



Charter 2
Planning

Engineering, Environmental, Planning & Zoning

4550 Walnut Lake Road

West Bloomfield, MI 48325

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www.wbtownship.org

APPROVED

By Debbie Binder - Township Clerk

West Bloomfield Township June 21, 2021

DATE: JUNE 15, 2021

TO: WEST BLOOMFIELD TOWNSHIP BOARD

MEETING DATE: JUNE 21, 2021

FROM: GORDON BOWDELL, AICP – BUILDING DIRECTOR / ZONING AND PLANNING MANAGER

RE: **APPROVAL AND ADOPTION OF ORDINANCE CZ21-01: AN ORDINANCE TO AMEND THE ZONING ORDINANCE, CHAPTER 26 OF THE CHARTER TOWNSHIP OF WEST BLOOMFIELD CODE OF ORDINANCES, ARTICLE 2, DEFINITIONS, SECTION 2.1, ARTICLE 4, USE STANDARDS, SECTION 4.19, HOME OCCUPATIONS; SECTION 4.57, MARIHUANA ESTABLISHMENTS PROHIBITED.**

Request:

As a result of several complaints regarding residential marihuana grow facilities, on January 19, 2021 the Township Board discussed marihuana facilities within the township and took the following action:

Motion by Rosenberg, supported by Warshay to approve for the Township Attorney to bring to the Township Board an amendment to the zoning ordinance that would help the Board to regulate marijuana grow houses in single-family zoned residences for the purposes of maintaining the health, welfare, safety and private enjoyment of residents of the Township.

Attached to this cover memo you may find the proposed ordinance amendment. The proposed amendment modifies the home occupation section of the ordinance to provide regulations and location requirements for Medical Marihuana Caregiver facilities. The regulations include limiting these facilities to parcels that contain a minimum of 2 acres and ensuring that Enclosed Locked Facilities with marihuana for medical use be at least 100 feet from a property line. In addition to the general locational requirements, the proposed ordinance amendment sets forth registration and inspection requirements for Medical Marihuana Caregivers within the Township.

The Planning Commission discussed the proposed text amendment on the April 13th agenda. As a result of that discussion, changes were incorporated into the text amendment and the Planning Commission held a public hearing on the proposed amendment on May 11th and recommended approval with conditions:

Motion by Santourian, supported by Abdelnour, to conditionally recommend approval of the proposed text amendment CZ21-01, to modify the zoning ordinance language to incorporate regulations for Medical Marihuana Caregiver facilities to the Township Board with the following corrections and modifications to be incorporated as discussed this evening:

1. Section 2 to capitalize "Home Occupation" and clarify (F) that the size requirement be limited to the home occupation within the residence.
2. Section 2(A)(iv) Changing the language to "not more than one" registered primary caregiver
3. Section 2(A)(xvii) Add "activities and operations"
4. Section 2(A)(xxii) Add "all electrical and mechanical must meet all applicable codes"
5. Section 2(B)(i) Change separation requirement to 1000 ft
6. Section 2(B)(xxii) Instead of the word "potential" substitute "remediation of" and finish the word "structure"

7. *Section 2(C)(i)(c) Strengthen language related to the submittal requirements for the site plan to require that the applicant provide accurate information.*

Ayes: Abdelnour, El-Gamal, Hagopian, Rosenberg, Santourian, Stokes

Nays: None

Absent: Matthews

MOTION CARRIED

On June 7, 2020, the Township Board reviewed and approved the introduction to the proposed text amendment.

The attached ordinance includes the conditions of approval listed above. The attached documents consist of a clean version and a marked-up version of the proposed language. Proposed language is identified in red and existing language proposed to be removed is identified with ~~red strikethrough~~.

Should you have any questions, please feel free to contact me at 248-451-4895 or gbowdell@wbtownship.org

CHARTER TOWNSHIP OF WEST BLOOMFIELD

ORDINANCE NO. CZ21-01

An Ordinance to amend the Zoning Ordinance, Chapter 26 of the Charter Township of West Bloomfield Code of Ordinances, Article 2, Definitions, Section 2.1, Article 4, Use Standards, Section 4.19, Home Occupations; Section 4.57, Marihuana Establishments Prohibited.

THE CHARTER TOWNSHIP OF WEST BLOOMFIELD ORDAINS:

Section 1 of Ordinance

Chapter 26, Article 2, Definitions, Section 2.1 is hereby amended to read as follows:

Sec. 2.1. DEFINITIONS

The following words, terms and phrases, when used in this subsection, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Medical Marihuana Registered Primary Caregiver Home Occupations. The following definitions apply specifically to Medical Marihuana Registered Primary Caregiver Home Occupations.

- i. **Enclosed Locked Facility** means a closet, room, or other comparable stationary and fully enclosed area equipped with secure locks or other functioning security devices that permit access only by a Registered Primary Caregiver or Registered Qualifying Patient and as further defined in the MMMA.

