

City of Muskegon
Muskegon County, Michigan
Ordinance Amendment No. _____

Rev. 9-9-14

THE CITY OF MUSKEGON HEREBY ORDAINS:

Chapter 34, Article IV of the Code of Ordinances of the City of Muskegon, Michigan is amended in its entirety, replacing sections 34-101 through 34-115 with the following:

Sec. 34-101. Purpose and Intent.

It is the intent of this ordinance to give effect to the intent of Initiated Act 1 of 2008, MCL 333.26421, et seq, (the Act) as approved by the electors, and not to determine and 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 amount to 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 issue licenses. It is the further intent of this ordinance 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, that would be reasonably expected 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 the creation and maintenance of a private and confidential patient-caregiver relationship to facilitate the statutory authorization for the limited cultivation, distribution, and use of marihuana for medical purposes; 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, including the following: adverse and long-term influence on children; substantial serious criminal activity; danger to law enforcement and other members of the public; discouragement and impairment of effective law enforcement with regard to unlawful activity involving the cultivation, distribution, and use of marihuana; the creation of a purportedly lawful commercial enterprise involving the cultivation, distribution and use of marihuana that is not reasonably susceptible of being distinguished from serious criminal enterprise; and, the uninspected installation of unlawful plumbing and electrical facilities that create dangerous health, safety, and fire conditions.

This ordinance permits authorization for activity based on the Act. 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 use, cultivation, growth, possession or control of marihuana not in strict accordance with the express authorizations of the Act and this ordinance; and, 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 the approval of a license under this ordinance shall not have the effect of superseding or nullifying federal law applicable to the

cultivation, use, and possession of marihuana, and all applicants and grantees of licenses are on notice that they may be subject to prosecution and civil penalty, including forfeiture of property.
Sec. 34-102. Definitions.

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

Department means the State of Michigan Department of Community Health.

Dispensary means one or more primary caregivers growing, storing, delivering, transferring, and/or providing qualifying patients with Medical marihuana out of a building or structure.

Qualifying patient or **patient** means a person as defined under MCL 333.26423(h) of the Act, who has been issued and possesses a Registry Identification Card under the Act.

Primary caregiver or **caregiver** means a person as defined under MCL 333.26423(g) of the Act, and who has been issued and possesses a Registry Identification Card under the Act.

Registry Identification Card means the document defined under MCL 333.26423(i) of the Act.

Distribution means the physical transfer of any amount of marihuana in any form by one person to any other person or persons, whether or not any consideration is paid or received.

Distributor means a primary caregiver who engages in any one or more acts of Distribution.

Facility or **Premises** means a commercial business having a separate or independent postal address, one private office having a separate or independent postal address, one single family residence having a separate or independent postal address, one apartment unit having a separate or independent postal address, one condominium unit having a separate or independent postal address, or one free-standing industrial building having a separate or independent postal address.

Medical Marihuana Home Cultivation Operation means the cultivation of marihuana by a registered patient within a single family dwelling that is the registered patient's primary residence and which cultivation is in conformity with the restrictions and regulation contained in the Act.

Marihuana means the substance or material defined in section 7106 of the public health code, 1976 PA 368, MCL 333.7106.

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

Sec. 34-103. Licensure requirements.

(1) The cultivation of marihuana by a caregiver or any other person permitted under the Act, and the provision of caregiver services relating to medical marihuana use, shall be permitted in accordance with the Act. No cultivation, distribution, and other

assistance to patients shall be lawful in this community at a location unless and until such location for such cultivation, distribution, and assistance shall have been licensed under this ordinance.

(2) The license requirements set forth in this chapter shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other federal, state or local law.

(3) Each caregiver operating at a facility or dispensary shall obtain a separate license prior to operating.

(4) The following locations shall require licensure:

- (a) A facility used for the cultivation of marihuana by caregivers or patients permitted under the Act;
- (b) A dispensary or facility used for distribution;
- (c) Any facility used to provide any other assistance to patients by caregivers permitted under the Act relating to medical marihuana;
- (d) A location other than a patient's principal residence where a patient cultivates or uses marihuana exclusively for such patient's personal consumption.
- (e) The principal residence of a patient where marihuana is cultivated exclusively for such patient's personal consumption.

(5) Operating as a primary caregiver is prohibited in a residence.

(6) Any portion of the structure where energy usage and heat exceeds typical residential 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 fire department to insure compliance with the City's adopted International Fire Code.

(7) The premises shall be open for inspection upon request by the City's appointed inspectors, building officials, fire department, and/or law enforcement officials for compliance with all applicable laws and rules, during normal business hours of 9:00 a.m. until 5:00 p.m. or as such other times as anyone is present on the premises.

Sec. 34-104. Application for license.

(1) An application for an annual license or renewal under this section shall be submitted to the City Clerk. A license shall be issued or renewed upon payment of the required fee and submission of a completed application in compliance with the provisions of this article, and compliance with all provisions and requirements of this article.

(2) An application renewal shall be submitted annually. Application to renew a license under this ordinance shall be filed at least 30 days prior to the date of expiration. Such renewal shall be accompanied by the annual fee.

