

ORDINANCE NO. 2158

**CITY OF MADISON HEIGHTS,
OAKLAND COUNTY, MICHIGAN**

AMENDMENT TO THE ZONING ORDINANCE

An Ordinance to amend Ordinance No. 252, being an Ordinance codifying and adopting a Zoning Ordinance for the City of Madison Heights by adding a new Article XII to the Zoning Ordinance of the Code of Ordinances, City of Madison Heights, Michigan, to create an overlay zoning district to establish location requirements for the cultivation of medical marihuana by primary caregivers, under the Michigan Medical Marihuana Act (MMMA), Initiated Law 1 of 2008, MCL 333.26421 et seq., as amended, to protect the health, safety and welfare of the public.

THE CITY OF MADISON HEIGHTS ORDAINS:

SECTION 1. Amendment.

That a new Article XII is added to the Zoning Ordinance of the Code of Ordinances, City of Madison Heights, Michigan, to read as follows:

ARTICLE XII. – Primary Caregiver Marihuana Grow Overlay District

Sec. 10.346. – Findings, Purpose and Intent.

The Michigan Medical Marihuana Act (MMMA), Initiated Law 1 of 2008, MCL 333.26421 et seq., as amended, does not nullify a municipality's inherent authority to regulate land use under the Michigan Zoning Enabling Act (MZEA), MCL 125.3101 et seq. as long as (1) the municipality does not prohibit or penalize the cultivation of medical marihuana and (2) the municipality does not impose regulations that are unreasonable and inconsistent with regulations established by state law. MCL 333.26424(b)(2) states that primary caregivers and qualifying patients must keep their plants in an enclosed, locked facility in order for those individuals to be entitled to the MMMA protections in MCL 333.26424(a) and (b). Because an enclosed, locked facility may be found in various locations on various types of property, this ordinance, limiting where a primary caregiver can cultivate medical marihuana within the City, does not directly conflict with the MMMA's requirement that marihuana plants be kept in an enclosed, locked facility. The City finds that the average residence in the City is not aptly suited to the safe and favorable cultivation of 72 marihuana plants that a primary caregiver is permitted to grow under the MMMA. The City further finds that the cultivation of 72 marihuana plants by primary caregivers in residential districts creates potential hazards and potential adverse and detrimental effects on the neighboring properties that endanger the public health, safety and welfare. The purpose and intent of this ordinance is to identify suitable locations for primary caregivers to cultivate medical marihuana, in compliance with the MMMA and this Article, to mitigate the potential adverse and detrimental effects on neighboring properties to protect the public health, safety and welfare.

First Reading – June 22, 2020

Public Hearing and Second Reading – July 13, 2020

Effective – July 23, 2020

Sec. 10.347. - Definitions.

