

**CITY OF WIXOM  
ORDINANCE NO. 2021-02**

**ORDINANCE TO AMEND THE CODE OF ORDINANCES FOR THE CITY OF WIXOM, TITLE 18, ZONING, CHAPTER 18.03, RESIDENTIAL DISTRICTS, SECTION 18.03.040, SPECIFIC STANDARDS APPLICABLE TO USES, SUBPARAGRAPHS K THROUGH M, TO ADD NEW PROVISIONS FOR MEDICAL MARIHUANA HOME OCCUPATIONS AND THE USE OF RECREATIONAL MARIHUANA, AND TO PROVIDE PENALTIES FOR VIOLATIONS THEREOF.**

**THE CITY OF WIXOM ORDAINS:**

**Section 1. Amendment to Chapter 18.03**

Title 18, Chapter 18.03, Section 18.03.040, subparagraphs K through M, of the Municipal Code of the City of Wixom shall be amended as follows:

K. Medical Marihuana Home Occupations/Recreational Marihuana

1. 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 in order for those individuals to be entitled to the MMMA protections.

The Stille-Derossett-Hale Single State Construction Code Act, MCL 125.1501, et seq. allows a local unit of government to legally adopt and enforce the State Building Code at the local level. The purpose of the Building Code is to enforce 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 where a patient or a caregiver has made alterations to a structure to support the cultivation of marihuana.

The City is taking these steps to curtail problems associated with insufficient or improper electrical supplies, problems with ventilation leading to mold, offensive odors, other health hazards and/or other hazards that are associated with the cultivation of marihuana in structures, particularly in residential settings.

The Michigan Zoning Enabling Act, MCL 125.3101, et seq. (MZEA), provides the City with statutory authority to regulate land use within the City through its Zoning Ordinance. The Michigan Supreme Court in the recent case of *DeRuiter v Byron Township*, 505 Mich 130 (2020), found that a city'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.

This article is intended to permit those persons in need of marihuana for medicinal purposes allowed under the MMMA 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 the MMMA and MZEA, and the geographical restrictions imposed by the Zoning Ordinance in order to protect the public health, safety, and welfare.

This article is also intended to recognize the rights of individuals 21 years of age and older to use, possess, store, consume, process or cultivate marihuana (referred to collectively as the "use of recreational marihuana") in their residence in accordance with the as provided in the Michigan Regulation and Taxation of Marihuana Act (MRTMA), MCL 333.27952, et seq., as amended

This article is further intended to protect and preserve the public health, safety, and welfare of the City, the quality of life and stability of property values, including, but not limited to, the value of residential districts.

2. The acquisition, possession, cultivation, use, delivery or distribution of marihuana to treat or alleviate a debilitating medical condition, and the use of recreational marihuana, is permitted as a home occupation in the R-1, R-2, R-3, and R-4 Districts in compliance with the MMMA and the following:
  - a. Medical marihuana for registered qualifying patients or the use of recreational marihuana by an individual 21 years or older. Registered qualifying patients, or visiting qualified patients, and individuals 21 years or older, may use, possess, cultivate, and store medical marihuana as provided in the MMMA, as amended, and recreational marihuana as provided in the Michigan Regulation and Taxation of Marihuana Act (MRTMA), MCL 333.27952, et seq., as amended, and as further regulated herein.
    - (1) A registered qualifying patient (medical marihuana) and individuals 21 years of age or older (recreational marihuana):
      - i. May use, possess, cultivate and store marihuana in their principle residence within the City for personal use only, and shall comply at all times and in all circumstances with the MMM or the MRTMA, as applicable, and the general rules of the Michigan Community Health or the Michigan Department of Licensing and Regulatory Affairs, as they may be amended from time to time.
      - ii. May only cultivate marihuana for him/herself in compliance with the MMMA or the MRTMA, as applicable, on property zoned R-1, R-2, R-3, or R-4, 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 21 years or older residing in the home.

