

**VILLAGE OF EAU CLAIRE
ORDINANCE NUMBER 2017-5-2019-1**

**AN ORDINANCE TO AMEND AND RESTATE ORDINANCE NUMBER 2017-5
TO AUTHORIZE AND PERMIT CERTAIN COMMERCIAL MEDICAL
MARIHUANA FACILITIES WITHIN THE VILLAGE OF EAU CLAIRE
INCLUDING A MEDICAL MARIHUANA PROVISIONING CENTER; TO
ESTABLISH REGULATIONS AND LICENSING REQUIREMENTS AND TO
IMPLEMENT PENALTIES FOR VIOLATIONS**

An Ordinance authorizing and permitting certain commercial medical marihuana facilities; to provide for the regulation and licensing of medical marihuana establishments; to establish land use and zoning requirements attendant thereto; to protect the public health, safety and welfare of the Village of Eau Claire; to set licensing fees with the purpose of deferring the costs associated with the implementation and enforcement of the provisions of the ordinance and to provide penalties for violations of the ordinance.

NOW THEREFORE, the Village of Eau Claire ordains:

SECTION 1.

Section 1. Title. This ordinance shall be known and may be cited as the “Amended and Restated Medical Marihuana Facilities Ordinance.”

Section 2. Legislative Intent. The purpose of this ordinance is to exercise the police, regulatory, and land use powers of the Village by licensing and regulating medical marihuana provisioning centers, medical marihuana grower facilities, medical marihuana safety compliance facilities, medical marihuana secure transporters, and medical marihuana processor facilities to the extent permissible under State of Michigan and federal laws and regulations and to protect the public health, safety, and welfare of the residents of the Village; and as such this ordinance constitutes a public purpose.

The Village finds that the activities described in this ordinance are significantly connected to the public health, safety, security and welfare of its citizens and it is therefore necessary to regulate and enforce safety, security, fire, police, health and sanitation practices related to such activities and also to provide a method to defray administrative costs incurred by such regulation and enforcement.

It is not the intent of this ordinance to diminish, abrogate, or restrict the protections for medical use of marihuana found in the Michigan Medical Marihuana Act as defined herein.

Section 3. Definitions, Interpretation and Conflicts. For the purposes of this Ordinance:

- (a) Any term defined by the Michigan Medical Marihuana Act, MCL 333.26421 et seq., as amended (“**MMMA**”), the Medical Marihuana Facilities Licensing Act, MCL 333.2701, et seq. (“**MMFLA**”), shall have the definition given in those acts, as amended, and the Marihuana Tracking Act (“**MTA**”), MCL 333.27901, et seq, if the definition of a word or phrase set forth in this ordinance conflicts with the definition in the MMMA or MMFLA, or if a term is not defined but is defined in the MMMA or MMFLA, then the definition in the MMMA, MMFLA, or MTA shall apply.
- (b) Any term defined by 21 USC 860(e) referenced in this ordinance shall have the definition given by 21 USC 860(e).
- (c) This ordinance shall not limit an individual’s or entity’s rights under the MMMA, the MMMA, MTA, and the MMFLA supersede this ordinance where there is a conflict between them.
- (d) All activities related to medical marihuana, including those related to a medical marihuana provisioning center, a medical marihuana grower facility, a medical marihuana secure transporter, a medical marihuana processor or a medical marihuana safety compliance facility shall be in compliance with the rules of the (Michigan) Medical Marihuana Licensing Board, the Michigan Department of Licensing and Regulatory Affairs, or any successor agency, the rules and regulations of the Village, the MMMA, and the MMFLA.
- (e) Any use which purports to have engaged in the cultivation or processing of medical marihuana into a usable form, or the distribution of medical marihuana, or the testing of medical marihuana either prior to or after enactment of this ordinance without obtaining the required licensing set forth in this ordinance, shall be deemed not a legally established use and therefore not entitled to legal nonconforming status under the provisions of this ordinance or state law. The Village finds and determines that it has not heretofore authorized or licensed the existence of any medical marihuana establishment, as defined herein, in the Village.
- (f) The following words and phrases shall have the following definitions when used in this Ordinance:

“Application” means an application for a license pursuant to the terms and conditions set forth in Sections 6 and 7.

“Application for a license renewal” means an application for a license renewal pursuant to the terms and conditions of Section 8.

“Building” means an independent, enclosed structure having a roof supported by columns or walls, intended and/or used for shelter or enclosure of persons or chattels. When any portion of a structure is completely separated from every other part by dividing walls from the ground up, and without openings, each portion of such structure shall be deemed a separate structure, regardless of whether the portions of such structure share common pipes, ducts, boilers, tanks, furnaces, or other such systems. This definition refers only to permanent structures, and does not include tents, sheds, greenhouses and private garages on residential property, stables, or other accessory structures. A building does not include such structures with interior areas not normally accessible for human use, such as gasholders, tanks, smoke stacks, grain elevators, coalbunkers, oil-cracking towers or similar structures.

“Church” means an entire building set apart primarily for purposes of public worship which is tax exempt under the laws of this state, and in which religious services are held, and the entire building structure of which is kept for that use and not put to any other use inconsistent with that use.

“Council or Village Council,” means the Village Council of Eau Claire, Michigan.

“Cultivation” or “cultivate,” means all phases of growth of marihuana from seed to harvest.

“Disqualifying felony” means a felony that makes an individual ineligible to serve as a registered primary caregiver under the MMMA or MMFLA.

“Employee” means any individual who is employed by an employer in return for the payment of direct or indirect monetary wages or profit, under contract, and any individual who volunteers his or her services to an employer for no monetary compensation, or any individual who performs work or renders services, for any period of time, at the direction of an owner, lessee, of other person in charge of a place.

