

VILLAGE OF EAU CLAIRE
ORDINANCE NUMBER 2017-3

MEDICAL MARIJUANA LICENSING ORDINANCE

AN ORDINANCE ENTITLED "MEDICAL MARIJUANA LICENSING"
TO ESTABLISH REGULATIONS AND LICENSING REQUIREMENTS
REGARDING MEDICAL MARIJUANA ACTIVITIES WITHIN THE
VILLAGE OF EAU CLAIRE

An Ordinance entitled "Medical Marijuana Licensing" to establish regulations and procedures to provide for the licensure and periodic renewal of sites for medical marijuana growing operations within the Village of Eau Claire; to provide for an application process and fee; to provide for the review and approval, renewal, denial or revocation of licenses; to provide an appeal process; to provide for penalties for violations thereof; and to provide for other matters relating thereto.

NOW THEREFORE, the Village of Eau Claire ordains:

SECTION 1.

An ordinance entitled "Medical Marijuana Licensing", to establish regulations and licensing requirements regarding medical marijuana activities within the Village of Eau Claire, as follows:

Section 1. Title. This ordinance shall be known and may be cited as the "Village of Eau Claire Medical Marijuana Licensing Ordinance".

Section 2. Findings. The Council of the Village of Eau Claire hereby makes the following findings:

- A. Electors in the State of Michigan approved a referendum authorizing certain limited uses of marijuana for medical purposes.
- B. Pursuant to voter approval, the Legislature enacted initiated Act 1 of 2008, MCL 333.26421, et seq. (the "Act").
- C. The Act authorizes a narrow exception to prosecution under state laws which criminalize the cultivation, distribution, possession and use of marijuana.
- D. The cultivation, distribution, possession and use of marijuana remain criminalized under Federal law.

- E. The cultivation, distribution, possession and use of marijuana under the Act, if not closely monitored and licensed, may result in an increase in illegal activities within the Village of Eau Claire jeopardizing the health, safety and welfare of the general public, persons properly licensed under the Act and law enforcement officers.

Section 3. Purpose. The purpose of this ordinance is to provide reasonable regulations regarding activities carried out pursuant to the Act and in keeping with the general character of the surrounding land uses by individuals properly registered with the State of Michigan pursuant to said Act within the Village of Eau Claire so as to provide reasonable locations for licensed activities and to protect the health, safety and welfare of such individuals, the general public and law enforcement officers.

Section 4. Definitions.

- A. “Marijuana” means “marihuana” as it is referred to in the Michigan Medical Marihuana Act of 2008 (the “Act”), and as defined in Section 7106 of the Public Health Code, 1978 PA 368, MCL 333.7106.
- B. “Medical Marijuana Growing Operation” means a facility where a “Primary Caregiver” who is legally registered by the Michigan Department of Licensing and Regulatory Affairs (“Department”), may lawfully assist up to five (5) “qualifying patients” who are also legally registered by the Department with the growing of medical marijuana in accordance with the Act. Any facility involved in the growing of more than twelve (12) plants on one property parcel shall be classified as a growing operation.
- C. “Medical Use” means the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer or transportation of marijuana or paraphernalia relating to the use of marijuana to treat or alleviate a registered “qualifying patient’s” debilitating medical condition.
- D. “Primary Caregiver” means a person who is at least twenty-one (21) years old and has agreed to assist a qualifying patient, to whom he or she is connected through the Department registration process for the use of medical marijuana in accordance with state law.
- E. “Qualifying Patient” means a person who has obtained a valid registration card from the Department allowing them to possess and purchase medical marijuana.

F. "Village" means the Village of Eau Claire.

Section 5. Cultivation, Distribution, Possession or Use of Marijuana Prohibited. Nothing in this ordinance shall be construed as permitting the cultivation, distribution, possession or use of marijuana within the Village except for in strict compliance with the Act and the rules promulgated by the Department.

Section 6. License Required. The use of property as a Medical Marijuana Growing Operation shall require the submittal and approval of a license issued by the Village Clerk in accordance with this ordinance and in compliance with Ordinance No. 2017-4 and the Village Zoning Ordinance.

Section 7. Application for License. Applications for licenses required by this ordinance shall be submitted upon forms provided by the Village Clerk, which shall be signed and verified under oath by the applicant, and which shall be accompanied by the appropriate nonrefundable application fee as set by resolution of the Village Council. Applications for licenses shall contain or set forth the following minimum information:

- A. The name, address, date of birth, and telephone number of the applicant.
- B. The street address of the site proposed to be licensed.
- C. Evidence that the site proposed to be licensed complies with the Village's zoning ordinance relative to such use.
- D. The length of time for which the license is sought, if less than one year.
- E. A copy of the applicant's computerized criminal history ("CCH").
- F. A site plan, survey, or sketch of the site proposed to be licensed.
- G. A description of how the applicant intends to comply with the Act's requirement that marijuana be kept in an enclosed, locked facility.

Section 8. Inspections. Upon receipt of an application, the Village Clerk may request the assistance of Village officials and consultants to determine that the premises comply with the provisions of this ordinance and any other ordinances of the Village, including the Village's zoning ordinance. Inspections should be scheduled within thirty (30) days of receipt of a complete application and prior to issuance of a license.

