

VILLAGE OF EAU CLAIRE
ORDINANCE NUMBER 2017-4

MEDICAL MARIJUANA GROWING OPERATION BUSINESSES ORDINANCE

AN ORDINANCE ENTITLED “MEDICAL MARIJUANA GROWING OPERATION BUSINESSES” TO REGULATE THE LOCATION AND OPERATION OF “PRIMARY CAREGIVERS” OPERATING A “MEDICAL MARIJUANA GROWING OPERATION” UNDER THE MICHIGAN MEDICAL MARIHUANA ACT OF 2008 (MCL 333.26421 TO 333.26430) WITHIN THE VILLAGE OF EAU CLAIRE

NOW THEREFORE, the Village of Eau Claire ordains:

SECTION 1.

An ordinance entitled “Medical Marijuana Growing Operation Businesses”, to regulate the location and operation of “Primary Caregivers” operating a “Medical Marijuana Growing Operation” under the Michigan Medical Marihuana Act of 2008 (MCL 333.26421 to 333.26430), within the Village of Eau Claire, as follows:

Section 1. Definitions. The following definitions apply to this ordinance:

- 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 grow, cultivate and harvest medical marijuana on behalf of up to five (5) “qualifying patients” who are also legally registered by the Department with the growing and maintenance of medical marijuana in accordance with the Act. Any establishment involved in the growing of more than twelve (12) plants upon 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 Village of Eau Claire.

Section 2. Findings. It is determined necessary for the health, safety and welfare of the Village to adopt this ordinance regulating the location and operation of Medical Marijuana Growing Operations due to the following factors:

- A. The purpose of this ordinance is to guide the development of Medical Marijuana Growing Operations within the Industrial (I) District of the Village. It is the intent of this ordinance to give effect to the intent of the Act as approved by the electors, and not to determine and establish an altered policy with regard to marijuana. 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.
- B. The Act authorizes a narrow exception to the prosecution under state laws which otherwise criminalize the cultivation, distribution, possession and use of marijuana. Outside the purview of the Act, the possession and use of marijuana in the state of Michigan remains a misdemeanor offense and possession with intent to deliver, delivery and manufacture of marijuana remain felonies.
- C. Marijuana is also classified federally as a “Schedule I Drug” under the Controlled Substances Act and is illegal to possess, manufacture, distribute or dispense under federal law.
- D. The United States Supreme Court has determined that distribution of medical marijuana is illegal under the Federal Controlled Substances Act, 21 U.S.C. Section 841 and that there is no medical necessity defense allowed under federal law. *Gonzalez v Raich*, 545 US 1, 27; 125 S Ct 2195 (2005).

- E. There are potential adverse secondary impacts associated with the location of Medical Marijuana Growing Operations. These include, but are not limited to, an increase in criminal activity such as illegal drug activity, robbery of persons leaving a Medical Marijuana Growing Operation, and burglaries at Medical Marijuana Growing Operations.
- F. The location of Medical Marijuana Growing Operations in close proximity to homes, apartments, schools, churches, licensed day care centers and public parks may have adverse effects upon children, established family relations, property values and public safety.
- G. The Act states that registered Primary Caregivers may receive compensation for assisting Qualified Patients in the medical use of marijuana, making this a likely commercial activity.

Section 3. Prohibited Locations. A Medical Marijuana Growing Operation shall not be located:

- A. Within fifty (50') feet of any residential zoning districts.
- B. Within one thousand (1,000') feet of the property line of any public or private school, college or university, any nursery school, day nursery, licensed day care center or any other building or location either rented or used in any way for the care or instruction of children under 18 years of age.
- C. Within five hundred (500') feet of the property line of any church, house of worship or other religious facility or institution.
- D. Within five hundred (500') feet of any public park publically owned building or recreational area commonly used by minor children.
- E. Within five hundred (500') feet of a public library.
- F. In an area that has been designated as an historic area by the Village, County of Berrien or State of Michigan.
- G. Within five hundred (500') feet of any other "Medical Marijuana Growing Operation" business.
- H. The distance measurement provided for in this subsection shall be a straight line from the boundary line of the "Medical Marijuana Growing Operation" business to the boundary line of the location it is to be separated from.

Section 4. Permitted Locations. A Medical Marijuana Growing Operation shall be located only in the Industrial (I) District, as a special use, as further specified by the Village Zoning Ordinance and shall be subject to all the requirements of this ordinance.

Section 5. Special Use. The use of property as a Medical Marijuana Growing Operation within the Industrial (I) District shall require submittal of a special use permit application and approval of a special use permit, pursuant to Article XV, entitled “Special Uses”, of the Village Zoning Ordinance.

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 Ordinance No. 2017-3.

Section 7. No Immunity. Nothing in this ordinance, or in any companion regulatory provision adopted in any other provision of the Village 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 marijuana not in strict compliance with the Act. Also, since Federal law is not affected by the Act, nothing in this ordinance, or in any companion regulatory provision adopted in any other provision of the Village ordinances, 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 8. 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.

The applicant may appeal the revocation of his/her license to the Village Council by following the process set forth within Section 10 of Ordinance No. 2017-3.

Section 9. 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 is 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 8 of this ordinance, or return the license to the applicant.

Section 10. 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 11. Required Review. This ordinance shall be reviewed by the Village Council within two (2) years of the date of its adoption. Evaluation of the effect of caregiver operations upon surrounding land uses, the community in general and changes in state law shall factor into consideration of any proposed changes.

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
Virginia Gonzalez, Village President

Ordinance declared adopted:

Shawn Foster
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
Shawn Foster, Village Clerk