- iii. All necessary building, electrical, plumbing, and mechanical permits shall be obtained for any alterations or any portion of the structure in support of or in association with the cultivation of marihuana.
- iv. The storage of any chemicals, such as herbicides, pesticides, and fertilizers shall be subject to inspection and approval by the City of Wixom Building Department.
- v. The separation of a plant resin from a marihuana plant by butane extraction or any other method that utilizes a substance with a flash point below 100 degrees Fahrenheit, in any public place, a motor vehicle, inside a residential structure, or the curtilage of a residential structure is prohibited.
- vi. If a room with windows is utilized as a marihuana cultivation location, any lighting methods that exceed usual residential levels 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.
- vii. If the registered qualifying patient, or individual 21 years or older is not the owner of the premises, then written and notarized consent must be obtained from the property owner to ensure the **owner's** knowledge of the use of the premises as permitted under this section, and the registered qualifying patient and individual 21 years or older shall maintain written proof that the use of the property under this section is approved by the property owner. The premises in this subparagraph shall be the principal residence of the registered qualifying patient or individual 21 years or older.
- viii. No person other than the registered qualifying patient, or individual 21 years or older residing in the home, shall be engaged or involved in the growing, processing or handling of marihuana.
- ix. Use of the registered qualifying **patient's** residence for medical marihuana or the use of an individual 21 years or **older's** residence for recreational marihuana shall be clearly incidental or subordinate to its use for residential purposes.

Any modifications to the dwelling unit for the purpose of cultivating medical or recreational marihuana shall comply with all applicable building, electrical, mechanical and fire safety code requirements, including all requisite 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 process or for distribution of medical or recreational marihuana unless such building or structure has been inspected and approved for the building, electrical, mechanical, and fire safety requirements of such use and fits the definition of an enclosed, locked facility.

- x. No equipment or process shall be used in growing, processing, or handling medical or recreational marihuana which creates noise, vibration, glare, light, fumes, odor, or electrical interference detectable to the normal senses at or beyond the property line of the registered patient's or individual over the age of 21's residential property. In case of electrical interference, no equipment or process shall be used that creates visual or audible interference with any radio, television, or similar receiver off the premises or causes fluctuation of line voltage off the premises.
  - xi. The registered qualifying patient, individuals over the age of 21, and the owners, agents, and employees of the property which marihuana for personal or medical use is present are responsible jointly and severally for compliance with this section.
- b. A registered primary caregiver, operating in compliance with the MMMA and applicable rules, may be permitted as a home occupation, only in accordance with the following standards and requirements:
- (1) Medical marihuana home occupations are not permitted in multiple-family developments. Cultivation or other medical use of marihuana as a medical marihuana home occupation is limited to single-family, detached dwellings located in the R-1, R-2, R-3, or R-4 districts.
  - (2) A registered primary caregiver operating a medical marihuana home occupation must not be located within 1,000 feet of any school, childcare facility, community center, youth center, playground, public or private library, housing facility owned by a public housing authority, and place of worship as measured from the outer most boundaries of the lot or parcel on which the medical marihuana home occupation and restricted facility is located.

- (3) The home occupation shall not be located within 500 feet of another registered caregiver.
- (4) Not more than one primary caregiver within a single dwelling unit shall be permitted to serve qualifying patients.
- (5) The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than 25% of the total square footage of the residence, including the basement and garage area, shall be used for the purposes of the home occupation. The home occupation shall be carried out completely within the confines of such dwelling. No accessory building, attached or detached, shall be used in the home occupation.
- (6) Except for lighting, heating, watering, drying, or other equipment, or fertilizers, herbicides, or other chemicals directly related to the medical use of marihuana, no other materials or equipment not generally associated with normal ownership, use, and maintenance of the dwelling shall be permitted.
- (7) A qualifying patient shall not smoke or consume marihuana at the dwelling of the primary caregiver marihuana.
- (8) 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.
- (9) If the primary caregiver is not the owner of record of the dwelling in which a registered primary caregiver of medical marijuana is functioning as a home occupation, the primary caregiver must gain written and notarized consent from the owner to use the dwelling for the medical marihuana home occupation. At any time, the City may request proof that the primary caregiver has consent from the property owner to use the dwelling for a medical marihuana home occupation. The premises in this subparagraph shall be the principal residence of the primary caregiver.
- (10) To ensure compliance with all applicable requirements and laws, the portion of the structure, such as a cultivation room, where energy use and heating requirements exceed typical residential limits and chemical storage occurs, it is subject to inspection and approval by the building official, fire marshal, or other authorized City officials.
- (11) The property, dwelling, and all enclosed lot facilities shall be available for inspection upon request by the building official, fire marshal, or other authorized officials.

