

**ORDINANCE TO AMEND THE CODE OF ORDINANCES
OF THE CITY OF PORTAGE, MICHIGAN
BY AMENDING SECTION 42-129 OF CHAPTER 42,
LAND DEVELOPMENT REGULATIONS**

THE CITY OF PORTAGE ORDAINS:

That Section 42-129 of Chapter 42, Land Development Regulations, is hereby amended to add Section 42-129(C) as follows:

Section 42-129. Home occupations.

- A. No change.
- B. No change.
- C. Medical Marihuana Home Occupation. A primary caregiver acting in compliance with the General Rules of the Michigan Department of Community Health (“General Rules”), the Michigan Medical Marihuana Act, P.A.2008, Initiated Law, MCL 333.26421, et. seq., (the “Act”) and the requirements of this section, shall only be allowed as a home occupation. The conditions and requirements contained in Section 42-129(A) and (B) (Passive and Active Home Occupations) shall not be applicable to medical marihuana home occupations under this section and no permit under the Portage Zoning Code is required for a medical marihuana home occupation. The Act was passed by Michigan Voters through the initiative process. Both the summary of the Act appearing on the ballot and the Act as a whole reflect an intent to create a private and confidential patient/caregiver relationship to facilitate the lawful cultivation, distribution and use of marihuana strictly for medical purposes. The Act does not authorize the broad legalization of the cultivation, distribution or use of marihuana and a reading that permits such broad legalization is inconsistent with the fundamental intent of the Act read as a whole in context with generally applicable Michigan law. A primary caregiver may assist only a qualifying patient to whom he or she is connected through the Department of Community Health’s (“Department”) registration process for the medical use of marihuana. The following requirements for a primary caregiver as a home occupation shall apply:
 - 1. A primary caregiver shall comply at all times and in all circumstances with the Act and the General Rules of the Department as they may be amended from time to time.
 - 2. The home occupation shall only be conducted in a dwelling unit (as defined by the Zoning Code) where no more than one primary caregiver:
 - a. Cultivates up to the maximum number of marihuana plants permitted by the Act (12 for each qualifying patient)
 - b. Possesses up to the maximum amount of marihuana permitted by the Act (2.5 ounces for each qualifying patient), including any incidental amounts of seed, stalks and unusable roots; and

- c. Assists no more than the maximum number of qualifying patients permitted by the Act (maximum of 5) who have been issued and possess a registry identification card and who are connected with the primary caregiver through the Department's registration process for the medical use of marihuana. Assistance to a qualifying patient by someone other than his or her designated primary caregiver is prohibited.
- 3. The following shall apply to a primary caregiver conducting a home occupation under this section:
 - a. Considering the federal "Drug Free School Zone" requirements, the home occupation shall not be located:
 - i. Within five hundred (500) feet from the real property comprising a public or private elementary, vocational or secondary school or a public or private college, junior college or university, or a playground, or housing facility owned by a public housing authority; or
 - ii. Within one hundred (100) feet of a public or private youth center, public swimming pool, or video arcade facility.
 - b. Measurements for purposes of Section 3(a)(i) and (ii) above shall be made from the property boundary of the zoning lot occupied by the home occupation to the nearest point of the property occupied by any of the uses listed above, using a straight line without regard to intervening structures or objects. "Zoning lot" is defined by Article 42, Section 42-112, Definitions, of the Portage Code of Ordinances, as amended. A map showing the uses and facilities listed in Section 3(a) above, as well as the protected areas, is available for review in the Department of Community Development at the Portage City Hall and on the City's website under the Department of Community Development.
 - c. The distance provisions of this subsection do not apply to a primary caregiver whose qualifying patient(s) (up to the maximum permitted under the Act) are permanent residents of the primary caregiver's household and whose residence is shared with the primary caregiver.
- 4. If the primary caregiver is not an owner of the premises, nothing contained in this section shall limit an owner of the premises from prohibiting the home occupation on the premises occupied by the primary caregiver nor limit an owner's right to pursue any private right of action allowed by law.
- 5. All medical marihuana plants shall be contained within the main residential structure in an enclosed, locked facility inaccessible on all sides and equipped with locks or other security devices that permit access only by the primary caregiver or qualifying patient. The home occupation shall not be conducted in an attached or detached accessory building or structure.

6. The home occupation shall be conducted consistent with the Portage Code of Ordinances including but not limited to securing all building, electrical, plumbing and mechanical permits for any portion of the residential structure in which electrical wiring, lighting, and/or watering devices are located, installed or modified that support the cultivation, growing or harvesting of marihuana, compliance with Article 4, Chapter 24 Noise, Article 5, Chapter 24 Safety, Sanitation and Health as well as Article 14, Chapter 42 Housing/Property Maintenance Code.
7. 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 p.m. and 6 a.m. 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.
8. Qualifying patients may visit the site for the purposes permitted under the Act only during the hours of 8:00 a.m. to 8:00 p.m. No more than 5 qualifying patients may visit the site at any one time.
9. Off street parking provided for the home occupation shall be provided on an improved driveway that fulfills the requirements of Article 5, Section 24-111, Definitions, of the Portage Code of Ordinances, as amended. There shall be no other vehicular parking other than the off street parking facilities normally required for the residential use.
10. There shall be no sign of any nature identifying the home occupation and the use of window displays are not permitted.
11. Nothing in this section, or in any companion regulatory provision adopted in any other provision of this Code is intended to grant, nor shall they be construed as granting, immunity from criminal prosecution for, growing, sale, consumption, use, distribution, or possession of marihuana not in strict compliance with the Act and the General Rules and this section. To this end, the sale, distribution, cultivation, manufacture, possession, delivery or transfer of marihuana to treat a qualifying patient shall only be conducted as a home occupation, and shall not be permitted in any other zoning classification of this Zoning Code. Also, since federal law is not affected by the Act or the General Rules, nothing in this section, or in any companion regulatory provision adopted in any other provision of this Code, is intended to grant, nor shall they be construed as granting, immunity from criminal prosecution under federal law. Neither this ordinance nor the Michigan Medical Marihuana Act protects users, caregivers or the owners of properties on which the medical use of marihuana is occurring from federal prosecution, or from having their property seized by federal authorities under the Federal Controlled Substances Act.

12. Definitions. As used in this section:

a. MARIHUANA

This term shall have the meaning given to it in Section 7601 of the Michigan Public Health Code, 1978 PA 368, MCL 333.7106, as is referred to in Section 3(d) of the Michigan Medical Marihuana Act, PA 2008, Initiated Law, MCL 333.26423(d).

b. PRIMARY CAREGIVER

A person who is at least 21 years old who has agreed to assist with a patient's medical use of marihuana, who has never been convicted of a felony involving illegal drugs and who has been issued and possesses a registry identification card.

c. QUALIFYING PATIENT

A person who has been diagnosed by a physician as having a debilitating medical condition.

d. REGISTRY IDENTIFICATION CARD

A document issued by the Department that identifies a person as a registered qualifying patient or a registered primary caregiver or a document or its equivalent that is issued under the laws of another state, district, territory, commonwealth, or insular possession of the United States that allows the medical use of marihuana by a visiting qualifying patient, or to allow a person to assist with a visiting qualifying patient's medical use of marihuana.

FIRST READING:	June 14, 2011
SECOND READING:	July 12, 2011
EFFECTIVE DATE:	July 26, 2011
ORDINANCE NUMBER:	11-11