“License” or “medical marihuana business license” means a license issued for the operation of a medical marihuana establishment pursuant to the terms and conditions of this ordinance and includes a license that has been renewed pursuant to Section 8.

“License application” means an application submitted for a license pursuant to the requirements and procedures set forth in Sections 6 and 7.

“Licensee” means a person issued a license for an establishment pursuant to this ordinance.

“Marihuana-infused product” means as defined in the MMMA and the MMFLA.

“Marihuana Tracking Act” or “MTA” means Public Act 282 of 2016. “Medical marihuana” means any marihuana intended for medical use that meets all requirements for medical marihuana contained in the MMMA and the MMFLA.

“Medical marihuana establishment(s), or, “establishment,” means any facility, establishment and/or center that is required to be licensed under this ordinance, including: a medical marihuana provisioning center, a medical marihuana grower facility; a medical marihuana processor facility; a medical marihuana secure transporter; and a medical marihuana safety compliance facility.

“Medical Marihuana Facilities Licensing Act” or “MMFLA” means Public Act 281 of 2016, MCL 333.27101, et. seq.

“Medical marihuana grower facility” means a commercial entity located in the Village that is licensed to operate by the state pursuant to the MMFLA and is licensed by the Village pursuant to this ordinance that cultivates, dries, trims or cures and packages marihuana in accordance with state law.

“Medical Marihuana Licensing Board” means that certain board established by the MMFLA.

“Medical marihuana provisioning center,” means a commercial entity located in the Village that is licensed to operate by the state pursuant to the MMFLA and is licensed by the Village pursuant to this ordinance that sells, supplies, or provides marihuana to registered qualifying patients only as permitted by state law. Medical marihuana provisioning center, as defined in the MMFLA, includes any commercial property where marihuana is sold in conformance with state law and regulation. A noncommercial location used by a primary caregiver to assist a qualifying patient, as defined in the MMMA, and connected to the caregiver through the department’s marihuana registration process in accordance with the MMMA, is not a medical marihuana provisioning center.

“MMMA” means the Michigan Medical Marihuana Act, as amended, at MCL 333.26421.

“Ordinance” means this ordinance as adopted by the Village Council.

“Park” means an area of land designated by the Village as a park on its master plan or on a council-approved list of Village parks.

“Person” means an individual, partnership, firm, company, corporation, association, sole proprietorship, limited liability company, joint venture, estate, trust, or other legal entity.

“Processor” or “Medical marihuana processor facility” means a commercial entity located in the Village that is licensed to operate by the state pursuant to the MMFLA and is licensed by the Village pursuant to this ordinance that extracts resin from the marihuana or creates a marihuana-infused product, to the extent permitted by state law.

“Safety compliance facility” or “medical marihuana safety compliance facility” means a commercial entity that is licensed to operate by the state pursuant to the MMFLA and is licensed by the Village pursuant to this ordinance, that receives marihuana from a medical marihuana establishment or a registered qualifying patient or a registered primary caregiver, tests it for contaminants and for tetrahydrocannabinol and other cannabinoids in accordance with state law.

“School” means and includes buildings used for school purposes to provide instruction to children and youth in grades pre-kindergarten through 12, and Headstart, when that instruction is provided by a public, private, denominational, or parochial school.

“Secure transporter” or “medical marihuana secure transporter” means a commercial entity that is licensed to operate by the state pursuant to the MMFLA and is licensed to operate by the Village pursuant to this ordinance, that is a commercial entity located in the Village that stores marihuana and transports marihuana between medical marihuana facilities for a fee and in accordance with state law.

“Stakeholder” means, with respect to a trust, the beneficiaries, with respect to a limited liability company, the managers or members, with respect to a corporation, whether profit or non-profit, the officers, directors, or shareholders, and with respect to a partnership or limited liability partnership, the partners, both general and limited.

“State” means the State of Michigan.

“Village” means the Village of Eau Claire, Michigan.

- (g) Any term defined by the MMMA, the MMFLA, or the MTA and not defined in this ordinance, shall have the definition provided in those acts.

Section 3. Reserved.

Section 4. Operation without License Prohibited.

- (a) It is unlawful for any person to engage in the operation of a medical marihuana establishment in the Village unless such person has obtained a license from the Village under this ordinance to do so for each location and additionally has a license to operate from the state pursuant to MMFLA. Every medical marihuana establishment in the Village shall be licensed pursuant to the terms and provisions set forth in this ordinance, and no person shall operate a medical marihuana establishment in the Village without first obtaining a license. A medical marihuana establishment operating without a license under the provisions of this ordinance is deemed a public nuisance.
- (b) The Village Clerk shall issue a license for a medical marihuana establishment only after the Village Clerk determines that the application and proposed facility comply with the terms, conditions, and provisions of this ordinance. The term of each license shall be one (1) year. A license issued under this ordinance may be conditioned on the approval of the operator by the state at the location under the MMFLA.

Section 5. License Required; Number of Licenses Available.

- (a) The Village hereby authorizes the operation of the following types of medical marihuana establishments, subject to the number of available licenses issued in this Section:
 - (1) Growers, Class C;
 - (2) Processors;
 - (3) Provisioning centers;
 - (4) Safety compliance facilities; and

- (5) Secure transporters.
- (b) The number of medical marihuana establishment licenses in effect at any time shall not exceed the following maximums within the Village:
- (1) Grower licenses, Class C (not more than 1,500 marihuana plants): 1;
 - (2) Processor licenses: 1;
 - (3) Provisioning center licenses: 1;
 - (4) Safety compliance facility licenses: 1; and
 - (5) Secure transporter licenses: 1.

Section 6. License Application Submission.