(3) An application shall include the names of all caregivers operating in the same facility or on the same premises, with proof of registration, including current Registry Identification Card, pursuant to the Act.

(4) Pursuant to the Act, primary caregivers shall not have any felony convictions within the past ten years and shall not have ever been convicted of a felony involving illegal drugs or a felony that is an assaultive crime as defined in section 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL 770.9a. If a criminal background check reveals any such felony conviction, no license shall be issued and/or an existing license shall be revoked.

(5) The application shall include the marihuana facility history of the applicant; whether such person has had a business license revoked or suspended, the reason therefore, and the business activity or occupation subsequent to such action of suspension or revocation.

(6) No license shall be issued and/or an existing license may be revoked if applicant or business owes to the City any outstanding back taxes, fines, fees or liens.

(7) Applications shall include the address of the precise premises at which there shall be possession, cultivation, distribution or other assistance in the use of marihuana.

(8) If the premises are rented and not owned by the applicant, the landlord/owner of the premises must sign the application acknowledging that they are aware of the legal growth, storage and/or distribution of medical marijuana on the premises.

(9) Specify the name and address of the place where all unused portions of marihuana plants cultivated in connection with the use of marihuana or caregiver activity at the premises shall be disposed.

(10) Describe the enclosed, locked facility in which any and all cultivation of marihuana is proposed to occur, or where marihuana is stored, with such description including: location in building, precise measurements in feet, of the floor dimensions and height; the security device for the facility; and in the case of facilities with more than one primary caregiver, the name of the single primary caregiver designated to solely oversee and have access to each separate enclosed, locked facility.

(11) Describe all locations in the premises where a caregiver or other person authorized under the Act shall render assistance to a qualifying patient.

(12) Specify the number of patients to be assisted by each caregiver, 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, and the maximum number of plants to be grown or cultivated at any one time.

(13) For safety and other code inspection purposes, it shall describe and provide detailed specifications of all lights, equipment, and all other electrical, plumbing, and other means proposed to be used to facilitate the cultivation of marihuana plants.

(14) The initial application fee and renewal fees shall be established by special resolution of the City Commission; thereafter they shall be established by annual budget resolution of the City Commission.

(15) In the case of corporations, partnerships, non-profit organizations, or other business types, the applicant shall be the highest level official or employee of the entity such as, board President, Chief Executive Officer, Executive Director, or comparable position.

(16) If the applicant is a corporation, a copy of the articles of incorporation and current corporation records disclosing the identity and residential addresses of all directors, officers, and shareholders shall be included. Include the address of the corporation itself, if different from the address of the marihuana dispensary or growing/manufacturing facility and the name and address of the resident agent for the corporation.

(17) If the applicant is a partnership, the names and residence address of each of the partners and the partnership itself, if different from the address of the marihuana dispensary or growing/manufacturing facility, and the name and address of the resident agent.

Sec. 34-105. Number of Marijuana Plants.

(1) In a patient's principal residence, there shall be not more than twelve marihuana plants per licensed patient being cultivated at any one time.

(2) At a facility at which a caregiver cultivates marihuana for use by patients, there shall not be more than twelve marihuana plants being cultivated at any one time per

patient, and in no event more than seventy-two marihuana plants being cultivated at any one time per caregiver (which assumes cultivation for five patients, plus an additional twelve plants if the caregiver is also a patient that has not designated a caregiver to assist in providing medical marihuana).

Sec. 34-106. Locations

(1) Dispensaries used by a primary caregiver are permitted in the following zoning districts: B-2, B-3, B-4, B-5, MC, I-1 and I-2.

(2) No dispensary may be located within 1,000 feet of a preschool, elementary school, middle school or high school. Measurements for purposes of this section shall be made from property boundary to property boundary.

Sec. 34-107. No Signs or Advertising.

(1) The distribution of marihuana is generally unlawful, and the Act does not authorize any activity such as a “dispensary.” Reading the Act as a whole, the activities of caregivers are interpreted as being limited to private and confidential endeavors. Moreover, the location and identity of a caregiver may be readily known to his or her patients. Accordingly, there shall be no signage identifying a facility, dispensary or any place where a caregiver is operating.

(2) Unless conducted as part of a related licensed professional medical or pharmaceutical practice, caregiver activity shall not be advertised as a “clinic,” “hospital,” “dispensary,” or other name customarily ascribed to a multi-patient professional practice.

Sec. 34-108. Primary caregiver operations.

The following additional standards shall apply to all primary caregiver operations:

(1) Shall not be operated from a business which sells alcoholic beverages.

(2) The establishment shall be designed, operated, and maintained at all times consistent with responsible business practices and so that no excessive demands shall be placed upon public safety services, nor any excessive risk of harm to the public health, safety, or sanitation, interference with vehicular or pedestrian traffic or parking, or the continuance or maintenance of any unlawful conduct, public nuisance, or disorderly conduct either within the establishment or on or about the adjacent businesses and public streets, alleys, parks, parking facilities, or other areas open to the public. The establishment shall make reasonable effort to report to authorities any unlawful conduct that is observed from the premises.