- (12) The registered primary caregiver is responsible for utilizing an enclosed, locked facility 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, or 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.
  - (13) The registered primary caregiver may grow up to the maximum of 72 plants, but no more than 12 plants for each individual registered qualifying patient as set forth in the MMMA.
  - (14) The registered primary caregiver is responsible for providing the security necessary to ensure the growing marihuana and usable product are accessible for use only by the registered primary caregiver for transfer to, only to registered qualifying patients, who are registered to the registered primary caregiver, and must fully comply with the provisions of the MMMA.
  - (15) A certificate of occupancy is required and must be obtained from the City before the primary caregiver establishes the home occupation or provides any services to a registered qualifying patient. marihuana.
  - (16) The consumption, transfer, or use of marihuana in public, or place open to the public, is prohibited.
- 3. It is unlawful to establish or operate a for-profit or non-profit marihuana dispensary, collective, or cooperative within the City, even if such use is intended for the medical use of marihuana.
- 4. Medical marihuana provisioning centers, safety compliance facilities, dispensaries, cooperatives, marihuana establishments, and any other operation or facility similar in nature are specific prohibited within the City.
- L. Home Occupations Other Than Medical Marihuana Home Occupations. Any use which is customarily conducted entirely within a dwelling and carried on by the inhabitants thereof, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes, and does not change the character thereof, is permitted. No article or service may be sold or offered for sale on the premises, except as such is produced by such occupation and shall not require internal or external alterations or construction features, machinery, outdoor storage, or signs not customary in residential areas. Any modifications to the dwelling made for the purpose of a home occupation shall comply with all applicable building, electrical, mechanical, and fire safety code requirements, including all requisite permit applications and related inspections. One non-illuminated

name plate, not more than 2 sq. ft. in area, may be attached to the residence, which shall contain only the name and occupation of the resident of the premises. No persons other than a full-time resident residing on the premises shall be engaged in a home occupation. No home occupation shall be allowed if the traffic to be generated by such home occupation is in excess of that normally associated with single-family residential use. Clinics, doctor offices, dentist offices, hospitals, kennels, millinery shops, beauty parlors, and other similar uses shall not be deemed to be a home occupation.

1. Home occupations that create the following conditions shall not be permitted:
  - a. Changes the outside appearance of the dwelling or is visible from the street.
  - b. Generates traffic, parking, sewerage or water use in excess of what is normal in the residential neighborhood.
  - c. Creates noise, vibration, glare, fumes, odors or results in electrical interference, or becomes a nuisance.
  - d. Results in outside storage or display of anything including signs.
  - e. Requires the employment of anyone in the home other than the dwelling occupant.
  - f. Requires exterior building alterations to accommodate the occupation.
  - g. Occupies more than twenty-five percent of the ground floor area of the dwelling and may not occupy a detached accessory building.
  - h. Requires parking for customers that cannot be accommodated on the site and/or not exceeding one parking space at curbside on the street.
  - i. Requires the delivery of goods or the visit of customers before six a.m. and after eight p.m.
2. The following are permitted home occupations, provided they do not violate any of the provisions of the previous paragraph:
  - a. Dressmaking, sewing and tailoring.
  - b. Painting, sculpturing or writing.
  - c. Telephone answering.
  - d. Home crafts, such as model making, rug weaving and lapidary work.
  - e. Tutoring, limited to a maximum of four students at a time.