- (a) Each medical marihuana establishment must be licensed by the Village. Applications for a license shall be made in writing to the Village Clerk. All applications submitted to the Village Clerk in accordance with the provisions of this ordinance shall be considered for the issuance of a license. Each application shall contain a signed acknowledgement that the applicant is aware and understands that all matters related to marihuana growing, cultivation, possession, dispensing, testing, safety compliance, transporting, distribution, and use are currently subject to state and federal laws, rules, and regulations, and that the approval or granting of a license hereunder does not exonerate or exculpate the applicant from abiding by the provisions and requirements and penalties associated with those laws, rules, and regulations or exposure to any penalties associated therewith; and further the applicant waives and forever releases any claim, demand, action, legal redress, or recourse against the Village, its elected and appointed officials and its employees and agents for any claims, damages, liabilities, causes of action, damages, and attorney fees the applicant may incur as a result of the violation by applicant, its officials, members, partners, shareholders, employees and agents of those laws, rules, and regulations and hereby waives, and assumes the risk of, any such claims and damages, and lack of recourse against the Village, its elected and appointed officials, employees, attorneys, and agents.
- (b) A complete application for a license required by this ordinance shall be made under oath on forms provided by the Village, and shall contain all of the following:

- (1) If the applicant is an individual, the applicant's name, date of birth, physical address, email address, one or more phone numbers, including emergency contact information, a copy of a government issued photo identification card of the applicant, and a copy of the applicant's caregiver registry identification card issued pursuant to the MMMA.
- (2) If the applicant is not an individual, the names, dates of birth, physical addresses, email addresses, and one or more phone numbers of each stakeholder of the applicant, including designation of a stakeholder as an emergency contact person and contact information for the emergency contact person, articles of incorporation, Internal Revenue Service SS-4 EIN confirmation letter, and the operating agreement of the applicant, if a limited liability company, and a copy of at least one stakeholder's caregiver registry identification card issued pursuant to the MMMA.
- (3) The name and address of the proposed medical marihuana establishment and any additional contact information deemed necessary by the Village Clerk.
- (4) With respect to medical marihuana provisioning centers, for the applicant or for each stakeholder of the applicant, affirmation that each is at least eighteen (18) years of age and has not been convicted of or pled guilty or no contest to a disqualifying felony. With respect to all other medical marihuana establishments, for the applicant or for each stakeholder of the applicant, an affirmation that each and every agent or employee is at least eighteen (18) years of age and has not been convicted of or pled guilty or no contest to a disqualifying felony.
- (5) A signed release authorizing the Village police department to perform a criminal background check to ascertain whether the applicant, each stakeholder of the applicant, each operator and employee of the applicant meet the criteria set forth in this ordinance.
- (6) With respect to medical marihuana provisioning centers, the name, date of birth, physical address, copy of photo identification, and email address for any operator or employee if other than the applicant.

- (7) An affirmation under oath as to whether the applicant or operator has had a business license revoked or suspended, and if revoked or suspended, then the reason therefore.
- (8) For the applicant or for each stakeholder of the applicant, a resume that includes whether the individual has any relevant experience with medical marihuana or a related industry.
- (9) A patient education plan to detail to patients the benefits or drawbacks of certain marihuana strains or products in connection with the debilitating medical conditions set forth in the MMMA.
- (10) A written description of the training and education that the applicant will provide to all employees.
- (11) A copy of the proposed business plan for the establishment, including, but not limited to, the following:
 - (i) the proposed ownership structure of the establishment, including percentage ownership of each person or entity; and
 - (ii) a current organization chart that includes position descriptions and the names of each person holding each position.
- (12) One of the following: (a) proof of ownership of the entire premises wherein the medical marihuana establishment is to be operated; or (b) written consent from the property owner for use of the premises in a manner requiring licensure under this ordinance along with a copy of the lease for the premises.
- (13) A description of the security plan for the medical marihuana establishment, including, but not limited to, any lighting alarms, barriers, recording/monitoring devices, and/or security guard arrangements proposed for the establishment and premises. The security plan must contain the specification details of each piece of security equipment.

Each medical marihuana establishment must have a security guard present during business hours.

- (14) A floor plan of the medical marihuana establishment, as well as a scale diagram illustrating the property upon which the medical

marihuana establishment is to be operated, including all available parking spaces, and specifying which parking spaces, if any, are handicapped-accessible.

- (15) Any proposed text or graphical materials to be shown on the exterior of the proposed medical marihuana establishment.
- (16) A location area map of the medical marihuana establishment and surrounding area that identifies the relative locations and the distances (closest property line to the subject establishment's property line) from the subject medical marihuana establishment to the closest real property of an operational public or private elementary or secondary school, church, park, a facility at which substance abuse prevention services or substance abuse treatment and rehabilitation services, as those terms are defined in Part 61 of PA 368 of 1978, MCL 333.6101 et seq., another licensed medical marihuana establishment or a commercial child care organization (non-home occupation) that is required to be licensed or registered with the Michigan Department of Health and Human Services.
- (17) A facility sanitation plan to protect against any marihuana being ingested by any person or animal, indicating how the waste will be stored and disposed of, and how any marihuana will be rendered unusable upon disposal. Disposal by on-site burning or introduction in the sewerage system is prohibited.
- (18) A proposed patient recordkeeping plan that will track quantities sold to individual patients and caregivers and will monitor inventory.
- (19) A description of procedures for testing of contaminants, including mold and pesticides.
- (20) An affidavit that neither the applicant nor any stakeholder of the applicant is in default to the Village. Specifically, that the applicant or stakeholder of the applicant has not failed to pay any property taxes, special assessments, fines, fee or other financial obligations to the Village.
- (21) Verification, with copies of actual bank statements, showing that the applicant has tangible financial capital in the applicant's name in the amount sufficient to complete the medical marihuana establishment and to fund the business plan and other plans required by this Section 6.

