

**ENSLEY TOWNSHIP
NEWAYGO COUNTY, MICHIGAN
(Ordinance No. 10-11)**

At a regular meeting of the Ensley Township Board held at the Township offices on November 9, 2010, the following Ordinance was offered for adoption by Township Board Member John VanderMeulen, and was seconded by Township Board Member Brenda Bird:

**AN ORDINANCE REGARDING THE REGULATION OF
MEDICAL MARIHUANA, MEDICAL MARIHUANA
DISPENSARIES, AND RELATED USES AND ACTIVITIES**

THE TOWNSHIP OF ENSLEY (“Township”) ORDAINS:

ARTICLE 1. PURPOSE AND INTENT

The voters of the state of Michigan adopted the Medical Marihuana Act, being Public Act 2008, Initiated Law 1, MCL 333.26421 *et seq.*, which became effective on December 4, 2008. That statute fails to regulate many aspects associated with the possession and use of medical marihuana, including, but not limited to, the distribution, sale, consumption, smoking and processing of medical marihuana. The Township Board finds that there are many negative impacts associated with the use and dispensing of marihuana (including medical marihuana) which can include burglaries, robberies, violence, increased vandalism, illegal sales of marihuana, and use of marihuana by minors and other persons without medical need. Furthermore, the unregulated sale and distribution of medical marihuana can create many problems in the areas adjacent to medical marihuana sales, usage or processing, including threats to the public peace and undermining of Township efforts to safeguard the health, safety and welfare of the residents and property owners of the Township and the public at large.

ARTICLE 2. DEFINITIONS

The following words, terms and phrases shall have the following meanings for purposes of this Ordinance:

A. “Act” means the Michigan Medical Marihuana Act, Public Act 2008, Initiated Law 1, being MCL 333.26421 *et seq.*, as well as any and all amendments thereto, and also any legislation enacted into law to implement that statute.

B. “Marihuana” is also known as Marijuana and Cannabis.

C. “Medical Marihuana Dispensary” means any business, facility, association, cooperative, location, or operation, whether fixed or mobile, where medical marihuana is made available to, sold, delivered, transmitted, dispensed, or distributed by or to one or more of the following:

1. A primary caregiver (as defined by Michigan Initiated Law I of 2008, as amended, being MCL 333.26421 *et seq.*, as amended).
2. A qualifying patient (as defined by Michigan Initiated Law I of 2008, as amended, being MCL 333.26421 *et seq.*, as amended).
3. Members of the general public.

A medical marihuana dispensary shall also include any place, location, facility, or operation, whether fixed or mobile, where medical marihuana is smoked or consumed where either three or more persons are present and smoking or consuming medical marihuana, or where one or more persons are present and smoking or consuming medical marihuana and such medical marihuana smoking or consumption is occurring on the property of a business, association, cooperative, or commercial operation or facility or on a public or government property.

A medical marihuana dispensary does not include the lawful dispensation of medical marihuana by a primary caregiver personally dispensing to not more than five (5) qualifying patients (as defined by Michigan Initiated Law 1 of 2008, as amended (being MCL 333.26421 *et seq.*, as amended), so long as the primary caregiver personally delivers the lawful amount of

medical marihuana to the qualifying patient where the qualifying patient resides and is done in full compliance with not only the Ensley Township Zoning Ordinance and this Ordinance but all applicable Michigan and federal laws and regulations.

D. “Medical Use of Marihuana” Is the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a qualifying patient’s debilitating medical condition or symptoms associated with the debilitating medical condition, as defined by the Act.

E. “Primary Caregiver” shall be as defined by the Act.

F. “Qualifying Patient” shall be as defined by the Act.

ARTICLE 3. PROHIBITION ON MEDICAL MARIHUANA DISPENSARIES

No medical marihuana dispensary shall be commenced, conducted, maintained, operated or utilized anywhere within Ensley Township or on or from any property, land, building or structure within and from Ensley Township. Furthermore, no person shall frequent, patronize or obtain or purchase any marihuana from or through any medical marihuana dispensary within Ensley Township.

ARTICLE 4. GENERAL REGULATIONS REGARDING PRIMARY CAREGIVER RESIDENCES

The following regulations generally pertain to the residence of a primary caregiver:

A. The primary caregiver may grow and process marihuana in compliance with the Act within the residential dwelling where the primary caregiver lives and is the primary caregiver’s residence pursuant to Michigan law. No such residential dwelling of the primary caregiver shall be located within an apartment building, multi-family residential building or

similar housing building or development, but rather, shall occur only within a detached lawful single-family residential dwelling.