Marihuana plants grown outdoors, are considered to be in an Enclosed Locked Facility if they are not visible to the unaided eye from an adjacent property when viewed by an individual at ground level or from a permanent structure, and are grown within a stationary structure that is enclosed on all sides, except for the base, by chain-link fencing, wooden slats, or a similar material that prevents access by the general public and that it is anchored, attached, or affixed to the ground; located on land that is owned, leased, or rented by either the Registered Qualifying Patient, or a person designated through the department registration process, as the Registered Primary Caregiver for the Registered Qualifying Patient(s) for whom the marihuana plants are grown; and equipped with functioning locks or other security devices that restrict access only to the Registered Qualifying Patient or the Registered Primary Caregiver who owns, leases, or rents the property on which the structure is located. Enclosed Locked Facility includes a motor vehicle if both of the following conditions are met:

- a. The vehicle is being used temporarily to transport living marihuana plants from one location to another with the intent to permanently retain those plants at the second location.

- b. An individual is not inside the vehicle unless he or she is either the Registered Qualifying Patient to whom the living marihuana plants belong, or the individual designated through the Department of Registration process as the Registered Primary Caregiver for the Registered Qualifying Patient.
- ii. **Home Occupation** means an accessory use that is customarily incidental and secondary to the use of a dwelling, and except for Registered Primary Medical Marihuana Caregiver Operations as regulated by this zoning Ordinance, that is conducted entirely within a dwelling and that is a legal occupation, profession, or business activity conducted by an occupant residing on the premises full time and, except for Registered Primary Medical Marihuana Caregiver Operations as regulated by this zoning Ordinance, where all business activity relies solely on electronic or off-premise transactions and communication is conducted over the internet, telephone, and/or electronic mail, utilizing equipment customarily found in a home and is generally not distinguishable from the outside. Medical, hospital or veterinary services, kennel, grooming or pet boarding services, personal service establishments, or repair facilities shall not be deemed a permissible home occupation.
- iii. **Marihuana** means that term as defined in Section 7106 of the Public Health Code, 1978 PA 368, MCL 333.7106. Marijuana, with the alternate spelling with the letter “j” has the same meaning as “Marihuana.”
- iv. **Medical Use** means 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 Registered Qualifying Patient's debilitating medical condition, or symptoms associated with the debilitating medical condition, as further defined under the MMMA.
- v. **MMMA** or **Act** means to the Michigan Medical Marihuana Act, MCL 333.26421, *et seq.*, currently, or as amended.
- vi. **MRTMA** means to the Michigan Regulation and Taxation of Marihuana Act Initiated Law 1 of 2018, MCL 333.27952, *et seq.*, currently, or as amended.
- vii. **Registered Primary Caregiver** means a person meeting the definition of caregiver under the MMMA and who has been issued and possesses a registry identification card and possesses the documentation that constitutes a valid registry under the MMMA.
- viii. **Registered Qualifying Patient** means a person meeting the definition under state law and who has been issued and possesses a registry identification card which is valid under the MMMA, as amended.

- ix. **Transfer** means to convey, sell, give, deliver, or allow the possession by another person or entity.
- viv. **Visiting Qualifying Patient** means a patient who is not a resident of this state or who has been a resident of this state for less than 30 days.

Other provisions and terms. The other provisions and terms of the MMMA and MRTMA for purposes of deferential context are incorporated by reference as though more fully restated herein.

Section 2 of Ordinance

Chapter 26, Article 4, Use Standards, Section 4.19, Home Occupations is hereby amended to read as follows:

Sec. 4.19 Home Occupation

1. Home occupations are permitted as an accessory use in a residential dwelling unit in compliance with all of the following:
 - A. Outdoor displays, storage, or signage are not permitted.
 - B. Except as required under Section 4.19.2.A below, interior or exterior alterations or construction features related to the home occupation are not permitted.
 - C. Mechanical equipment or machinery not customarily used for domestic or household purposes is not permitted.
 - D. There is no client or customer visitation to the home and the home occupation does not generate parking or traffic in the residential area, except that the use of a residence to give instruction in craft or fine art to a student is permitted pursuant to MCL 125.3204.
 - E. Only commodities produced by the home occupation may be sold from the premises over the internet or transported off-premise for sale or service.
 - F. A maximum of twenty-five (25%) percent of the total floor area is to be used for a Home Occupation.
 - G. A maximum of two (2) persons may be engaged in the home occupation who shall both reside at the residence.
 - H. The high hazard use sections of the State Construction Code adopted pursuant to the Stille-DeRossett-Hale Single State Construction Code Act, MCL 125.1501, *et seq.*, and the performance standards of Section 5.11 of this Chapter shall apply to home occupations. 2. Noncompliance with the above criteria or requirements imposed by the Zoning Board of Appeals shall constitute an ordinance violation

and the home occupation shall be suspended and shall be subject to enforcement pursuant to Section 7.13.