- (22) An estimate of the number and type of jobs that the medical marihuana establishment is expected to create, the amount and type of compensation expected to be paid for such jobs, and the projected annual budget and revenue of the medical marihuana establishment.
- (23) As it relates to a medical marihuana grower facility, the following additional items shall be required:
- (i) a cultivation plan that includes at a minimum a description of the cultivation methods to be used, including plans for the growing mediums, treatments, and/or additives;
 - (ii) a production testing plan that includes at a minimum a description of how and when samples for laboratory testing by an international organization for standardization accredited testing facility will be selected, what type of testing will be requested, and how the test results will be used;
 - (iii) an affidavit that all operations will be conducted in conformance with the MMMA, the MMFLA, and other applicable state law;
 - (iv) a chemical and pesticide storage plan that states the names of the pesticides to be used in cultivation and where and how pesticides and chemicals will be stored in the establishment, along with a plan for the disposal of unused pesticides; and
 - (v) all cultivation must be performed in a building.
- (24) Proof of an insurance policy covering the establishment and naming the Village, its elected and appointed officials, employees, and agents, as additional insured parties, available for the payment of any damages arising out of an act or omission of the applicant or its stakeholders, agents, employees, or subcontractors, in the amount of (i) at least one million dollars for property damage; (ii) at least one million dollars for injury to one person; and (iii) at least two million dollars for injury to two or more person resulting from the same occurrence. The insurance policy underwriter must have a minimum A.M. best company insurance ranking of B+, consistent with state law.

- (25) Any other information deemed necessary by the Village.
- (c) All applications shall be accompanied by a license application fee in an amount of not more than \$5,000.00 as established by Village council resolution. The license shall be valid for one (1) year from the date of issuance unless revoked as provided by law. If an application is approved and a license issued, the annual fee of not more than \$5,000.00 shall be established by Village council resolution, and paid by the licensee on an annual basis. The application and the annual fees are established to defray the costs of administration of this ordinance.
- (d) Upon receipt of a completed application meeting the requirements of this Section and appropriate nonrefundable license application fee, the Village Clerk shall refer a copy of the application to each of the following for their approval: the Village fire department, the Village police department, the Village zoning administrator and the Village Treasurer.
- (e) No application shall be accepted by the Village Clerk unless:
- (1) the Village fire department has inspected the proposed location for compliance with all laws for which they are charged with enforcement and for compliance with the requirements of this ordinance;
 - (2) the Village zoning administrator has confirmed that the proposed location complies with the zoning ordinance;
 - (3) the Village Treasurer has confirmed that the applicant and each stakeholder of the applicant are not in default to the Village; and
 - (4) the Village police department has determined that the applicant has met the requirements of this ordinance with respect to the background check and security plan.

If written approval is given by each individual or department identified in this Subsection (e), the Village Clerk shall accept a copy of the application for consideration.

Section 7. License Application Evaluation.

- (a) Except as provided in Section 9(a), the Village Clerk will assess all applications pursuant to the provisions, requirements, and criteria set forth in this ordinance and shall consult with the Village police department, the

Village fire department, the Village zoning administrator, and the treasury department. The Village Clerk may consult with outside professionals in the business and finance disciplines.

- (b) In its application deliberations, the Village Clerk shall assess each application in each of the following categories:
 - (1) whether the reports issued by the Village fire, police, building safety, zoning and treasury departments indicate that the applicant or its stakeholders or employees have satisfied the requirements of Section 6(e) (1-4) and sufficiently addressed the considerations of Section 6 (b) (1-25);
 - (2) whether the proposed establishment will negatively impact the character and aesthetics of the surrounding neighborhood and community, including whether the applicant or its stakeholders have engaged in positive community outreach on behalf of the proposed establishment, and whether the applicant or its stakeholders have made significant improvements to the building or neighborhood where the proposed establishment is to be located; and
 - (3) whether the applicant and its stakeholders are persons of good character, honesty, and integrity who do not discredit or tend to discredit public confidence and trust in the medical marihuana industry, or pose a threat to the public health, security, safety, morals, good order, or general welfare.
- (c) If the Village Clerk issues a certificate of approval to an applicant, the Village Clerk shall issue an initial license to that applicant within ten (10) business days.
- (d) Nothing in this Section is intended to confer a property or other right, duty, privilege or interest entitling an applicant to an administrative hearing upon denial of an application or with regard to any scoring decision.

Section 8. License Renewal Application.

- (a) Application for a license renewal required by this ordinance shall be made in writing to the Village Clerk at least thirty (30) days prior to the expiration of an existing license.

- (b) An application for a license renewal required by this ordinance shall be made under oath on forms provided by the Village, and shall contain all of the information required by Section 6.
- (c) An application shall be accompanied by a renewal fee in an amount of not more than \$5,000.00 as established by Village council resolution. The renewal fee is established to defray the costs of the administration of this ordinance.
- (d) Upon receipt of a completed application meeting the requirements of this ordinance and the license renewal fee, the Village Clerk shall refer a copy of the renewal application to each of the following for their approval: the Village fire department, the Village police department, the Village zoning administrator, and the Village treasurer.
- (e) No renewal application shall be approved unless:
 - (1) the Village fire department has inspected the proposed location for compliance with all laws for which they are charged with enforcement within the past calendar year;
 - (2) the Village zoning administrator has confirmed that the proposed location currently complies with the zoning code and this ordinance;
 - (3) the Village treasurer has confirmed that the applicant and each stakeholder of the applicant and the proposed location of the facility are not currently in default to the Village;
 - (4) the Village police department has reviewed the application and determined that the applicant has satisfied the requirements of this ordinance with respect to the background check and security plan; and
 - (5) the Village Clerk has reviewed the application for compliance with Section 7(b)(1-3).
- (f) If written approval is given by each individual or department identified in subsection (e), the Village Clerk shall issue a license renewal to the applicant. If no renewal license is issued, one-half (1/2) of the renewal fee shall be returned to the applicant. The license renewal shall be deemed approved if the Village has not issued formal notice of approval or denial within sixty (60) days of the application being filed.