B. No person other than the members of the immediate family of the primary caregiver residing within the residence of that primary caregiver (and no person under 18 years of age) shall be engaged or involved in the growing, processing, dispensing, delivery, or handling of the marihuana.

C. Use of the residential dwelling (which is the residence of the primary caregiver) for marihuana related purposes shall be clearly incidental and subordinate to its use for single family residential purposes. Not more than 25% of the gross finished floor area of the dwelling shall be used for the growing, processing and handling of the marihuana. 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 marihuana.

D. No qualifying patient shall visit, come to or be present at the residence of the primary caregiver to purchase, smoke, consume, obtain or receive possession of any marihuana; rather, the primary caregiver must personally deliver any medical marihuana to a qualifying patient at the residence of that qualifying patient.

E. No person shall deliver marihuana to a qualifying patient other than the primary caregiver for that qualifying patient. The primary caregiver must personally deliver the marihuana to his/her qualifying patient.

F. There shall be no visible change to the outside appearance of the primary caregiver's residence or other visible evidence of the conduct of the medical marihuana operation occurring inside the dwelling.

G. No marihuana, marihuana plants, marihuana paraphernalia or plant growing apparatus shall be visible from the exterior of the dwelling.

H. No growing, processing, smoking or use of marihuana shall occur outdoors. All medical marihuana growing, processing and handling shall occur entirely within the dwelling.

I. No sale or distribution of merchandise or products shall be conducted on, within or from the dwelling or residential premises (including the lot or parcel involved) of the primary caregiver apart from the medical marihuana itself.

J. No equipment or process shall be used in growing, processing or handling medical marihuana which creates noise, vibration, glare, light, fumes, odors or electrical interference detectable to the normal senses outside the dwelling unit. 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. The dwelling of the primary caregiver shall meet all building, housing, fire and local and state codes and ordinance requirements.

K. The growing, processing, distribution, sale and handling of medical marihuana shall comply at all times and all circumstances with the Act and any applicable regulations or requirements by the Michigan Department of Community Health or any other Michigan agency.

L. The residence for the primary caregiver shall be located more than 1,000 feet from any school, church or library as defined by Michigan law to ensure community compliance with federal “Drug-Free School Zone” requirements and to minimize negative impacts.

M. Not more than one (1) primary caregiver shall be permitted to grow, process or handle medical marihuana at or from a given dwelling unit.

N. All medical marihuana shall be contained within the primary caregiver's residential dwelling (except when being delivered by the primary caregiver to a qualifying patient off site) and in an enclosed, locked facility inaccessible on all sides and equipped with locks or other security devices that permit access only by the registered primary caregiver. Any person under eighteen (18) years old shall not have any access to any medical marihuana.

O. No on-site consumption or smoking of marihuana is allowed within the residence (or on the lot or parcel) of a primary caregiver except for any medical marihuana consumption by the primary caregiver himself/herself if he/she is a qualifying patient and in full compliance with the Act.

P. No medical marihuana shall be grown, processed or handled at, from or through the residence of the primary caregiver beyond that which is needed or allowed by law (whichever is less) for the qualifying patients of that particular primary caregiver.

Q. No sign identifying the dwelling as being a place where medical marihuana is grown, sold, processed, kept, or distributed shall be visible outside of the dwelling or within any of the windows of the dwelling.

ARTICLE 5. REGULATIONS REGARDING QUALIFYING PATIENTS

A. A primary caregiver is required to deliver marihuana to his/her qualifying patients at the residence where the particular qualifying patient resides. A qualifying patient shall not go to the residence of their primary caregiver to purchase, obtain, smoke or consume marihuana.

B. Use of marihuana by a qualifying patient shall fully comply with this Ordinance and the Act.

ARTICLE 6. REQUIRED COMPLIANCE WITH FEDERAL LAW

A. Nothing in this Ordinance is intended to grant, nor shall any provisions of this Ordinance be construed as granting, immunity from prosecution for the growing, sale, consumption, use, smoking, distribution or possession of marihuana which is not in strict compliance with the Act, this Ordinance and all other applicable laws and regulations.

B. Since federal laws are not affected by the Act or this Ordinance, nothing in this Ordinance is intended to grant, nor shall it be construed as granting, immunity from criminal prosecution under federal law. The Act and this Ordinance do not protect users, primary caregivers, qualifying patients or the owners of properties on which medical use of marihuana is occurring from federal prosecution or from having their property seized by federal authorities under the Federal Controlled Substances Act, as amended.