2. **Medical Marihuana Registered Primary Caregiver Home Occupations**

It is the intent of this subsection to regulate Medical Marihuana Registered Primary Caregivers as Home Occupations. This subsection is not intended to allow commercial marihuana grow operations within the Township. In addition to the general regulations above, Medical Marihuana Registered Primary Caregiver Home Occupations are subject to the following:

A. General Regulations:

- i. No more than five (5) Registered Qualifying Patients are permitted for each Caregiver Home Occupation.
- ii. The medical use of marihuana shall comply at all times with the MMMA and the MMMA General Rules, as amended.
- iii. A Registered Primary Caregiver shall not possess marihuana or otherwise engage in the medical use of marihuana in a school bus, on the grounds of any preschool or primary or secondary school, or in a correctional facility.
- iv. Not more than one (1) Registered Primary Caregivers, who shall also be full-time residents of the dwelling, shall be permitted to operate at any one property. Evidence of the Registered Primary Caregiver's "full-time" residency shall include, but not be limited to the following: a) Principal Residency Exemption; b) address listed on driver's license; c) address listed on vehicle registrations; d) address listed on voter registration; e) mail delivery in the name of the Primary Registered Caregiver being delivered to the dwelling; f) school district registration; g) utility usage and billing for the dwelling; Registered Primary Caregiver residing at the residence.
- v. The medical use of marihuana shall be conducted in compliance with the MMMA. A Registered Primary Caregiver may keep and cultivate in an Enclosed Locked Facility, as that phrase is defined by the MMMA, or within a dwelling 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 Registered Primary Caregiver is also a Registered Qualifying Patient under the MMMA.
- vi. A sign identifying the home occupation by word, image or otherwise, or indicating that the medical use of marihuana is taking place on the premises shall not be permitted; nor shall any vehicle having such a sign be parked

anywhere on the premises. Primary Caregiver Operations may not use exterior signage or displays with neon, flashing lights, or similarly noxious or obtrusive lighting or effects. All Primary Caregiver Operations signage must comply with the any and all Township ordinances. Primary Caregiver Operations may not use exterior signage or displays that contain an image of a marihuana leaf or other commonly recognized symbol for marihuana or which utilize any of the following words: marihuana, marijuana, weed, cannabis, blunt, doobie, joint, hooch, hash, or other similar slang term for marihuana or marihuana-related products.

- vii. 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 a dwelling shall be permitted.
- viii. Distribution of marihuana or use of items in the administration of marihuana shall not occur at or on the premises of the Registered Primary Caregiver. A Registered Qualifying Patient shall not visit, come to, or be present at the residence of the Registered Primary Caregiver to purchase, smoke, consume, obtain, or receive possession of any marihuana.
- ix. No on-site consumption or smoking of marihuana shall be permitted within the dwelling or on the property of a Registered Primary Caregiver except for lawful medical marihuana consumption by the Registered Primary Caregiver that is registered as a Qualifying Patient under the MMMA.
- x. 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.
- xi. 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.
- xii. The Registered Primary Caregiver is responsible for providing the security necessary to assure that the growing marihuana and usable product are accessible for use only by the Primary Registered Caregiver for transfer to only Registered Qualifying Patients who are registered to the Registered Primary Caregiver and must fully comply with the provisions of the MMMA.
- xiii. Medical marihuana-related merchandise or products shall not be sold or distributed from the dwelling or property of the Registered Primary Caregiver apart from the permitted quantity of medical marihuana.

- xiv. To ensure compliance with all applicable requirements and laws, the portion of a building or other structure, such as a cultivation room, where energy use and heating requirements exceed typical residential limits and chemical storage occurs, is subject to inspection and approval by the zoning administrator or other authorized official.
- xv. The Registered Primary Caregiver is responsible for utilizing an Enclosed Locked Facility upon the above-identified zoned parcels in compliance with the MMMA for cultivating, growing, manufacturing, processing, and storing marihuana for medical use only. The Enclosed Locked Facility utilized by the Registered Primary Caregiver shall provide separation by fully enclosed walls, or fences, 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 Registered Primary Caregiver and Registered Qualifying Patient. The processing and storing of medical marihuana are permitted only by Registered Primary Caregivers and Registered Qualifying Patients.
- xvi. The property, dwelling, and all Enclosed Locked Facilities shall be available for inspection upon request by the zoning administrator, building official, or law enforcement official.
- xvii. All business operations, activities and/or transactions of a Registered Primary Caregiver must occur indoors. Such operations may not provide drive-thru service.
- xviii. Registered Primary Caregiver operations may not emit noxious odors or fumes.
- xix. The Registered Primary Caregiver operations may not increase the amount of customary vehicular traffic, deliveries, or delivery vehicles that frequent the dwelling or the neighborhood, and such vehicular traffic shall not become nuisance to the area.
- xx. The Medical Marihuana Registered Primary Caregiver home occupation may not be located in multi-family residential districts or attached residential dwelling units.
- xxi. It is unlawful to establish or operate a for-profit or nonprofit marihuana dispensary, collective, or cooperative within the Township even if such use is intended for the medical use of marihuana.

