

ORDINANCE NO. #252

**PORT HURON TOWNSHIP MEDICAL MARIHUANA
CAREGIVER’S AND PERSONAL RECREATIONAL MARIHUANA ORDINANCE**

AN ORDINANCE TO REGULATE PATIENT CAREGIVER ACTIVITIES PURSUANT TO THE MICHIGAN
MEDICAL MARIHUANA ACT AND PERSONAL RECREATIONAL MARIHUANA GROW ACTIVITIES
PURSUANT TO THE MICHIGAN REGULATION AND TAXATION OF MARIHUANA ACT

Article ____, Section _____ of the Code of Ordinances, Port Huron Township, Michigan, is hereby created to read as follows:

Section 1 – Short Title

This ordinance shall be known and may be sighted as the “2022 Medical Marihuana Caregiver’s and Personal Recreational Marihuana Ordinance.”

Section 2 – Intent and Purpose

On November 4, 2008, Michigan voters approved a ballot initiative that legalized medical marihuana and on December 4, 2008, Michigan's Medical Marihuana Act, MCL §333.26421, *et seq.* ("MMMA"), took effect allowing both patients and/or their caregivers to cultivate medical marihuana within an enclosed, locked facility for those individuals to be entitled to the MMMA protections. Growers of marihuana currently engage in the cultivation of medical marihuana throughout Port Huron Township without regard to the impact that activity has on surrounding properties and uses.

The Stille-Derossett-Hale Single State Construction Code Act 230 of 1972, MCL §125. 1501, *et seq.*, (“Michigan Construction Code”) allows a local unit of government to legally adopt and enforce the Michigan Construction Code at the local level. The purpose of the Michigan Construction Code is to ensure public health, safety, and welfare by protecting life and property from all hazards related to the design, erection, repair, removal, demolition, or use and occupancy of buildings, structures, or premises. This is in relation to structural strength, adequate egress facilities, sanitary equipment, light and ventilation, and fire safety. Building permits are required when construction or alteration of a structure is in order when a patient caregiver has made alterations to a structure to support the cultivation of marihuana.

Since the passage of the MMMA, a caregiver's cultivation of marihuana, particularly within residential and commercial zoning districts within the Township, presents problems with insufficient or improper electrical supplies, problems with the ability to ensure adequate ventilation, leading to mold, offensive odors, other health hazards, and/or other hazards which are associated with the cultivation of marihuana in residential and commercial settings.

The Michigan Zoning Enabling Act, MCL §125.3101 *et seq.*, ("MZEA") provides the Township with statutory authority to regulate land use within the Township through its Zoning Ordinance. The Michigan Supreme Court in the case of *DeRuiter v Byron Township*, 505 Michigan 130, (2020), ruled that a township's Zoning Ordinance that geographically restricted such caregiver marihuana cultivation to a particular zoning district did not directly conflict with the MMMA and the Township had the authority under the MZEA to require zoning permits and permit fees for the use of buildings and structures within its jurisdiction.

Therefore, this Article as proposed is intended to permit those persons in need of marihuana for medicinal purposes as allowed under the state law, as defined herein, to be afforded a reasonable opportunity to be treated and for those persons who are permitted to furnish medical marihuana, to furnish it within the limitations of state law and the geographical restriction imposed by the Port Huron Township Zoning Ordinance in order to protect public health, safety, and welfare.

This Article is also intended to protect and preserve the public health, safety, and welfare of the community, the quality of life, and the stability of property values including but not limited to the value of residential, commercial, and industrial districts.

This Article is intended to prohibit a caregiver's cultivation of marihuana in residential and commercial districts in order to protect and preserve peace, order, property, and safety of persons as a result of issues associated with the growth of marihuana in residential and commercial districts including problems with insufficient or improper electrical supply, problems with ventilation leading to mold, offensive odors, or other health hazards and other hazards which are associated with the cultivation of marihuana in residential and commercial settings and which is otherwise often difficult to detect and regulate. The MZEA provides the Township with statutory authority to impose zoning limitations as set forth in this Article. The Township's zoning authority as it relates to Patient Care Giver Operations pursuant to the MMMA has also been upheld by the Michigan Supreme Court in the recent case of *DeRuiter v Byron Township*, 505 Michigan 130, (2020).

