuana which create noise, vibration, glare, light, fumes, odors or electrical interference which are detectable to the normal senses from outside the residential premises. No equipment or process shall be used which creates visual or audible interference with any radio, television or similar receiver off the premises or which causes fluctuation of line voltage off the premise; and

4. Otherwise in full compliance with The Act.

SECTION R 14.09 SEVERABILITY

If any provision, clause or portion of this Ordinance is declared by a court of competent jurisdiction to be unconstitutional or invalid, such invalidation shall not affect any other portion of this Ordinance and the balance of this Ordinance shall remain in full force and effect.

SECTION R 14.10 PENALTIES

A violation of this Ordinance constitutes a municipal civil infraction. Any person, who violates, disobeys, omits, neglects, or refuses to comply with any provision of this Ordinance, or any amendment thereof, or any person who knowingly or intentionally aids or abets another person in violation of this Ordinance, shall be in violation of this Ordinance and shall be responsible for a municipal civil infraction and subject to the fines published by the Township from time to time. For purposes of this section, "subsequent offense" means a violation of the provisions of this Ordinance committed by the same person within twelve (12) months of a previous violation of the same provision of this Ordinance or similar provision of this Ordinance for which said person admitted responsibility or was adjudged to be responsible. Each day during which any violation continues shall be deemed a separate offense.

SECTION R 14.11 PUBLIC NUISANCE AND NUISANCE PER SE

The violation of any provisions of this Ordinance or The Act shall be deemed to constitute a nuisance per se and shall be subject to abatement.

SECTION R 14.12 REQUIRED COMPLIANCE WITH FEDERAL LAW

- A. Nothing in this Ordinance is intended to grant, nor shall any provisions of this Ordinance be construed as granting, immunity from prosecution for the growing, sale, consumption, use, smoking, distribution or possession of marihuana which is not in strict compliance with The Act, this Ordinance and all other applicable laws and regulations.
- B. Nothing in this Ordinance is intended to grant, nor shall it be construed as granting, immunity from criminal prosecution under federal law, applicable state penal laws and The Act. This Ordinance does not protect users, primary caregivers, qualifying patients or the owners of properties on which medical use or marihuana is occurring from federal prosecution or from having their property seized by federal authorities under the Federal Controlled Substances Act, as amended.

SECTION R 14.13 EFFECTIVE DATE

This Ordinance shall become effective upon the expiration of thirty (30) days after this Ordinance or a notice of adoption of this Ordinance appears in the newspaper as provided by law.

ADOPTED: January 22, 2013
PUBLISHED: February 3, 2013
EFFECTIVE: February 5, 2013