Section 9. Licenses Generally.

- (a) To the extent permissible under law, all information submitted in conjunction with an application for a license or license renewal required by this ordinance is confidential and exempt from disclosure under the Michigan Freedom of Information Act, 1976 PA 442, MCL 15.231 et seq.
- (b) Licensees may transfer a license issued under this ordinance to a different location upon receiving written approval from the Village Clerk. In order to request approval to transfer a license location, the licensee must make a written request to the Village Clerk, indicating the current license location and the proposed license location. Upon receiving the written request, the Village Clerk shall refer a copy of the written request to each of the following for their approval: the Village fire department, the Village police department, the Village zoning administrator, and the Village treasurer. No license transfer shall be approved unless each such individual or department gives written approval that the licensee and the proposed license location meet the standards identified in Section 6(e) and the Village Clerk has determined that the proposed location meets the requirements of Section 7(b)(2).
- (c) Licensees may transfer a license issued under this ordinance to a different individual or entity upon receiving written approval by the Village Clerk. In order to request approval to transfer a license to a different individual or entity, the licensee must make a written request to the Village Clerk, indicating the current licensee and the proposed licensee. Upon receiving the written request, the Village Clerk shall consider the request as a new application for a license and the procedures set forth in Sections 6 and 7 shall be followed.
- (d) Licensees shall report any other change in the information required by this ordinance to the clerk within ten (10) business days of the change. Failure to do so may result in suspension or revocation of the license.

Section 10. Minimum Operational Standards of a Medical Marihuana Provisioning Center.

- (a) Every medical marihuana provisioning center must be located in a building.
- (b) No medical marihuana provisioning center shall be open between the hours of 10 p.m. and 9 a.m.

- (c) Consumption of marihuana shall be prohibited on the premises of a medical marihuana provisioning center except as permitted by state law.
- (d) A medical marihuana provisioning center shall continuously monitor the entire premises on which they are operated with surveillance systems that include security cameras. The video recordings shall be maintained in a secure, off-site location for a period of fourteen (14) days.
- (e) Unless permitted by the MMMA, public or common areas of the medical marihuana provisioning center must be separated from restricted or non-public areas of the provisioning center by a permanent barrier. Unless permitted by the MMMA, no medical marihuana is permitted to be stored, displayed, or transferred in an area accessible to the general public.
- (f) All medical marihuana storage areas within medical marihuana provisioning center must be separated from any customer/patient areas by a permanent barrier. Unless permitted by the MMMA, no medical marihuana is permitted to be stored in an area accessible by the general public or registered customers/patients. Medical marihuana may be displayed in a sales area only if permitted by the MMFLA.
- (g) Any usable medical marihuana remaining on the premises of a medical marihuana provisioning center while the medical marihuana provisioning center is not in operation shall be secured in a safe permanently affixed to the premises.
- (h) Drive-thru windows on the premises of a medical marihuana provisioning center shall not be permitted.
- (i) No medical marihuana provisioning center shall be operated in a manner creating noise, dust, vibration, glare, fumes, or odors detectable to normal senses beyond the boundaries of the property on which the medical marihuana provisioning center is operated.
- (j) The license required by this ordinance shall be prominently displayed on the premises of a medical marihuana provisioning center.
- (k) Disposal of medical marihuana shall be accomplished in a manner that prevents its acquisition by any person who may not lawfully possess it and otherwise in conformance with state law.
- (l) All medical marihuana delivered to a patient shall be packaged and labeled as provided by state law and this ordinance. The label shall include:

- (1) A unique alpha-numeric identifier for the person to whom it is being delivered.
 - (2) A unique alpha-numeric identifier for the cultivation source of the marihuana.
 - (3) That the package contains marihuana.
 - (4) The date of delivery, weight, type of marihuana and dollar amount or other consideration being exchanged in the transaction.
 - (5) A certification that all marihuana in any form contained in the package was cultivated, manufactured, and packaged in the State of Michigan.
 - (6) The warning that: “This product is manufactured without any regulatory oversight for health, safety or efficacy. There may be health risks associated with the ingestion or use of this product. Using this product may cause drowsiness. Do not drive or operate heavy machinery while using this product. Keep this product out of reach of children. This product may not be used in any way that does not comply with state law or by a person who does not possess a valid medical marihuana patient registry card.”
 - (7) The name, address, email address, and telephone number of an authorized representative of the dispensary whom a patient can contact with any questions regarding the product.
- (m) A licensee shall require all registered patients to present both their Michigan medical marihuana patient/caregiver ID card and state identification prior to entering restricted/limited areas or non-public areas of the medical marihuana provisioning center, and if no restricted/limited area is required, then promptly upon entering the medical marihuana provisioning center.
- (n) The premises shall be open for inspection during the stated hours of operation and as such other times as anyone is present on the premises.
- (o) It shall be prohibited to display any signs that are inconsistent with local laws or regulations or state law.

- (p) It shall be prohibited from displaying or distributing in any manner, physically or electronically, advertising material that is misleading, deceptive, or false, or that is designed to appeal to minors.
- (q) No licensed medical marihuana provisioning center shall place or maintain, or cause to be placed or maintained, an advertisement of medical marihuana in any form or through any medium:
 - (1) within one thousand (1,000) feet measured property line to property line of the real property line comprising an operational school; a commercial child care organization (non-home occupation) that is required to be licensed or registered with the Michigan Department of Health and Human Services, or its successor agency, under the Child Care Organizations Act, 1973 PA, MCL 722.11 et seq; or
 - (2) within five hundred (500) feet, measured property line to property line, of a facility at which substance abuse prevention services or substance abuse treatment and rehabilitation services, as those terms are defined in Part 61 of PA 368 of 1978, MCL 333.6101 et seq., are offered; a church or other structure in which religious services are conducted; parks; or another medical marihuana establishment.
- (r) Certified laboratory testing results that display at a minimum the tetrahydrocannabinol (THC), cannabidiol (CBD), total cannabinoid testing results, and a pass/fail rating based on the certified laboratory's state-required testing must be available to all medical marihuana provisioning center patients/customers upon request and prominently displayed.