- xxii. All Primary Caregiver Operations must have electrical, ventilation, fire safety, plumbing, filtration, and waste disposal systems, which are in compliance with all applicable code and ordinance requirements.
- xxiii. The Medical Marihuana Registered Primary Care Operation must provide evidence of a certificate of insurance with coverage on the structure sufficient to ensure **remediation of** mold and mildew that may develop within or on the structure as a result of the caregiver operations within the residential structure or other structures on that property that are used for such caregiver operations. The owner of the residence and/or the Registered Primary Caregiver utilizing the residential structure as a medical marihuana caregiver operation shall maintain such insurance for the duration that Registered Primary Caregiver Operations are conducted at the residential property. The Registered Primary Caregiver shall provide proof of such insurance coverage, or any changes or renewals of the coverage, to the Township. Failure to obtain, renew, or maintain such insurance coverage shall result in the revocation of the Registered Primary Medical Marihuana Caregiver Permit.

B. Location:

- i. Each parcel upon which Enclosed Locked Facilities with marihuana for medical use are present must be a minimum of one-thousand feet (1,000') from any parcel upon which any of the following is located:
 - a. A school, school facility, or childcare facility subject to Federal "Drug-Free School Zone" requirements.
 - b. A place of worship or public park. Measurement of the buffer shall be from property line to property.
 - c. Another Registered Primary Caregiver.
- ii. Each parcel upon which Enclosed Locked Facilities with marihuana for medical use are present must contain a minimum of 2 acres.
- iii. Each residence which contains Enclosed Locked Facilities with marihuana for medical use must be a minimum of 100 feet from any property line.

C. Registration Required. The operations of a Registered Primary Caregiver as a home occupation shall be permitted only with the prior issuance of a Township registration certificate.

i. Application:

- a. A complete and accurate application shall be submitted on a form provided by the Township and an application fee in an amount determined by resolution of the Township Board shall be paid.
- b. The registration application shall include the name and address of the applicant; the address of the property; proof, such as a driver's license, voter registration card or similar record showing that the dwelling is the applicant's full-time residence; a current state registration card issued to the Registered Primary Caregiver; a full description of the nature and types of equipment which will be used in marihuana cultivation and processing; and a description of the location at which the use will take place. The zoning administrator may require additional information necessary to demonstrate compliance with all requirements. The zoning administrator shall review the application to determine compliance with this Ordinance, the MMMA, and the MMMA General Rules. A registration shall be granted if the application demonstrates compliance with this Ordinance, the MMMA, and the MMMA General Rules.
- c. The applicant shall submit a site plan to the Township showing the general layout of the proposed residential Primary Caregiver operation. The plan shall be drawn to scale and shall include the following information: the square footage of the proposed operations within the dwelling or enclosed lock facility, the total square footage of the residence, existing or proposed electrical layout, proposed mechanical modifications, and demonstrate compliance with all applicable codes. No application shall be issued without the Township approving such site plans.
- d. To ensure compliance with applicable codes, within 30 days of a completed application, the applicant shall schedule an inspection with the West Bloomfield Building Department. The intent of the inspection is to ensure that the structure is in compliance with the International Property Maintenance Code and that the area used for marihuana has adequate electrical and mechanical safeguards to ensure the health, safety, and welfare of the occupants, and neighbors.
- e. Within 15 business days from the date of the inspection, the owner/applicant/contractor shall obtain all necessary permits.
- f. Prior to the operation of a Primary Caregiver as a home occupation, a certificate of completion shall be provided by the West Bloomfield Building Department.

- ii. The use shall be maintained in compliance with the requirements of this Ordinance, the MMMA, and the MMMA General Rules. Any departure shall be grounds to revoke the registration and take other lawful action. If a registration is revoked, the applicant shall not engage in any activity subject to the permit unless and until a new permit is granted.
- iii. Information treated as confidential under the MMMA, including the Registered Primary Caregiver registry identification card and any information about Registered Qualifying Patients associated with the Registered Primary Caregiver which is received by the Township shall be maintained separately from public information submitted in support of the application. It shall not be distributed or otherwise made available to the public and shall not be subject to disclosure under the Freedom of Information Act.
- iv. The use of the dwelling or other permitted facility of a Registered Qualifying Patient to cultivate medical marihuana in accordance with the MMMA solely for personal use does not require a permit under this subsection; however, all applicable state and Township ordinance requirements must be met.
- v. The provisions of this subsection do not apply to the personal use and/or internal possession of marihuana by a Registered Qualifying Patient in accordance with the MMMA for which a permit is not required.

3. Noncompliance with the above criteria or requirements imposed by the Zoning Board of Appeals shall constitute an ordinance violation and the home occupation shall be suspended and shall be subject to enforcement pursuant to Section 7.13.

Section 3 of Ordinance

Chapter 26, Article 4, Use Standards, Section 4.57, Marihuana Establishments Prohibited is hereby added and shall read as follows:

Sec. 4.57. Marihuana Establishments Prohibited

- 1. Any type of “marihuana establishment,” as that term is defined and used in Michigan Initiated Law 1 of 2018, commonly known as the Michigan Regulation and Taxation of Marihuana Act, is strictly prohibited in the Township and may not be established or operated in any zoning district, by any means, including by way of a variance.
- 2. “Marihuana facilities” as described in the Medical Marihuana Facilities Licensing Act, Act 281 of 2016, are strictly prohibited in the Township and may not be established, licensed, or operated in any zoning district, by any means, including by way of a variance.