Section 3 – Definitions

[The following words, terms, and phrases, when used in this subsection, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

- A. "MMMA" means to the Michigan Medical Marihuana Act, MCL §333.26421 *et seq.* currently, or as amended. ("Act or "MMMA")
- B. "Registered primary caregiver" means a person meeting the definition of a caregiver under the MMMA and who has been issued and possesses a registry identification card and possesses the documentation that constitutes a valid registry under the MMMA.
- C. "Marihuana" means that term as defined in Section 7106 of the Public Health Code, 1978 PA 368, MCL §333.7106.

- D. "Medical use" means the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, and transportation of marihuana, or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition, or symptoms associated with the debilitating medical condition, as further defined under the MMMA.
- E. "Registered qualifying patient" means a person meeting the definition of a registered qualified patient under state law and who has been issued and possesses a registry identification card that is valid under the MMMA, as amended.
- F. "Enclosed locked facility" means a closet, room, or other comparable stationary and fully enclosed area equipped with secure locks or other functioning security devices that permit access only by a registered primary caregiver, or registered qualifying patient. Marihuana plants grown outdoors, are considered to be in an enclosed, locked facility if they are not visible to the unaided eye from an adjacent property when viewed by an individual at ground level, or from a permanent structure and are grown within a stationary structure that is enclosed on all sides, except for the base, by chain-link fencing, wooden slats, or a similar material that prevents access by the general public and that it is anchored, attached, or affixed to the ground; located on land that is owned, leased, or rented by either the registered qualifying patient, or a person designated through the department registration process, as the primary giver, for the registered qualifying patient, or patients for whom the marihuana plants are grown; and equipped with functioning locks or other security devices that restrict access only to the registered qualifying patient, or the registered primary caregiver, who owns, leases, or rents the property on which the structure is located. An enclosed and locked facility includes a motor vehicle if both of the following conditions are met:
1. The vehicle is being used temporarily to transport living marihuana plants from one location to another with the intent to permanently retain those plants at the second location.
 2. An individual is not inside the vehicle unless he or she is either the registered qualifying patient to whom the living marihuana plants belong or the individual designated through the Department of Licensing and Regulations as the primary caregiver for the registered qualifying patient.
- G. "Transfer" means to convey, sell, give, deliver, or allow the possession by another person or entity
- H. "MRTMA" means the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, MCL §333.27952 *et seq.* currently, or as amended. ("MRTMA")

Section 4 – Medical Marihuana for Registered Qualifying Patients or any Individual Over the Age of Twenty-one

Registered qualifying patients or visiting qualified patients and individuals over the age of twenty-one years old, may use, possess, and store medical marihuana as provided in the MMMA, MCL §333.26421 *et seq.*, as amended, and marihuana as provided in the MRTMA, MCL §333.27952 *et seq.* as amended, and as further regulated herein.