Section 11. Minimum Operational Standards of a Medical Marihuana Grower Facility.

- (a) The following minimum standards for medical marihuana grower facilities shall apply:
 - (1) The medical marihuana grower facility shall comply at all times and in all circumstances with the MMMA, the MMFLA, the MTA, and the general rules of the Medical Marihuana Licensing Board and the Department of Licensing and Regulatory Affairs, or their successors, as the foregoing laws and regulations may be amended from time to time.
 - (2) Except as provided by state law, consumption and/or use of medical marihuana shall be prohibited at the grower facility.

- (3) All grower activity related to the grower facility shall be performed in a building.
- (4) The premises shall be open for inspection during the stated hours of operation and as such other times as anyone is present on the premises.
- (5) Any medical marihuana grower facility shall comply with the MTA and shall maintain a logbook and/or database identifying by date the amount of medical marihuana and the number of medical marihuana plants on the premises, which shall not exceed the amount permitted under the grower license issued by the State of Michigan. This log shall be available to law enforcement personnel to confirm that the medical marihuana grower does not have more medical marihuana than authorized at the location and shall not be used to disclose more information than is reasonably necessary to verify the lawful amount of medical marihuana at the facility.
- (6) All medical marihuana shall be contained within the building in a locked facility in accordance with the MMMA, the MMFLA, MTA, and the rules and regulations of the Medical Marihuana Licensing Board, as amended.
- (7) All necessary building, electrical plumbing and mechanical permits shall be obtained from the Village or other applicable government authority for any portion of the structure in which electrical wiring, lighting and/or watering devices that support the cultivation, growing or harvesting of marihuana are located.
- (8) That portion of the structure where any chemicals such as herbicides, pesticides, and fertilizers are stored shall be subject to inspection and approval by the Village fire department to insure compliance with the Michigan fire codes.
- (9) The dispensing of medical marihuana at the medical marihuana grower facility shall be prohibited.
- (10) There shall be no other accessory uses permitted within the same facility other than those associated with cultivating, processing, or testing medical marihuana. Multi-tenant commercial buildings may permit accessory uses in suites segregated from medical marihuana grower facility.

- (11) All persons working in direct contact with medical marihuana shall conform to hygienic practices while on duty, including but not limited to:
 - (i) maintaining adequate personal cleanliness;
 - (ii) washing hands thoroughly in adequate hand-washing areas before starting work and at any other time when the hands may have become soiled or contaminated; and
 - (iii) refraining from having direct contact with medical marihuana if the person has or may have an illness, open lesion, including boils, sores or infected wounds, or any other abnormal source of microbial contamination, until the condition is corrected.
- (12) Litter and waste shall be properly removed and the operating systems for waste disposal are maintained in an adequate manner so that they do not constitute a source of contamination in areas where medical marihuana is exposed.
- (13) Floors, walls, and ceilings shall be constructed in such a manner that they may be adequately cleaned and kept clean and in good repair.
- (14) There shall be adequate screening or other protection against the entry of pests. Rubbish shall be disposed of to minimize the development of odor, minimize the potential for waste development, and minimize the potential for waste becoming an attractant, harborage or breeding place for pests.
- (15) Any buildings, fixtures and other facilities shall be maintained in a sanitary condition.
- (16) Each cultivation center shall provide its occupants with adequate and readily accessible toilet facilities that are maintained in a sanitary condition and good repair.
- (17) Medical marihuana that can support the rapid growth of undesirable microorganisms shall be held in a manner that prevents the growth of these microorganisms.

- (18) Medical marihuana grower facilities shall be free from infestation by insects, rodents, birds, or vermin of any kind.
 - (19) Medical marihuana grower facilities shall produce no products other than useable medical marihuana intended for human consumption.
- (b) Exterior signage or advertising identifying the facility as a medical marihuana grower facility shall be prohibited.

Section 12. Minimum Operational Standards of a Medical Marihuana Safety Compliance Facility.

- (a) The following minimum standards for safety compliance facilities shall apply:
- (1) The safety compliance facility shall comply at all times and in all circumstances with the MMMA, the MMFLA, the MTA, and the general rules of the Medical Marihuana Licensing Board and the Department of Licensing and Regulatory Affairs, or their successors, as the foregoing laws and regulations may be amended from time to time.
 - (2) Except as provided by state law, consumption and/or use of medical marihuana shall be prohibited at the facility.
 - (3) The premises shall be open for inspection during the stated hours of operation and as such other times as anyone is present on the premises.
 - (4) Any safety compliance facility shall maintain a log book and/or database identifying by date the amount of medical marihuana on the premises and from which particular source. The facility shall maintain the confidentiality of qualifying patients in compliance with the MMMA, MMFLA, and MTA, as amended.
 - (5) All medical marihuana shall be contained within the building in an enclosed, locked facility in accordance with the MMMA, the MMFLA and the MTA, and the rules and regulations of the Medical Marihuana Licensing Board, as amended.
 - (6) There shall be no other accessory uses permitted within the same facility other than those associated with testing medical marihuana.

- (7) All persons working in direct contact with medical marihuana shall conform to hygienic practices while on duty.
 - (8) Litter and waste shall be properly removed and the operating systems for waste disposal are maintained in an adequate manner so that they do not constitute a source of contamination in areas where medical marihuana is exposed.
 - (9) Floors, walls and ceilings shall be constructed in such a manner that they may be adequately cleaned and kept clean and in good repair.
 - (10) Any buildings, fixtures and other facilities shall be maintained in a sanitary condition.
 - (11) Medical marihuana that can support the rapid growth of undesirable microorganisms shall be held in a manner that prevents the growth of these microorganisms.
- (b) Exterior signage or advertising identifying the facility as a medical marihuana safety compliance facility shall be prohibited.