3. Nothing in this Section 4 shall limit any privileges, rights, immunities, or defenses of a person as provided in the Michigan Medical Marihuana Act or the Michigan Initiated Law 1 of 2008, MCL 333.26421, *et seq.*

Section 4 of Ordinance

If any section, subsection, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion of this Ordinance, and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 5 of Ordinance

All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

Section 6 of Ordinance

Within fifteen (15) days after adoption, a notice of ordinance adoption shall be published in a newspaper of general circulation in the Township including the effective date of the amendment and the place where and time when a copy of the amendment may be purchased or inspected.

Section 7 of Ordinance

Pursuant to the Michigan Zoning Enabling Act, MCL 125.3401(6), this Ordinance shall take effect upon the expiration of seven (7) days after publication.

CERTIFICATION

STATE OF MICHIGAN)
) SS.
COUNTY OF OAKLAND)

I, Deborah Binder, the duly elected Clerk for the Charter Township of West Bloomfield, Oakland County, Michigan, do hereby certify that the foregoing is a true and complete copy of the Ordinance adopted by the Township Board for the Charter Township of West Bloomfield at a meeting held on the 21st day of June, 2021; the original of which is on file in the Office of the Township Clerk.

I affix my official signature/seal this 21st day of June, 2021.

By: Deborah Binder
Deborah Binder, Clerk

INTRODUCED: 06/07/2021
ADOPTED: 06/21/2021
PUBLISHED: 06/30/2021
EFFECTIVE: 07/08/2021

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CHARTER TOWNSHIP OF WEST BLOOMFIELD

ORDINANCE NO. CZ21-01

An Ordinance to amend the Zoning Ordinance, Chapter 26 of the Charter Township of West Bloomfield Code of Ordinances, Article 2, Definitions, Section 2.1, Article 4, Use Standards, Section 4.19, Home Occupations; Section 4.57, Marihuana Establishments Prohibited.

THE CHARTER TOWNSHIP OF WEST BLOOMFIELD ORDAINS:

Section 1 of Ordinance

Chapter 26, Article 2, Definitions, Section 2.1 is hereby amended to read as follows:

Sec. 2.1. DEFINITIONS

The following words, terms and phrases, when used in this subsection, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Medical Marihuana Registered Primary Caregiver Home Occupations. The following definitions apply specifically to Medical Marihuana Registered Primary Caregiver Home Occupations.

- i. **Enclosed Locked Facility** means a closet, room, or other comparable stationary and fully enclosed area equipped with secure locks or other functioning security devices that permit access only by a Registered Primary Caregiver or Registered Qualifying Patient and as further defined in the MMMA.

Marihuana plants grown outdoors, are considered to be in an Enclosed Locked Facility if they are not visible to the unaided eye from an adjacent property when viewed by an individual at ground level or from a permanent structure, and are grown within a stationary structure that is enclosed on all sides, except for the base, by chain-link fencing, wooden slats, or a similar material that prevents access by the general public and that it is anchored, attached, or affixed to the ground; located on land that is owned, leased, or rented by either the Registered Qualifying Patient, or a person designated through the department registration process, as the Registered Primary Caregiver for the Registered Qualifying Patient(s) for whom the marihuana plants are grown; and equipped with functioning locks or other security devices that restrict access only to the Registered Qualifying Patient or the Registered Primary Caregiver who owns, leases, or rents the property on which the structure is located. Enclosed Locked Facility includes a motor vehicle if both of the following conditions are met:

- a. The vehicle is being used temporarily to transport living marihuana plants from one location to another with the intent to permanently retain those plants at the second location.

- b. An individual is not inside the vehicle unless he or she is either the Registered Qualifying Patient to whom the living marihuana plants belong, or the individual designated through the Department of Registration process as the Registered Primary Caregiver for the Registered Qualifying Patient.
- ii. **Home Occupation** means an accessory use that is customarily incidental and secondary to the use of a dwelling, and except for Registered Primary Medical Marihuana Caregiver Operations as regulated by this zoning Ordinance, that is conducted entirely within a dwelling and that is a legal occupation, profession, or business activity conducted by an occupant residing on the premises full time and, except for Registered Primary Medical Marihuana Caregiver Operations as regulated by this zoning Ordinance, where all business activity relies solely on electronic or off-premise transactions and communication is conducted over the internet, telephone, and/or electronic mail, utilizing equipment customarily found in a home and is generally not distinguishable from the outside. Medical, hospital or veterinary services, kennel, grooming or pet boarding services, personal service establishments, or repair facilities shall not be deemed a permissible home occupation.
- iii. **Marihuana** means that term as defined in Section 7106 of the Public Health Code, 1978 PA 368, MCL 333.7106. Marijuana, with the alternate spelling with the letter “j” has the same meaning as “Marihuana.”
- iv. **Medical Use** means 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 Registered Qualifying Patient's debilitating medical condition, or symptoms associated with the debilitating medical condition, as further defined under the MMMA.
- v. **MMMA or Act** means to the Michigan Medical Marihuana Act, MCL 333.26421, *et seq.*, currently, or as amended.
- vi. **MRTMA** means to the Michigan Regulation and Taxation of Marihuana Act Initiated Law 1 of 2018, MCL 333.27952, *et seq.*, currently, or as amended.
- vii. **Registered Primary Caregiver** means a person meeting the definition of caregiver under the MMMA and who has been issued and possesses a registry identification card and possesses the documentation that constitutes a valid registry under the MMMA.
- viii. **Registered Qualifying Patient** means a person meeting the definition under state law and who has been issued and possesses a registry identification card which is valid under the MMMA, as amended.