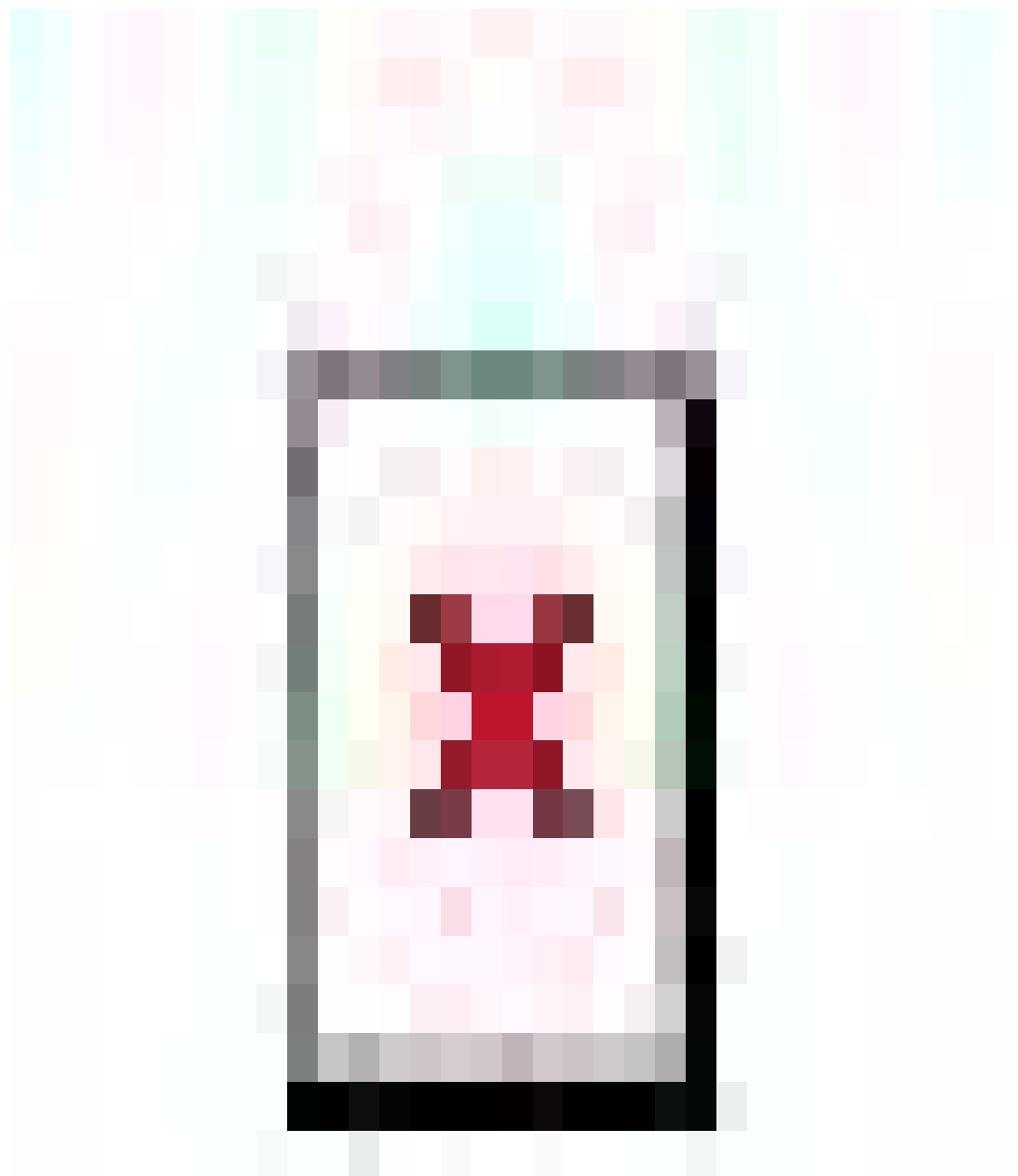
For the purpose of the provisions of this Article, all words and phrases herein shall be construed to have the meanings as provided for in the Michigan Medical Marihuana Act (MMMA), Initiated Law 1 of 2008, MCL 333.26421, et. seq., as amended.

Sec. 10.348. – No effect on patients.

This Article does not apply to or regulate any qualifying MMMA patient activities or conduct that is in compliance with the MMMA. A qualifying patient, operating in compliance with the MMMA, shall be permitted to cultivate, at the patient's primary residence, who shall also be full-time resident of the dwelling, no more than the 12 allowed marihuana plants as permitted by the MMMA for the patient's personal use to treat their debilitating medical condition.

Sec. 10.349. – Caregiver Marihuana Grow Overlay District.

The Caregiver Marihuana Grow Overlay District boundaries shall be the parcels indicated as established in the following overlay district map:



First Reading – June 22, 2020

Public Hearing and Second Reading – July 13, 2020

Effective – July 23, 2020

Sec. 10.350. – Caregiver Marihuana Grow Overlay District Requirements.

The following standards and requirements shall apply to any location at which the cultivation of medical marihuana is conducted by a primary caregiver.