Section 13. Minimum Operational Standards of a Medical Marihuana Processor Facility and a Medical Marihuana Secure Transporter.

- (a) The following minimum standards for processor and a secure transporter shall apply:
- (1) The processor and secure transporter shall comply at all times and in all circumstances with the MMMA, the MMFLA and MTA, and the general rules of the Medical Marihuana Licensing Board and the Department of Licensing and Regulatory Affairs, or their successors, as the foregoing laws and regulations may be amended from time to time.
 - (2) Except as provided by state law, consumption and/or use of medical marihuana shall be prohibited at the processor or secure transporter facility.
 - (3) All activity related to the processor facility shall be performed indoors in a building.

- (4) The premises shall be open for inspection during the stated hours of operation and as such other times as anyone is present on the premises.
- (5) Any processor and/or secure transporter facility shall maintain a log book and/or database in accordance with the MMFLA and the MTA, and the rules and regulations of the Medical Marihuana Licensing Board identifying by date the amount of medical marihuana on the premises which shall not exceed the amount permitted under the processor license issued by the State of Michigan, to the extent a state permit process exists. This log shall be available to law enforcement personnel to confirm that the processor does not have more medical marihuana than authorized at the location and shall not be used to disclose more information than is reasonably necessary to verify the lawful amount of medical marihuana at the facility.
- (6) All medical marihuana will be tagged with unique identification.
- (7) All medical marihuana shall be contained within the building in a locked facility in accordance with the MMMA, the MMFLA the MTA, and the rules and regulations of the Medical Marihuana Licensing Board, as amended.
- (8) All necessary building, electrical plumbing and mechanical permits shall be obtained for any portion of the structure in which electrical wiring for devices that support the processing or secure transporting of medical marihuana are located.
- (9) That portion of the structure where the storage of any chemicals exists shall be subject to inspection and approval by the Village fire department to insure compliance with the Michigan Fire Protection Code.
- (10) The dispensing of medical marihuana at the medical marihuana processor or secure transporter facility shall be prohibited except as authorized by state law.
- (11) There shall be no other accessory uses permitted within the same facility other than those associated with the processing or secure transporting of medical marihuana. Multi-tenant commercial buildings may permit accessory uses in suites segregated from the processor facility.

- (12) All persons working in direct contact with medical marihuana shall conform to hygienic practices while on duty, including but not limited to:
 - (i) maintaining adequate personal cleanliness;
 - (ii) washing hands thoroughly in adequate hand-washing areas before starting work and at any other time when the hands may have become soiled or contaminated; and
 - (iii) refraining from having direct contact with medical marihuana if the person has or may have an illness, open lesion, including boils, sores or infected wounds, or any other abnormal source of microbial contamination, until the condition is corrected.
- (13) Litter and waste shall be properly removed and the operating systems for waste disposal are maintained in an adequate manner so that they do not constitute a source of contamination in areas where medical marihuana is exposed.
- (14) Floors, walls, and ceilings shall be constructed in such a manner that they may be adequately cleaned and kept clean and in good repair.
- (15) There shall be adequate screening or other protection against the entry of pests. Rubbish shall be disposed of to minimize the development of odor and minimize the potential for the waste development of odor and minimize the potential for waste becoming and attractant, harborage or breeding places for pests.
- (16) Any buildings, fixtures and other facilities shall be maintained in a sanitary condition.
- (17) Each medical marihuana processor facility shall provide its occupants with adequate and readily accessible toilet facilities that are maintained in a sanitary condition and good repair.
- (18) Medical marihuana that can support the rapid growth of undesirable microorganisms shall be held in a manner that prevents the growth of these microorganisms.
- (19) Processor facilities shall be free from infestation by insects, rodents, birds, or vermin or any kind.

- (20) Processor facilities shall produce no products other than useable medical marihuana intended for human consumption.
- (b) Exterior signage or advertising identifying the facility as a processor facility shall be prohibited.

Section 14. Location of Medical Marihuana Provisioning Centers.

- (a) No medical marihuana provisioning center shall be located within:
 - (1) within one thousand (1,000) feet measured property line to property line of the real property line comprising an operational school; a commercial child care organization (non-home occupation) that is required to be licensed or registered with the Michigan Department of Health and Human Services, or its successor agency, under the Child Care Organizations Act, 1973 PA, MCL 722.11 et seq; or
 - (2) within five hundred (500) feet, measured property line to property line, of a facility at which substance abuse prevention services or substance abuse treatment and rehabilitation services, as those terms are defined in Part 61 of PA 368 of 1978, MCL 333.6101 et seq., are offered; a church or other structure in which religious services are conducted; parks; or another medical marihuana establishment.
- (b) Medical marihuana provisioning centers shall be subject to subsection (a) and shall be located only in the commercial district as a special use, as further specified in the Zoning Ordinance of the Village.
- (c) No medical marihuana provisioning center shall be located within another business.
- (d) No medical marihuana establishment shall be located in an unzoned area or in an area subject to an agreement entered into pursuant to Public Act 425 of 1984.
- (e) Except as otherwise permissible under state law, no person shall allow the consumption of marihuana or marihuana infused products on licensed premises.
- (f) No provisioning center shall be located in a building with shared (common) walls.

Section 15. Location of Medical Marihuana Safety Compliance Facilities, Medical Marihuana Processor Facilities, Medical Marihuana Grower Facilities, and Medical Marihuana Secure Transporters.