(3) No drive-through facilities shall be permitted.

(4) All transfers and deliveries of medical marihuana to qualifying patients must occur within the structure out of public view.

(5) The consumption of medical marihuana on the premises is prohibited.

Sec. 34-109. Medical Marihuana Home Cultivation Operation.

In addition to the requirements of home occupations outlined in the City's zoning ordinance, patients who chose to cultivate their own medical marijuana at home shall be subject to the following requirements:

(1) All use of marijuana on the premises shall comply with the Act at all times.

(2) All medical marijuana shall be contained within an enclosed, locked facility inside a primary or accessory building.

(3) All necessary building, electrical, plumbing and mechanical permits shall be obtained for any portion of the building in which electrical wiring, lighting, storage and/or watering devices that support the cultivation, growing or harvesting of marihuana are located.

(4) The City Clerk shall coordinate electrical, fire, mechanical, plumbing inspectors (and any other inspector(s) deemed necessary under the circumstances) with regard to site of such cultivation for the purpose of determining whether all lights, plumbing, equipment, and all other means used to facilitate the cultivation of marihuana plants is in accordance with all applicable codes.

(5) If a room with windows is utilized as a growing location, any lighting methods that exceed usual residential levels between the hours of 11 pm and 7am 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 or vehicles on adjacent right of ways.

Sec. 34-110. Use of land in accordance with approved application.

(1) If approved, all use of property shall be in accordance with an approved license application, including all information and specifications submitted by the applicant in reliance on which the application shall be deemed to have been approved.

(2) Any facility that exists on the effective date of this ordinance shall cease operations and may make application for and receive approval to continue to operate.

Sec. 34-111. 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 of this ordinance.

Sec. 34-112. Effect of license; suspension; penalties; daily violation.

(1) A license is valid only for the location identified on the license and cannot be transferred to another location within the city without a new application.

(2) A license does not prohibit prosecution by the federal government of its laws or prosecution by state authorities for violations of the Act or other violations not protected by the Act.

(3) Compliance with city ordinances and state statutes is a condition of maintenance of a license and a license may be suspended for cause pursuant to the provisions of this chapter.

(4) Suspension of a license is not an exclusive remedy and nothing contained herein is intended to limit the city's ability to prosecute code violations that may have been the cause of the suspension or any other code violations not protected by the Act.

(5) Each day that a person shall conduct a primary caregiver operation or Medical Marihuana Home Cultivation Operation without a license or allow, operate, or assist in said operation shall constitute a separate offense.

(6) A violation of any section of this article is a misdemeanor.

Sec. 34-113. Non-renewal revocation.

The City Clerk may choose to not renew or to revoke a license based on any of the following:

(1) A failure to meet the conditions or maintain compliance with the standards established by this division in reference to applications for a new license or the renewal of an existing license; or

(2) One or more violations of any city ordinance, state or federal law or regulation, on the premises; or

(3) Maintenance of a nuisance on the premises; or

- (4) A demonstrated history of excessive calls for public safety.
- (5) Nonpayment of real and/or personal property taxes, fines, fees or liens owed to the City; or
- (6) Failure to comply with any City adopted building or fire codes.

Sec. 34-114. Appeals Process

If an applicant or licensee chooses to appeal denial of a license or revocation of a license, the applicant or licensee can enter in a written appeal to the City Clerk’s office using a city generated form including the appellants signature, the requirement or decision from which the appeal is made, and shall state the specific grounds on which the appeal is based. Appeals shall be filed within 30 days of the decision in question. City Commission shall consider the appeal within 30 days of the receipt of the appeal.

Sec. 34-115. Severability

If any clause, sentence, section, paragraph, or part of this ordinance, or the application thereof to any person, firm, corporation, legal entity, or circumstances, shall be for any reason adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not effect, impair, or invalidate the remainder of this ordinance and the application of such provision to other persons, firms, corporation, legal entities, or circumstances by such shall be confined in its operation to the clause, sentence, section, paragraph, or part of this ordinance thereof directly involved in the case or controversy in which such judgment shall have been rendered and to the person, firm, corporation, legal entity, or circumstances then and there involved. It is hereby declared to the legislative intent of this body that the ordinance would have been adopted had such invalid or unconstitutional provisions have not been included in this ordinance.

Sec. 34-116. Prohibition against “provisioning centers” and “safety compliance facilities”

It is unlawful for any individual or commercial entity to acquire, possess, manufacture, deliver, transfer or transport, sell, supply, or provide marijuana – whether medical or otherwise – to any individual or group of individuals, whether or not such person(s) has/have not become registered as qualifying patient(s) or registered primary caregiver(s) pursuant to the Michigan Medical Marihuana Act, MCL 333.26421, et seq. (the “Act”), unless explicitly permitted by the Act or explicitly permitted by this ordinance. “Provisioning Centers” and “Safety Compliance Facility” contemplated by the House Bill 4271 of 2014, are prohibited.