Section 9. Issuance of License; Term; Standards for Approval. The Village Clerk shall issue a license in response to an application which satisfies the requirements of this ordinance and is accompanied by the appropriate application fee. A license shall be valid

for a term of no more than one (1) year from the date of issuance. The Village Clerk shall deny the issuance of a license under the following conditions:

- A. The application is incomplete in any manner.
- B. The applicant is less than twenty-one (21) years of age.
- C. Verification of any of the information required on the application shows the information provided by the applicant to be fraudulent, a misrepresentation, or a false or untrue statement.
- D. A license for the applicant has been previously revoked.
- E. An investigation through an appropriate law enforcement agency shows a pattern or history of criminal behavior.
- F. The applicant's CCH shows a conviction for a felony.
- G. The applicant's CCH shows a conviction for an activity that may pose a threat or a danger to the residents of the Village should a license be granted (by way of example, but not exclusively, disturbing the peace, assault and battery, simple assault, domestic violence, stalking, theft, dishonesty or deception, fraud, obstruction of justice, disorderly conduct, criminal sexual conduct, trespassing, or breaking or entering).

Section 10. Denial of License; Appeal Process. Any person whose application for a license has been denied shall have the right to petition the Village Council for an appeal. Within sixty (60) days of receipt of a petition for appeal, the Village Council shall set a date for a public hearing. The Village Clerk shall send by certified mail notice of the date, time and location of the public hearing to the applicant at the address shown on the petition for appeal, at least seven (7) days prior to the public hearing date. At the public hearing, the applicant shall have the right to appear and present evidence in support of the application.

Within sixty (60) days after the public hearing, the Village Council shall submit to the applicant its written determination regarding the appeal. The Village Council determination shall be based upon competent, material and substantial evidence.

Section 11. Renewal of License. A license issued pursuant to this ordinance shall expire after a period of one (1) year and may be renewed annually. Applications for renewal of a license shall be submitted pursuant to the same process as an application for a new license except that a public hearing and Village Council approval shall not be required unless otherwise stipulated. Applications for renewal of a license may not be

submitted earlier than ninety (90) days prior to the expiration date shown on the current license.

Section 12. Revocation of License; Appeal Process. A license issued by the Village Clerk may be revoked by written notice of the Village Clerk sent by certified mail to the applicant at the address shown on the application upon a determination by the Village Clerk of any of the following:

- A. The licensed site fails to comply with the Village's zoning ordinance.
- B. Any of the information required on the application shows the information provided by the applicant to have been fraudulent, a misrepresentation, or a false or untrue statement.
- C. The applicant has been convicted of any felony.
- D. Any violation of this ordinance.
- E. Any person who wishes to appeal the revocation of a license shall follow the appeals process described in Section 10 above.

Section 13. Surrender of License upon Demand. The license shall be surrendered on demand to any law enforcement officer based upon probable cause by the officer that the license or licensed premises are being used in violation of this ordinance. Within five (5) business days of the surrender of any license, the Village Clerk shall either revoke the license pursuant to Section 12 of this ordinance, or return the license to the applicant.

Section 14. Violations and Penalty. Violations and Penalties. Any person who shall violate any of the provisions of this Ordinance is responsible for a municipal civil infraction, subject to payment of a civil fine of not less than Fifty (\$50.00) Dollars or more than Five Hundred (\$500.00) Dollars, plus costs and other sanctions, for each infraction. Repeat offenses shall be subject to an increased civil fine as follows:

- A. The fine for any offense shall be not less than Two Hundred Fifty (\$250.00) Dollars, plus costs and other sanctions.
- B. The fine for any offense which is a second repeat offense or any subsequent repeat offense shall be not less than Five Hundred (\$500.00) Dollars, plus costs and other sanctions. A repeat offense means a second (or any subsequent) violation of this Ordinance (i) committed by a person within any six (6) month period and (ii) for which the person admits responsibility or is determined to be responsible.

Each day on which any violation of this Ordinance continues constitutes a separate offense and shall be subject to penalties or sanctions as a separate offense.

The imposition of penalties or sanctions hereunder shall not exempt the offender from compliance with the requirements of this Ordinance.

SECTION 2. Prior Ordinances.

All other ordinances or parts of ordinances in conflict with or superseded by this Ordinance are repealed except to the extent that any project, condition, violation or prosecution that was subject to the prior ordinance shall continue.

SECTION 3. Headings.

The headings used in each section of this ordinance are for the purpose of identification and are not a substantive part of this ordinance

SECTION 4. Severability.

If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional, unlawful or unenforceable by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 5. Effective Date.

This Ordinance shall take effect twenty (20) days after publication.

SECTION 6. Publication.

The Village Clerk shall certify to the adoption of this Ordinance and cause the same to be published as required by law.

YEAS: 3

NAYS: 0

ABSENT: 2

Dated: may 4, 2017



Virginia Gonzalez, Village President

Ordinance declared adopted:


Shawn Foster, Village Clerk

Certification

I hereby certify that the above and foregoing Ordinance was duly adopted by the Village Council of Eau Claire and published in the *Journal Era*, a weekly newspaper published in the Village of Eau Claire, in the issue of said newspaper dated and published on the 10 day of MAY, 2017.


Shawn Foster, Village Clerk

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