

**HENRIETTA TOWNSHIP
JACKSON COUNTY, MICHIGAN**

AMENDMENT TO THE ZONING ORDINANCE GENERAL PROVISIONS

ORDINANCE NO. 120. MEDICAL MARIHUANA HOME OCCUPATIONS ORDINANCE

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF HENRIETTA TOWNSHIP, TO ADD A NEW SECTION 120 ENTITLED MEDICAL MARIHUANA HOME OCCUPATIONS; TO PROVIDE FOR THE LICENSING AND REGULATION AND RELATED USES AND ACTIVITIES OF MEDICAL MARIHUANA; TO ADDRESS THE NEGATIVE SECONDARY EFFECTS ASSOCIATED WITH MEDICAL MARIHUANA BY PROVIDING FOR ADDITIONAL MISCELLANEOUS REGULATIONS; AND TO ALLOW INSPECTIONS.

THE TOWNSHIP OF HENRIETTA ORDAINS:

SECTION 120-1 PURPOSE AND INTENT

It is the purpose and intent of this Section to minimize the negative secondary effects associated with Medical Marihuana Home Occupations, and thereby promote the health, safety, and general welfare of the owners and qualifying patients of Medical Marihuana Home Occupations and the citizens and residents of the Township, through licensing and regulating Medical Marihuana Home Occupations.

It is not the intent of this Section to prohibit any use or activity guaranteed protection by the Michigan Medical Marihuana Act, but to enact regulations which address the possible adverse secondary effects of facilities used for the cultivation, sale or dispensation of medical marihuana; to ensure that such facilities are not covertly used for unlawful purposes not authorized by the Michigan Medical Marihuana Act; and to ensure that these types of facilities do not create or cause adverse effects that might contribute to the blighting or downgrading of the surrounding area.

A primary goal of regulating these uses is to prevent a concentration of the uses in any one area of the Township; to minimize or even prevent the possible adverse secondary effects of such uses; to ensure the integrity of the Township's residential areas; and to protect the integrity of places of religious worship, schools, licensed day-care facilities, parks and playgrounds, and other areas where persons congregate. Nothing in this Section shall be construed as permitting a violation of any State or Federal law.

SECTION 120-2 DEFINITIONS

The following definitions shall apply in the interpretation and enforcement of this Section, unless otherwise specifically stated.

A. Michigan Medical Marihuana Act (MMMA): Michigan Medical Marihuana Act (MCL 333.26421 et seq.) as may be amended, legislation to allow under state law the medical use of marihuana. The MMMA is supplemented by administrative rules promulgated by the Michigan Department of Community Health (MDCH), (R 333.101 et seq).
The MMMA defines the following specific categories of people:

1. Primary Caregiver – A primary caregiver is an individual, as defined by MMMA MCL 333.26423, and is authorized by and registered through the MDCH to grow and distribute medical marihuana to qualified patients. The primary caregiver must have a valid registry card.

Cultivation of Marihuana by a Primary Caregiver as defined in MCL 333.26423 shall be permitted in Agricultural (AG) Zoning District in a single family detached dwellings which are owned or rented and occupied by the Primary Caregiver for their residential use or his/her Qualifying Patients, for their residential use, to whom they are connected through registration with the Michigan Department of Licensing and Regulatory Affairs.

2. Qualifying Patient – A qualifying patient is an individual, as defined by MMMA MCL 333.26423, that has been diagnosed by a licensed physician, as defined by the MMMA, as having a medical condition alleviated by the use of medical marihuana, and who is registered through the MDCH to grow and/or consume medical marihuana. The qualifying patient must have a valid registry card. Cultivation of Marihuana by a Qualifying Patient as defined in MCL 333.26423 shall be permitted only in single family detached dwellings which are owned or rented and occupied by the Qualifying Patient for their residential use.

B. Medical Marihuana Home Occupation: A medical marihuana home occupation is an accessory use to a dwelling unit used by not more than one (1) registered primary caregiver for the purposes of the growing and dispensing of medical marihuana outside the privacy of a personal dwelling for up to five (5) qualifying patients (as well as the caregiver if he or she is also a qualifying patient), but where there is no consumption of marihuana on the premises except by the Qualified Patient who resides at the home.

C. Medical Marihuana Home Use: A medical marihuana home use is a single family detached dwelling where a qualifying patient grows or uses medical marihuana for personal consumption in the privacy of their own dwelling, and/or where a registered primary caregiver, serving not more than one (1) qualifying patient who resides with the primary caregiver, grows or distributes medical marihuana for the qualifying patient in the privacy of the primary caregiver's own dwelling, and is allowed as a use by right wherever dwellings are permitted.