- A. A registered qualifying patient and/or individual over the age of twenty-one years of age may use, possess, and store marihuana as permitted in the MMMA and/or MRTMA in their principal residence within the Township for personal use only, and shall comply at all times and in all circumstances with the MMMA, the MRTMA, and the General Rules of the Michigan Department of Community Health or the Michigan Department of Licensing and Regulatory Affairs, as they may be amended from time to time.
- B. A registered qualifying patient and/or individual over the age of twenty-one years of age may only cultivate marihuana for him or herself in compliance with the MMMA and/or the MRTMA on a residentially zoned parcel or otherwise authorized for residential use and on an industrial-zoned parcel, in an enclosed locked facility, inaccessible on all sides and equipped with locks or other security devices that permit access only by the registered qualifying patient and the individual who is twenty-one years or older.
- C. All necessary building, electrical, plumbing, and mechanical permits shall be obtained for any construction or alterations of any portion of the structure in support of or in association with the cultivation of marihuana. Any such construction or alterations to structures must, in all cases, be compliant with the provisions of the Michigan Construction Code and the Port Huron Township Ordinances.
- D. The storage of any chemicals such as herbicides, pesticides, and fertilizers, shall be subject to inspection and approval by the Port Huron Township Building Department.
- E. The separation of plant resin from a marihuana plant by butane extraction or any other method that utilizes a substance with a flashpoint below 100 degrees Fahrenheit in any public place, a motor vehicle, inside a residential structure, or the curtilage of a residential structure is prohibited.
- F. If a room with windows is utilized as a marihuana-cultivation location, any lighting methods that exceed usual residential use between the hours of 11:00 p.m. and 6:00 a.m. shall employ shielding methods, without alteration to the exterior of the residence or dwelling unit, to prevent ambient light spillage that causes or creates a distraction or nuisance to adjacent residential properties.
- G. If the registered patient, or individual twenty-one years or older, is not the owner of the premises then written consent must be obtained from the property owner to ensure the owner's knowledge of the use of the premises as permitted by this section, and the registered

patient and individual twenty-one years or older shall maintain written proof that the use of the property under this section is approved by the property owner.

- H. No person other than the registered patient or individual twenty-one years or older shall be engaged or involved in the growing, processing, or handling of marihuana.
- I. Use of the registered patient's residential dwelling unit for medical marihuana or an individual twenty-one years or older for recreational marihuana related purposes, shall be clearly incidental and subordinate to its use for residential purposes. Not more than one hundred (100) square feet of any residential dwelling unit and/or accessory structure on a residential lot, shall be used for the growing, processing, and handling of medical or recreational marihuana. Any modifications to the dwelling unit made for the purpose of cultivating medical or recreational Marihuana shall comply with all applicable building, electrical, mechanical, and fire safety code requirements, including all required permit applications and related inspections. No part of an accessory building, detached garage, pole barn, or similar building or structure shall be used for the growing, processing, or distribution of medical or recreational marihuana. The growing and processing of marijuana for all personal medical and recreational uses must be confined to the interior of the principal residential dwelling.
- J. No equipment or process shall be used in growing, processing, or handling medical or recreational Marihuana which creates noise, vibration, glare, light, fumes, odors, or electrical interference detectable to the normal senses at or beyond the property line of the registered patient's or individual's over the age of twenty-one's residential property. In case of electrical interference, no equipment or process shall be used which creates visual or audible interference with any radio, television, or similar receiver off the premises or causes fluctuation of line voltage off the premises.
- K. The registered qualifying patient, individuals over the age of twenty-one, and the owners, agents, and employees of the parcel at which marihuana for personal or medical use is present are responsible jointly and severally for compliance with this section.

Section 5 – Registered Primary Caregiver Operations

Any registered primary caregiver may acquire, possess, cultivate, manufacture, transfer, or transport medical marihuana compliant with the MMMA, MCL §333.26421 *et seq.* as amended. Cultivation of medical Marihuana by a registered primary caregiver as defined under the MMMA is prohibited in any zoning district except the Heavy Industrial Zoning District, and is further subject to the following:

- A. A registered primary caregiver may only grow, cultivate, manufacture, process, and store marihuana on a parcel in the Heavy Industrial Zoning District, and in an enclosed locked facility.
- B. The registered primary caregiver is responsible for utilizing an enclosed locked facility upon the Heavy Industrial zoned parcel, compliant with the MMMA for cultivating, growing,

manufacturing, processing, and storing marihuana for medical use only. The enclosed locked facility utilized by the primary registered caregiver shall provide separation by fully enclosed walls, or fences, for plants that are grown on behalf of each registered qualifying patient, on whose behalf the registered primary caregiver is furnishing Marihuana for medical use, so it is accessible only to the primary caregiver and registered patient. The processing and storing of medical marihuana is permitted only by registered primary caregivers and registered qualifying patients.