- f. Computer application, not including sale of computers.
  - g. Salesperson's office or home office of a professional person.
  - h. Laundering and ironing, with outdoor drying of clothing prohibited.
  - i. Repair of clocks, instruments or other small appliances which do not create a nuisance due to noise, vibration, glare, fumes, odors or results in electrical interference.
  - j. Barber shops, beauty shops and similar personal service establishment, limited to one operator.
  - k. Other home occupations similar to the above.
- 3. Any proposed home occupation that is not specifically permitted by subsection (K)(2) of this section shall be considered a special land use and be granted or denied upon consideration of those standards contained in subsection (K)(1) of this section and under the procedures specified in [Section 18.18.020](#).
  - 4. Home occupation permits shall be limited to the applicant who legally resides in the residence.
- M. Garage Sales. Garage sales or yard sales shall be permitted as an accessory use on a residential lot, provided a permit is obtained from the city and the total time of all garage sales shall not exceed fourteen days within a calendar year.
- N. Bed and Breakfast Inns. Bed and breakfasts shall be subject to the following requirements:
- 1. Bed and breakfast operations as a subordinate use to one-family dwelling units are subject to city licensing provisions.
  - 2. Such dwellings shall meet all applicable codes and ordinances of the city, county and state.
  - 3. Floor plans drawn to scale of all floors to be utilized for bed and breakfast activities shall be submitted to the city.
  - 4. Buildings shall be suitable in character for the use proposed and shall not be cause for a change in character of the neighborhood.
  - 5. The dwelling shall have not more than six sleeping rooms available for guests of the bed and breakfast dwelling.
  - 6. There shall be no separate cooking facilities provided for the bed and breakfast occupants. Meals, other than those served as a part of the normal operation of



the household, shall be served only to occupants of the bed and breakfast facility.

7. Approved smoke detectors/alarms shall be provided in individual sleeping units and in common hallways.
8. Emergency egress lighting to assure continued illumination for a duration of not less than one hour in case of emergency or primary power loss.
9. An approved fire extinguisher in the common hallway accessible to all occupants.
10. Every sleeping unit shall have at least one operable window approved for emergency egress or rescue, except where the sleeping unit is provided with a door to a corridor having access to two remote exits in opposite directions.
11. Occupancy shall be of a transient nature for periods not to exceed one week in duration in any one month by any transient occupant. A guest registry indicating name, address, phone number, and vehicle license number, shall be kept indicating dates of arrival and departure of guests and shall be available to the city for inspection upon request.
12. An unlit sign not exceeding six square feet in area may be provided. Such sign may be provided as a ground sign or a wall sign, except in the VCA district, where the sign must be a wall sign.
13. Off-street parking shall be provided based upon one space for each rental room and one space for the operator of the facility. It is the city's intent to not encourage yards to be destroyed, landscaping removed, or the integrity of the neighborhood altered to provide parking. In those instances where parking requirements cannot be met, the applicant may request special consideration from the planning commission. In such a case the applicant shall submit an analysis of parking required and parking provided within a three-hundred-foot radius of the subject parcel. After analyzing this data, the planning commission may lower the number of the required parking spaces based on the fact that sufficient off-street parking exists in the neighborhood.

## **Section 2. Amendment to Chapter 18.03**

Title 18, Chapter 18.12, General Provisions, Section 18.12.160, Medical Marihuana Activities, is hereby repealed in its entirety.

## **Section 3. Savings Clause.**

Nothing in this Ordinance hereby adopted shall be construed to affect any just or legal right or remedy of any character nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

**Section 4. Severability.**

The various parts, sections and clauses of this Ordinance are declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected.

**Section 5. Adoption.**

This Ordinance is hereby declared to have been adopted by the City of Wixom City Council at a meeting thereof duly called and held on the 27th day of April, 2021, and ordered to be given effect upon publication as mandated by Charter and statute.

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Patrick Beagle, City Mayor

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Catherine Buck, City Clerk

Notice of adoption published in the Spinal Column on May 5, 2021.

**CERTIFICATION OF CLERK**

I hereby certify that the foregoing is a true and complete copy of an Ordinance adopted by the City Council of the City of Wixom, County of Oakland, State of Michigan, at a regular meeting of the City Council duly called and held on 27th day of April, 2021.

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Catherine Buck, City Clerk