D. Other Definitions: Words and phrases used in this Section shall have the same meanings as set forth in the Michigan Medical Marihuana Act, and the regulations adopted under the Michigan Medical Marihuana Act by the State of Michigan Department of Community Health, or any similar or successor agency.

SECTION 120-3 PROHIBITION

It shall be a violation of this Section for any person to operate or cause to be operated a Medical Marihuana Home Occupation in the Township without a valid license issued pursuant to the provisions of this Section.

SECTION 120-4 LOCATION REQUIREMENTS

A. A Medical Marihuana Home Occupation is limited to single family detached dwellings in the Agricultural (AG) District.

B. A Medical Marihuana Home Occupation shall not be located or operated within one (100) hundred feet of any public roadway.

C. A Medical Marihuana Home Occupation shall not be located or operated within three (300) hundred feet of any property line.

D. A Medical Marihuana Home Occupation shall not be located or operated within one (1,000) 2.

thousand feet of any of the following existing land uses:

1. Another Medical Marihuana Home Occupation (this requirement may be waived upon a determination by the Township Board that a second Medical Marihuana Home Occupation would not contribute to blighting or an excessive concentration of such uses);
2. A church, synagogue, mosque or other place of religious worship, or a public park or community center, playground, library, or municipal facility, or a licensed day-care facility (see PA 110 of 2006), or a public or private school (recognizing drug-free school zones), including all other schools that have different name references but serve students of the same age;

The measurement of the above-stated isolation-distance requirement shall be made by extending a straight line from the property line of the Medical Marihuana Home Occupation to the nearest property line occupied by any of the land uses stated in this Section.

SECTION 120-5 APPLICANT'S INFORMATION

- A. The applicant shall submit proof that he or she is at least 21 years of age.
- B. The applicant shall submit a floor plan to scale of the premises showing the following:
 1. The location of the entry, showing areas of the premise to which any patron is permitted access for any purpose, excluding restrooms;
 2. Location of all equipment and fixtures used for the home occupation;
 3. Identification of any portion of the premises in which patrons will not be permitted;
 4. Identification of the use of each room or other area of the premises; and
 5. Identification of any areas that will be used for the cultivation of marihuana, and the total square footage that will be used for this purpose.
- C. The applicant shall submit a current certificate and straight-line drawing, prepared within 30 days prior to the application, legibility depicting the property lines and the structures of the proposed home occupation, showing a circle extending three (300) hundred feet depicting neighboring property within, and one thousand (1,000) feet from the property line of the property on which the Medical Marihuana Home Occupation will be located, and depicting the property line of any church, synagogue, mosque, other place of religious worship, park, playground, school, licensed day care facility, library, or municipal facility.
- D. The applicant shall submit proof that the proposed operator of the Medical Marihuana Home Occupation has been issued a state registry identification card, to serve as a registered primary caregiver. Not more than one (1) registered primary caregiver from a dwelling unit shall be permitted to service qualifying patients.
- E. The applicant shall submit proof ownership or legal possession of the dwelling and, if the applicant does not own the dwelling, the notarized signature(s) of all owner(s) on the application indicating that the owner(s) support issuance of a license for the property.
- F. Medical Marihuana Home Occupation activities may not occur in or at an apartment building, multi-family residential building or similar housing or development but, rather may occur only within a detached lawful single-family residential dwelling unit.

SECTION 120-6 LICENSE APPLICATION

A. All applicants for a Medical Marihuana Home Occupation license shall sign and file an application for the license with the Township Clerk's Office. The applicant shall be named in each application.

B. The applicant must be qualified according to the provisions of this Chapter and the premises must be inspected and found to be in compliance with the law and applicable codes by the building inspector. A certificate of occupancy issued pursuant to this article does not eliminate the need for the applicant to obtain other licenses and permits (i.e., building, mechanical, electrical, plumbing, etc.) required for the operation of a medical marihuana home occupation.

C. Applications for a license, whether original or renewal, must be made to the Township Clerk's Office by the primary caregiver of the Medical Marihuana Home Occupation. The primary caregiver shall be required to give the following information on the application.

1. The application shall state the telephone number of the Medical Marihuana Home Occupation.

2. The application shall state the address and legal description of the real property on which the Medical Marihuana Home Occupation is to be located.

3. The application shall state whether the applicant had a previous Medical Marihuana Home Occupation license under this Chapter, or a Medical Marihuana Home Occupation or business from another city, village, township or county. The application shall further state if any previous license was denied, suspended or revoked; the name and location of the Medical Marihuana Home Occupation or business for which the license was denied, suspended or revoked; and the date of the denial, suspension or revocation.