- ix. **Transfer** means to convey, sell, give, deliver, or allow the possession by another person or entity.
- xiv. **Visiting Qualifying Patient** means a patient who is not a resident of this state or who has been a resident of this state for less than 30 days.

Other provisions and terms. The other provisions and terms of the MMMA and MRTMA for purposes of deferential context are incorporated by reference as though more fully restated herein.

Section 2 of Ordinance

Chapter 26, Article 4, Use Standards, Section 4.19, Home Occupations is hereby amended to read as follows:

Sec. 4.19 Home Occupation

1. Home occupations are permitted as an accessory use in a residential district dwelling unit in compliance with all of the following:
 - A. Outdoor displays, storage, or signage are not permitted.
 - B. **Except as required under Section 4.19.2.A below**, interior or exterior alterations or construction features related to the home occupation are not permitted.
 - C. Mechanical equipment or machinery not customarily used for domestic or household purposes is not permitted.
 - D. There is no client or customer visitation to the home and the home occupation does not generate parking or traffic in the residential area, except that the use of a residence to give instruction in craft or fine art to a student is permitted pursuant to MCL 125.3204.
 - E. Only commodities produced by the home occupation may be sold from the premises over the internet or transported off-premise for sale or service.
 - F. A maximum of twenty-five (25%) percent of the total floor area is to be used for a Home Occupation.
 - G. A maximum of two (2) persons may be engaged in the home occupation who shall both reside at the residence.
 - H. The high hazard use sections of the State Construction Code adopted pursuant to the Stille-DeRossett-Hale Single State Construction Code Act, MCL 125.1501, *et seq.*, and the performance standards of Section 5.11 of this Chapter shall apply to home occupations. 2. Noncompliance with the above criteria or requirements imposed by the Zoning Board of Appeals shall constitute an ordinance violation

and the home occupation shall be suspended and shall be subject to enforcement pursuant to Section 7.13.

2. **Medical Marihuana Registered Primary Caregiver Home Occupations**

It is the intent of this subsection to regulate Medical Marihuana Registered Primary Caregivers as Home Occupations. This subsection is not intended to allow commercial marihuana grow operations within the Township. In addition to the general regulations above, Medical Marihuana Registered Primary Caregiver Home Occupations are subject to the following:

A. General Regulations:

- i. No more than five (5) Registered Qualifying Patients are permitted for each Caregiver Home Occupation.
- ii. The medical use of marihuana shall comply at all times with the MMMA and the MMMA General Rules, as amended.
- iii. A Registered Primary Caregiver shall not possess marihuana or otherwise engage in the medical use of marihuana in a school bus, on the grounds of any preschool or primary or secondary school, or in a correctional facility.
- iv. Not more than one (1) Registered Primary Caregivers, who shall also be full-time residents of the dwelling, shall be permitted to operate at any one property. Evidence of the Registered Primary Caregiver's "full-time" residency shall include, but not be limited to the following: a) Principal Residency Exemption; b) address listed on driver's license; c) address listed on vehicle registrations; d) address listed on voter registration; e) mail delivery in the name of the Primary Registered Caregiver being delivered to the dwelling; f) school district registration; g) utility usage and billing for the dwelling; Registered Primary Caregiver residing at the residence.
- v. The medical use of marihuana shall be conducted in compliance with the MMMA. A Registered Primary Caregiver may keep and cultivate in an Enclosed Locked Facility, as that phrase is defined by the MMMA, or within a dwelling 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 Registered Primary Caregiver is also a Registered Qualifying Patient under the MMMA.
- vi. A sign identifying the home occupation by word, image or otherwise, or indicating that the medical use of marihuana is taking place on the premises shall not be permitted; nor shall any vehicle having such a sign be parked

anywhere on the premises. Primary Caregiver Operations may not use exterior signage or displays with neon, flashing lights, or similarly noxious or obtrusive lighting or effects. All Primary Caregiver Operations signage must comply with the any and all Township ordinances. Primary Caregiver Operations may not use exterior signage or displays that contain an image of a marihuana leaf or other commonly recognized symbol for marihuana or which utilize any of the following words: marihuana, marijuana, weed, cannabis, blunt, doobie, joint, hooch, hash, or other similar slang term for marihuana or marihuana-related products.