ARTICLE 7. GENERAL REGULATIONS

A. No medical marihuana shall be grown, utilized, smoked, processed, distributed or handled within 1,000 feet of any half-way house, school, library, church, correctional facility, college, trade or vocational school, public park, halfway house, child daycare center, foster care center or similar use.

B. No medical marihuana shall be grown, utilized, smoked, distributed or handled within a dwelling or on a residential lot or parcel within 1,000 feet of the residence of another primary caregiver.

C. The smoking or consumption of marihuana shall not occur in any public place.

D. Every primary caregiver, qualifying patient and any other person shall comply at all times and all circumstances with the Act and the regulations of the Michigan Department of Community Health, as may amended from time to time.

E. It shall be unlawful to give, sell, dispense, or otherwise distribute medical marihuana (or any marihuana) to anyone other than a primary caregiver or qualifying patient.

F. No sign or other advertising materials identifying a particular dwelling or property as being associated with the use or cultivation of medical marihuana or marihuana in general shall be displayed, posted, or distributed.

G. Every primary caregiver shall maintain an accurate and complete written record of all medical marihuana purchased, sold, distributed, or dispensed by or through the primary caregiver which shall include, at a minimum, all of the following:

1. The identity of the primary caregiver and qualifying patient involved in each transaction.
2. The total quantity of, and amount paid for, the medical marihuana for each transaction.
3. The date, time and location of each transaction.

H. All transactions and the above-required information shall be recorded and kept in a numerical register in the order of which the transaction occurs. All such records must be kept in the English language in a legible manner and must be preserved and made available for inspection by the Township for a period of 3 years after the date of the transaction.

I. It is unlawful to purchase or otherwise obtain medical marihuana (or any marihuana) from any source other than a primary caregiver who is authorized under the Act to sell or dispense medical marihuana to that particular person.

J. The Township Board by resolution may require the issuance of a Township business permit for each primary caregiver.

ARTICLE 8. RESPONSIBILITY FOR THE PREMISES

A primary caregiver shall be responsible (and shall be deemed to be in violation of this Ordinance) for any violation of this Ordinance or the Act which occurs in the residential dwelling or lot or parcel owned or leased by the primary caregiver.

ARTICLE 9. SEVERABILITY

If any provision, clause or portion of this Ordinance is declared by a court of competent jurisdiction to be unconstitutional or invalid, such invalidation shall not effect any other portion of this Ordinance and the balance of this Ordinance shall remain in full force and effect.

ARTICLE 10. PENALTIES

A violation of this Ordinance constitutes a municipal civil infraction. Any person who violates, disobeys, omits, neglects, or refuses to comply with any provision of this Ordinance, or any amendment thereof, or any person who knowingly or intentionally aids or abets another person in violation of this Ordinance, shall be in violation of this Ordinance and shall be responsible for a civil infraction. The civil fine for a municipal civil infraction shall be not less than one hundred dollars (\$100.00) for the first offense and not less than two hundred dollars (\$200.00) for subsequent offenses, in the discretion of the court, in addition to all other costs, damages, expenses and remedies provided by law. For purposes of this section, “subsequent offense” means a violation of the provisions of this Ordinance committed by the same person within twelve (12) months of a previous violation of the same provision of this Ordinance or similar provision of this Ordinance for which said person admitted responsibility or was adjudged to be responsible. Each day during which any violation continues shall be deemed a separate offense.

ARTICLE 11. PUBLIC NUISANCE AND NUISANCE *PER SE*

The violation of any provisions of this Ordinance or the Act shall be deemed to constitute a nuisance *per se* and shall be subject to abatement.

ARTICLE 12. EFFECTIVE DATE

This Ordinance shall become effective upon the expiration of thirty (30) days after this Ordinance or a notice of adoption of this Ordinance appears in the newspaper as provided by law.

The vote in favor of this Ordinance was as follows:

YEAS: John VanderMeulen, Cynthia Harwood, Brenda Bird, Faye Folkema and Phillip Starr

NAYS: None

ABSENT/ABSTAIN:

ORDINANCE DECLARED ADOPTED.

CERTIFICATION

I hereby certify that the above is a true copy of an Ordinance adopted by the Ensley Township Board at the time, date, and place specified above pursuant to the required statutory procedures.

Respectfully submitted,

Dated: November 9, 2010

By _____
Cynthia Harwood
Ensley Township Clerk