- (a) no medical marihuana safety compliance facility, medical marihuana processor facility, medical marihuana grower facility, or medical marihuana secure transporter shall be located within:
 - (1) one thousand (1,000) feet measured property line to property line of the real property line comprising an operational school; a commercial child care organization (non-home occupation) that is required to be licensed or registered with the Michigan Department of Health and Human Services, or its successor agency, under the Child Care Organizations Act, 1973 PA, MCL 722.11 et seq; or
 - (2) five hundred (500) feet, measured property line to property line, of a facility at which substance abuse prevention services or substance abuse treatment and rehabilitation services, as those terms are defined in Part 61 of PA 368 of 1978, MCL 333.6101 et seq., are offered; a church or other structure in which religious services are conducted; parks; or another medical marihuana establishment.
- (b) All medical marihuana safety compliance facilities, medical marihuana processor facilities, and medical marihuana secure transporter facilities shall be subject to subsection (a) and shall be located only in the industrial districts as a special use, as further specified in the Zoning Ordinance of the Village.
- (c) All medical marihuana grower facilities shall be subject to subsection (a) and shall be located only in the industrial district as a special use, as further specified in the Zoning Ordinance of the Village.
- (d) The use of property as a medical marihuana safety compliance facility, medical marihuana processor facility, a medical marihuana secure transporter facility or a medical marihuana growing facility within the industrial district shall require submittal of a special use permit application and approval of a special use permit, pursuant to the Village Zoning Ordinance, Article XV, “Special Uses.”

Section 16. License Revocation; Bases for Revocation; Appeal of License Denial.

- (a) A license issued under this ordinance may be revoked after an administrative hearing and a determination that any grounds for revocation under subsection (b) exist. Notice of the time and place of the hearing and the grounds for revocation must be given to the licensee at least five (5) days prior to the date of the hearing, by first class mail to the address given on the license application or any address provided pursuant to Section 6(b)(1), (2) or (3).
- (b) A license issued under this ordinance may be denied or revoked on any of the following bases:
 - (1) a material violation of any provision of this ordinance;
 - (2) any conviction of a disqualifying felony by the licensee, stakeholder, or any person holding an ownership interest in the license;
 - (3) commission of fraud or misrepresentation or the making of a false statement by the applicant, licensee, or any stakeholder of the applicant or licensee while engaging in any activity for which this ordinance requires a license;
 - (4) failure to obtain and maintain a certificate of approval from the Village Clerk; or
 - (5) the medical marihuana establishment is determined by the Village to have become a public nuisance.
- (c) The Village Clerk shall notify an applicant of the reason(s) for denial of an application or revocation of a license and provide the applicant with the opportunity to be heard. Any applicant aggrieved by the denial or revocation of a license under this ordinance may appeal to the Village Clerk, who shall appoint a hearing officer. Such appeal shall be taken by filing with the Village Clerk, within fourteen (14) days after notice of the action complained of has been mailed to the applicant's last known address on the records of the Village Clerk, a written statement setting forth fully the grounds for the appeal. The review on appeal of a denial or revocation shall be limited to whether there has been an abuse of discretion in the decision or that the decision is not supported by material and competent evidence. The final and conclusive decision on appeal shall be the Village council who shall receive a report and recommendation from the hearing officer.

Section 17. Penalties; Temporary Suspension of a License.

- (a) The Village may require an applicant or licensee of a medical marihuana facility to produce documents, records, or any other material pertinent to the investigation of an application or alleged violation of this ordinance. Failure to provide the required material may be grounds for application denial or license revocation.
- (b) Any person in violation of any provision of this ordinance shall be responsible for a municipal civil infraction and subject to the payment of a civil fine, plus costs. Increased civil fines may be imposed for a repeat violation. As used in this Section, “repeat violation” shall mean a second or any subsequent infraction of the same requirement or provision committed by a person or establishment within any 12-month period. Unless otherwise specifically provided in this ordinance or any other ordinance for a municipal infraction, the penalty schedule is as follows:
 - (1) \$500, plus costs, for the first violation;
 - (2) \$750, plus costs, for a repeat violation; and
 - (3) \$750, plus costs, per day, plus costs, for any violation that continues for more than one day.
- (c) A violation of this ordinance shall be deemed to be a nuisance per se. In addition to any other remedy available at law, the Village may bring an action for an injunction or other process against the person to restrain, prevent or abate any violation of this ordinance.
- (d) This ordinance shall be enforced and administered by the Zoning Administrator or such other Village official as may be designated from time to time by resolution of the Village council.
- (e) All fines imposed under this ordinance shall be paid within forty-five (45) days after the effective date of the order imposing the fine or as otherwise specified in the order.
- (f) The Village President may temporarily suspend a medical marihuana establishment license without a prior hearing if the Village President finds

that public safety or welfare requires emergency action affecting the public health, safety, or welfare. The Village President shall cause the temporary suspension by issuing a suspension notice in connection with institution of proceedings for notice and a hearing.

- (g) If the Village President temporarily suspends a license without a prior hearing, the licensee is entitled to a hearing within thirty (30) days after the suspension notice has been served on the licensee or posted on the licensed premises. In the case of a license issued for a medical marihuana grower facility, the hearing shall be held within seven (7) days after the notice has been served on the licensee or posted on the premises of the licensed facility. the hearing shall be limited to the issues cited in the suspension notice;
- (h) If the Village President does not hold a hearing within thirty (30) days after the date the suspension was served on the licensee or posted on the licensed premises, or in the case of a grower facility seven (7) days, then the suspended license shall be automatically reinstated and the suspension vacated.
- (i) The penalty provisions of this ordinance are not intended to foreclose any other remedy or sanction that might be available to, or imposed by the Village, including criminal prosecution.

Section 18. 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.

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: _____

NAYS: _____

ABSENT: _____

Dated: _____, 2019

John Glassman, 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 _____ day of _____, 2019.

Shawn Foster, Village Clerk