- vii. 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 a dwelling shall be permitted.
- viii. Distribution of marihuana or use of items in the administration of marihuana shall not occur at or on the premises of the Registered Primary Caregiver. A Registered Qualifying Patient shall not visit, come to, or be present at the residence of the Registered Primary Caregiver to purchase, smoke, consume, obtain, or receive possession of any marihuana.
- ix. No on-site consumption or smoking of marihuana shall be permitted within the dwelling or on the property of a Registered Primary Caregiver except for lawful medical marihuana consumption by the Registered Primary Caregiver that is registered as a Qualifying Patient under the MMMA.
- x. 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.
- xi. 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.
- xii. The Registered Primary Caregiver is responsible for providing the security necessary to assure that the growing marihuana and usable product are accessible for use only by the Primary Registered Caregiver for transfer to only Registered Qualifying Patients who are registered to the Registered Primary Caregiver and must fully comply with the provisions of the MMMA.
- xiii. Medical marihuana-related merchandise or products shall not be sold or distributed from the dwelling or property of the Registered Primary Caregiver apart from the permitted quantity of medical marihuana.

- xiv. To ensure compliance with all applicable requirements and laws, the portion of a building or other structure, such as a cultivation room, where energy use and heating requirements exceed typical residential limits and chemical storage occurs, is subject to inspection and approval by the zoning administrator or other authorized official.
- xv. The Registered Primary Caregiver is responsible for utilizing an Enclosed Locked Facility upon the above-identified zoned parcels in compliance with the MMMA for cultivating, growing, manufacturing, processing, and storing marihuana for medical use only. The Enclosed Locked Facility utilized by the Registered Primary Caregiver shall provide separation by fully enclosed walls, or fences, 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 Registered Primary Caregiver and Registered Qualifying Patient. The processing and storing of medical marihuana are permitted only by Registered Primary Caregivers and Registered Qualifying Patients.
- xvi. The property, dwelling, and all Enclosed Locked Facilities shall be available for inspection upon request by the zoning administrator, building official, or law enforcement official.
- xvii. All business operations, activities and/or transactions of a Registered Primary Caregiver must occur indoors. Such operations may not provide drive-thru service.
- xviii. Registered Primary Caregiver operations may not emit noxious odors or fumes.
- xix. The Registered Primary Caregiver operations may not increase the amount of customary vehicular traffic, deliveries, or delivery vehicles that frequent the dwelling or the neighborhood, and such vehicular traffic shall not become nuisance to the area.
- xx. The Medical Marihuana Registered Primary Caregiver home occupation may not be located in multi-family residential districts or attached residential dwelling units.
- xxi. It is unlawful to establish or operate a for-profit or nonprofit marihuana dispensary, collective, or cooperative within the Township even if such use is intended for the medical use of marihuana.

- xxii. All Primary Caregiver Operations must have electrical, ventilation, fire safety, plumbing, filtration, and waste disposal systems, which are in compliance with all applicable code and ordinance requirements.
- xxiii. The Medical Marihuana Registered Primary Care Operation must provide evidence of a certificate of insurance with coverage on the structure sufficient to ensure remediation of mold and mildew that may develop within or on the structure as a result of the caregiver operations within the residential structure or other structures on that property that are used for such caregiver operations. The owner of the residence and/or the Registered Primary Caregiver utilizing the residential structure as a medical marihuana caregiver operation shall maintain such insurance for the duration that Registered Primary Caregiver Operations are conducted at the residential property. The Registered Primary Caregiver shall provide proof of such insurance coverage, or any changes or renewals of the coverage, to the Township. Failure to obtain, renew, or maintain such insurance coverage shall result in the revocation of the Registered Primary Medical Marihuana Caregiver Permit.

B. Location:

- i. Each parcel upon which Enclosed Locked Facilities with marihuana for medical use are present must be a minimum of one-thousand feet (1,000') from any parcel upon which any of the following is located:
 - a. A school, school facility, or childcare facility subject to Federal "Drug-Free School Zone" requirements.
 - b. A place of worship or public park. Measurement of the buffer shall be from property line to property.
 - c. Another Registered Primary Caregiver.
- ii. Each parcel upon which Enclosed Locked Facilities with marihuana for medical use are present must contain a minimum of 2 acres.
- iii. Each residence which contains Enclosed Locked Facilities with marihuana for medical use must be a minimum of 100 feet from any property line.