4. The application shall state whether the applicant holds any other licenses under this Chapter or other similar Medical Marihuana Home Occupation or business ordinance from another city, village, township or county and, if so, the names and locations of such other permitted business or home occupation.

5. The application shall state the applicant's driver's license number, social security number, or federally issued tax identification number.

D. The application shall be accompanied by the following:

1. Payment of the application and license fee, as established by resolution of the Township Board;

2. Satisfactory proof that the applicant meets the requirements of this Chapter and the Michigan Medical Marihuana Act;

3. Documentation identifying the owner(s) of the real property on which the Medical Marihuana Occupation is to be situated; and

E. The application shall contain a statement under oath that:

1. The applicant has personal knowledge of the information contained in the application and that the information in the application and furnished with the application is true;

2. The applicant has read this Section.

SECTION 120-7 OPERATIONAL REQUIREMENTS

A Medical Marihuana Home Occupation must comply with the following operational requirements.

A. Age Requirement Regulations. No persons under the age of 18 shall be permitted in the area of a dwelling used for a Medical Marihuana Home Occupation at any time, unless the person is a registered qualifying patient and is accompanied by a parent or legal guardian.

B. Hours of Operation. Hours of operation of a Medical Marihuana Home Occupation shall be limited to 8:00 AM to 8:00 PM.

C. Inspection. During regular hours of operation the owner of the dwelling or operator of the Medical Marihuana Home Occupation shall permit all representatives of the Township, County and the State of Michigan to inspect the premises of the Medical Marihuana Home Occupation for the purpose of determining compliance with this Section and other applicable laws.

D. Exterior Structural Requirements. All Medical Marihuana Home Occupations shall comply with the following exterior structural requirements.

1. All Home Occupations must be clearly incidental and subordinate to its use for residential purposes.

2. The merchandise or activities of the Medical Marihuana Home Occupation shall not be visible from any point outside the dwelling.

3. The exterior portion of a Medical Marihuana Home Occupation shall not utilize flashing lights, or any words, signage, lettering, photographs, silhouettes, drawings, flags, or pictorial representations of any kind.

4. Fences shall be a type that does not obstruct vision of the street or highway.

E. Interior Structural Requirements.

1. Any interior space used for the cultivation of marihuana shall have a gross floor area not greater than twenty five percent (25%) to support the cultivation of not more than seventy two (72) individual marihuana plants, and shall be located in a separate locked room, as defined by the MMMA, and accessible only to the primary caregiver and the qualifying patient. It shall not be accessible to the general public.

2. If a room with windows is utilized as a marihuana growing location, any lighting methods that exceed usual residential use between the hours of 11:00 PM. and 7:00AM., shall employ shielding methods, without alteration to the exterior of the residence, to prevent ambient light spillage that causes or creates a distraction or nuisance to adjacent residential properties.

3. The interior premises shall be equipped with locks and other 24-hour security devices, sufficient in nature and scope to deter and detect unlawful access and/or theft of marihuana from the premises.

F. Standards of Conduct. The following standards of conduct shall be adhered to on the premises of the Medical Marihuana Home Occupation.

1. The owner of the dwelling or operator of the Medical Marihuana Home Occupation shall not allow the illegal possession, use, or sale of alcohol or controlled substances on the premises.

2. The owner of the dwelling or operator of the Medical Marihuana Home Occupation shall not illegally offer for sale or illegally allow to be consumed or possessed upon the premises, or upon any parking areas, sidewalks, walkways, access ways or grounds of the premises, narcotics or dangerous drugs or fermented malt, malt, vinous or spirituous beverages. 5.

3. All activity of the Medical Marihuana Home Occupation, including but not limited to the legal cultivation, dispensing and sale of medical marihuana, shall be performed indoors.
4. Smoking or consumption of Medical Marihuana shall not be allowed on any portion of the site of the Medical Marihuana Home Occupation by anyone other than the primary caregiver, and then only if in accordance with the Michigan Medical Marihuana Act.
5. A Medical Marihuana Home Occupation shall be operated in compliance with any applicable rules promulgated by the Michigan Department of Community Health or the applicable State licensing agency.
6. Qualifying patients, and their primary caregivers, may be subject to prosecution under federal and state laws relating to the possession and distribution of controlled substances, and Henrietta Township accepts no legal liability in connection with the approval and operation of the Medical Marihuana Home Occupation and/or Medical Marihuana Home Use.
7. There is no authorization for marihuana-related stores, dispensaries, cooperatives, provisioning centers, safety compliance facilities, or other non-profit or for profit businesses that may market to a wide customer base, that do not meet the regulations set by this Section for a Medical Marihuana Home Occupation or registered medical marihuana primary caregiver (see Michigan Attorney General Opinion No. 7259 of 2011.)