- (a) A registered primary caregiver shall not cultivate medical marihuana at a parcel that is not located within the Caregiver Marihuana Grow Overlay District.
- (b) The cultivation of medical marihuana by a caregiver shall comply at all times with the MMMA and the MMMA General Rules, as amended.
- (c) Not more than one registered primary caregiver shall be permitted to operate at any one parcel located with the Caregiver Marihuana Grow Overlay District.
- (d) The cultivation of medical marihuana by a primary caregiver shall be conducted entirely within an “enclosed, locked facility” (as that phrase is defined by the MMMA), up to 12 marihuana plants for each registered qualifying patient with whom the registered primary caregiver is connected through the registration process established by the Department of Licensing and Regulatory Affairs, and up to 12 additional marihuana plants for personal use, if the primary caregiver is also registered as a qualifying patient under the MMMA. The number of marihuana plants shall not exceed the number of marihuana plants permitted by the MMMA in total aggregate at any location or multiple locations whether located in the city or outside of the city.
- (e) No sign identifying the location by word, image or otherwise, or indicating that the cultivation of medical marihuana is taking place on the premises, shall be permitted; nor shall any vehicle having such a sign be parked anywhere on the premises.
- (f) Distribution of marihuana or use of items in the administration of marihuana shall not occur at or on the parcel where medical marihuana is cultivated. A qualifying patient shall not visit, come to, or be present at the parcel where medical marihuana is cultivated to purchase, smoke, consume, obtain or receive possession of any marihuana.
- (g) No on-site consumption or smoking of marihuana shall be permitted within the parcel (or on the property) where medical marihuana is cultivated, except for lawful medical marihuana consumption by the primary caregiver if registered as a qualifying patient under the MMMA.
- (h) Medical marihuana shall not be grown, processed, handled or possessed at the location where medical marihuana is cultivated beyond that which is permitted by law.
- (i) A certificate of occupancy, together with a required site plan review, shall be obtained from the city and all necessary building, electrical, plumbing and mechanical permits shall be obtained for any portion of a building or structure in which equipment and devices that support the cultivation, growing or harvesting of marihuana are located or used.

First Reading – June 22, 2020

Public Hearing and Second Reading – July 13, 2020

Effective – July 23, 2020

- (j) If marihuana is grown or located in a room with windows, all interior lighting shall be shielded to prevent ambient light from creating a distraction for adjacent properties.
- (k) Related merchandise or products shall not be sold or distributed from the property.
- (l) There shall be no exterior storage or parking of materials or equipment.
- (m) No nuisance shall be generated by any heat, glare, noise, smoke, vibration, noxious fumes, odors, vapors, gases or matters at any time.
- (n) The entire parcel and all enclosed, locked facilities shall be available for inspection upon request by the zoning administrator, building official, fire official or law enforcement official during reasonable business hours.

Sec. 10.351. – Principal uses permitted.

All principal uses permitted in the Underlying Zoning District(s) are permitted by right in the Overlay Districts, provided they comply with all applicable requirements of the Underlying Zoning District.

SECTION 2. Repealer.

All ordinances, or parts of ordinances, in conflict with this ordinance are repealed only to the extent necessary to give this ordinance full force and effect.

SECTION 3. Severability.

Should any section, subdivision, clause, or phrase of this ordinance be declared by the courts to be invalid, the validity of the ordinance as a whole, or in part, shall not be affected other than the part invalidated.

SECTION 4. Savings.

All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this ordinance takes effect, are saved and may be consummated according to the law in force when they were commenced.

SECTION 5. Effective Date.

This ordinance as ordered shall take effect ten (10) days after its adoption and upon

First Reading – June 22, 2020

Public Hearing and Second Reading – July 13, 2020

Effective – July 23, 2020

publication.

SECTION 6. Inspection.

A copy of this ordinance may be inspected or purchased at the City Clerk's office between the hours of 8:00 a.m. and 11:30 a.m. and between the hours of 12:30 p.m. and 4:30 p.m. on regular business days.