- C. The registered primary caregiver may grow up to a maximum of 72 plants, but no more than 12 plants for each individual registered qualifying patient as set forth in the MMMA.
- D. The registered primary caregiver is responsible for providing the security necessary to assure that the growing marihuana and usable product are accessible for use only by the primary registered caregiver for transfer to, only registered qualifying patients who are registered to the registered primary caregiver and must fully comply with the provisions of the MMMA.
- E. Each parcel upon which enclosed locked facilities with marihuana for medical use are present, must be a minimum of 500 feet from any parcel upon which any school, school facility, child care facility, place of worship, or public park is situated. Measurement of the buffer shall be from property line to property.
- F. Certificate of Occupancy is required and must be obtained from the Township before the presence of marihuana is allowed on the parcel.
- G. Marihuana plants grown outdoors in an enclosed, locked facility shall be subject to the requirements of this Article.
- H. The consumption, transfer, or use of Marihuana, in public, or in a place open to the public is prohibited.

Section 6 – Certificate Required

The operations of a registered primary caregiver within an industrial zoning district shall only be permitted upon the issuance of a Zoning Certificate to Cultivate Medical Marihuana. Such certificate is required to be renewed annually and is subject to inspections by the building and fire department as well as the police department for compliance with the provisions of this Ordinance and for the issuance of the certificate and its renewals.

- A. A complete and accurate application shall be submitted on a form provided by the Township along with the submission of the application fee. The application fee and renewal fee shall be an amount determined by resolution of the Township Board.
- B. The certificate application shall include the name and address of the applicant; the address of the property; a copy of the current state registration card issued to the primary caregiver; a

full description of the nature and types of equipment that will be used in marihuana cultivation and processing; and a description of the location at which the use will take place. The planning and zoning administrator may require additional information necessary to demonstrate compliance with all requirements. The planning zoning administrator shall review the application to determine compliance with this Ordinance, the MMMA and the MRTMA, and any applicable Michigan Regulatory Agency General Rules. A certificate shall be granted if the application demonstrates compliance with this Ordinance and the MMMA

- C. The use shall be maintained in compliance with the requirements of this Ordinance and the MMMA. Any departure shall be grounds to revoke the certificate and take other lawful action. If a certificate is revoked, the applicant shall not engage in the activity unless and until a new Zoning Authorization to Cultivate Medical Marihuana certificate is granted.
- D. Information treated as confidential under the MMMA, including the primary caregiver registry identification card and any information about qualifying patients associated with the primary caregiver, which is received by the Township, shall be maintained separately from public information submitted in support of the application. It shall not be distributed or otherwise made available to the public and shall not be subject to disclosure under the Freedom of Information Act.

Section 7 - Enforcement

The provisions of the “2022 Medical Marihuana Ordinance” shall be administered and enforced by the Township Board through the Building Official, Code Enforcement Officer, or any other employees, law enforcement authorities, inspectors, and officials as the Township Board may delegate to enforce the provisions of the Ordinance.

Section 8 – Severability

If any section, subsection, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion of this Ordinance, and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 9 – Repeal

All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

Section 10 – Effective Date

This Ordinance shall be effective thirty (30) days from the date of publication hereof

This Ordinance was approved for adoption on December 19, 2022, at a regular meeting of the Charter Township of Port Huron Board of Trustees in a motion by Reno and supported by

Dudas the vote as follows:

YEAS: Reno, Dudas, Livingston, Riehl, Shonka, Davis, Lewandowski

NAYS: None

ABSTAIN/ABSENT: None

ORDINANCE DECLARED ADOPTED:

Benita E. Davis, Clerk
Charter Township of Port Huron

CERTIFICATION

The foregoing is a true and complete copy of an Ordinance adopted by the Township Board of Port Huron Township, County of St. Clair, State of Michigan, at a regular meeting held on the 19th day of December, 2022, and public notice of the said meeting was given pursuant to and in accordance with the requirement of Act No. 110 of the Public Act of 1976, as amended being the Open Meeting Act, and the Minutes of the said meeting have or will be made available as required by said Act.

BENITA DAVIS
PORT HURON TOWNSHIP CLERK