SECTION 120-8 DISALLOWANCE OF A MEDICAL MARIHUANA HOME OCCUPATION

The Township shall not allow a Medical Marihuana Home Occupation to operate if any of the following are true.

- A. An applicant is under 21 years of age.
- B. An applicant is overdue in payment to the Township of fees, fines or penalties assessed against the applicant or imposed upon the applicant in relation to a Medical Marihuana Home Occupation.
- C. The premises to be used for the Medical Marihuana Home Occupation have not been approved by the building inspector as being in compliance with applicable building codes, laws and ordinances.
- D. The applicant has operated a Medical Marihuana Home Occupation or business which was determined to be a public nuisance under laws of any state, county, city, village or township within one year prior to the date of application.
- E. The application fee has not been paid.
- F. The application for the proposed Medical Marihuana Home Occupation is in violation of or is not in compliance with any of the provisions of this Section.
- G. The applicant has ever been convicted of a felony involving illegal drugs.

SECTION 120-9 TERM OF LICENSE

All licenses issued pursuant to this Section shall be for a term of one year. The term shall commence on January 1 of each year and terminate upon December 31 of the same year. Applications for a license filed at any other time during the year shall be treated as if they were filed January 1 of that year and shall terminate on December 31 of the same year, and no proration of fees shall be permitted. Renewal or amendment(s) of license or certificate of registration shall be submitted in the same manner, no later than thirty (30) days before expiration date.

SECTION 120-10 REVOCAION OF LICENSE

The Township Board shall revoke a license if a cause of suspension occurs and the license has been suspended within the preceding 12 months. The Township Board shall also revoke a license if it determines that any of the following has occurred:

- A. Any condition exists that would warrant disapproval of a license as set forth in this Section;
- B. The Medical Marihuana Home Occupation operator has engaged or has allowed others to engage in acts of misconduct on the licensed premises in violation of any Township ordinance or the laws of the State of Michigan or of the United States, when the operator knew or should have known such acts were taking place; which include but are not limited to having more than twelve (12) plants per patient, two and one half (2-1/2) ounces, or dispensing to anyone other than one of their five registered patients;
- C. Repeated disturbances of the public peace have occurred within the Medical Marihuana Home Occupation or upon any parking areas, sidewalks, access ways or grounds of the Medical Marihuana Home Occupation;
- D. Visible change(s) to the outside appearance of the primary caregiver's or qualifying patient's residence or other visible evidence of the conduct of the medical marihuana operation occurring inside the dwelling. Increased traffic, fire and safety hazards, noise, dirt, odor, gas, glare, fumes, vibration or other nuisance elements are prohibited;
- E. When energy use, heat generation odor, and noise resulting from growth of marihuana exceeds levels reasonably attributable to residential uses adversely impact the health and safety risks of any neighboring property to the Medical Marihuana Home Occupation dwelling. In the course of making that determination the zoning administrator, or his or her designee, may find it necessary to order inspection by appropriate inspector(s) with applicable inspection fees.

When the Township Board revokes a license, the revocation shall continue for one year. The licensee shall not be issued a license under this Chapter for one year from the date revocation became effective. If, subsequent to revocation, the Township Board finds that the basis for the revocation has been corrected or abated, a license may be reinstated if at least 90 days have elapsed since the date the revocation became effective.

SECTION 120-11 TRANSFER OF LICENSE

Any license granted under this Section shall be non-transferable. A licensee shall not transfer any license to another individual or business, nor shall a licensee operate a Medical Marihuana Home Occupation under the authority of a license at any place other than the address designated in the application for the license.

SECTION 120-12 CONTROLLED SUBSTANCE PENALTY

Except as authorized by State law; it shall be unlawful for any person to use or possess marijuana. A person who violates applicable laws and this ordinance shall be guilty of a misdemeanor, punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both, at the discretion of the Court. Nothing in this Ordinance hereby adopted shall be construed to affect any just or legal right or remedy of any chapter, nor shall any just or legal right or remedy of any chapter be lost, impaired or affected by this Ordinance.

SECTION 120-13 SEVERABILITY

The various sections and provisions of this Ordinance shall be deemed to be severable, and should any section or provision of this Ordinance be declared by any court of competent jurisdiction to be unconstitutional or invalid the same shall not affect the validity of the Ordinance as a whole or any 7.


section or provision of this Ordinance other than the section or provision so declared to be unconstitutional or invalid.

SECTION 120-14 REPEAL AND EFFECTIVE DATE


This ordinance shall take effect eight days following proper publication of notice of its adoption in accordance with and subject to Michigan Public Act 110 of 2006. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Adopted: May 11, 2016

Effective: _____



Andrew Grimes, Supervisor



Sally Keene, Clerk