C. Registration Required. The operations of a Registered Primary Caregiver as a home occupation shall be permitted only with the prior issuance of a Township registration certificate.

i. Application:

- a. A complete and accurate application shall be submitted on a form provided by the Township and an application fee in an amount determined by resolution of the Township Board shall be paid.
- b. The registration application shall include the name and address of the applicant; the address of the property; proof, such as a driver's license, voter registration card or similar record showing that the dwelling is the applicant's full-time residence; a current state registration card issued to the Registered Primary Caregiver; a full description of the nature and types of equipment which will be used in marihuana cultivation and processing; and a description of the location at which the use will take place. The zoning administrator may require additional information necessary to demonstrate compliance with all requirements. The zoning administrator shall review the application to determine compliance with this Ordinance, the MMMA, and the MMMA General Rules. A registration shall be granted if the application demonstrates compliance with this Ordinance, the MMMA, and the MMMA General Rules.
- c. The applicant shall submit a site plan to the Township showing the general layout of the proposed residential Primary Caregiver operation. The plan shall be drawn to scale and shall include the following information: the square footage of the proposed operations within the dwelling or enclosed lock facility, the total square footage of the residence, existing or proposed electrical layout, proposed mechanical modifications, and demonstrate compliance with all applicable codes. No application shall be issued without the Township approving such site plans.
- d. To ensure compliance with applicable codes, within 30 days of a completed application, the applicant shall schedule an inspection with the West Bloomfield Building Department. The intent of the inspection is to ensure that the structure is in compliance with the International Property Maintenance Code and that the area used for marihuana has adequate electrical and mechanical safeguards to ensure the health, safety, and welfare of the occupants, and neighbors.
- e. Within 15 business days from the date of the inspection, the owner/applicant/contractor shall obtain all necessary permits.
- f. Prior to the operation of a Primary Caregiver as a home occupation, a certificate of completion shall be provided by the West Bloomfield Building Department.

- ii. The use shall be maintained in compliance with the requirements of this Ordinance, the MMMA, and the MMMA General Rules. Any departure shall be grounds to revoke the registration and take other lawful action. If a registration is revoked, the applicant shall not engage in any activity subject to the permit unless and until a new permit is granted.
- iii. Information treated as confidential under the MMMA, including the Registered Primary Caregiver registry identification card and any information about Registered Qualifying Patients associated with the Registered Primary Caregiver which is received by the Township shall be maintained separately from public information submitted in support of the application. It shall not be distributed or otherwise made available to the public and shall not be subject to disclosure under the Freedom of Information Act.
- iv. The use of the dwelling or other permitted facility of a Registered Qualifying Patient to cultivate medical marihuana in accordance with the MMMA solely for personal use does not require a permit under this subsection; however, all applicable state and Township ordinance requirements must be met.
- v. The provisions of this subsection do not apply to the personal use and/or internal possession of marihuana by a Registered Qualifying Patient in accordance with the MMMA for which a permit is not required.

23. Noncompliance with the above criteria or requirements imposed by the Zoning Board of Appeals shall constitute an ordinance violation and the home occupation shall be suspended and shall be subject to enforcement pursuant to Section 7.13.

Section 3 of Ordinance

Chapter 26, Article 4, Use Standards, Section 4.57, Marihuana Establishments Prohibited is hereby added and shall read as follows:

Sec. 4.57. Marihuana Establishments Prohibited

1. Any type of “marihuana establishment,” as that term is defined and used in Michigan Initiated Law 1 of 2018, commonly known as the Michigan Regulation and Taxation of Marihuana Act, is strictly prohibited in the Township and may not be established or operated in any zoning district, by any means, including by way of a variance.
2. “Marihuana facilities” as described in the Medical Marihuana Facilities Licensing Act, Act 281 of 2016, are strictly prohibited in the Township and may not be established, licensed, or operated in any zoning district, by any means, including by way of a variance.

3. Nothing in this Section 4 shall limit any privileges, rights, immunities, or defenses of a person as provided in the Michigan Medical Marihuana Act or the Michigan Initiated Law 1 of 2008, MCL 333.26421, *et seq.*

Section 4 of Ordinance

If any section, subsection, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion of this Ordinance, and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 5 of Ordinance

All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

Section 6 of Ordinance

Within fifteen (15) days after adoption, a notice of ordinance adoption shall be published in a newspaper of general circulation in the Township including the effective date of the amendment and the place where and time when a copy of the amendment may be purchased or inspected.

Section 7 of Ordinance

Pursuant to the Michigan Zoning Enabling Act, MCL 125.3401(6), this Ordinance shall take effect upon the expiration of seven (7) days after publication.

CERTIFICATION

STATE OF MICHIGAN)
) SS.
COUNTY OF OAKLAND)

I, Deborah Binder, the duly elected Clerk for the Charter Township of West Bloomfield, Oakland County, Michigan, do hereby certify that the foregoing is a true and complete copy of the Ordinance adopted by the Township Board for the Charter Township of West Bloomfield at a meeting held on the ___ day of _____, 2021; the original of which is on file in the Office of the Township Clerk.

I affix my official signature/seal this _____ day of _____, 2021.

By: _____
Deborah Binder, Clerk

INTRODUCED:
ADOPTED:
PUBLISHED:
EFFECTIVE:

6771589_1

FOR INFORMATION ONLY

**MINUTES
PLANNING COMMISSION
CHARTER TOWNSHIP OF WEST BLOOMFIELD**

**This is a virtual meeting pursuant to the Open Meetings Act
in accordance with MCL 15.2632**

TUESDAY, MAY 11, 2021 --- 6:00 P.M.

Members present: Chairman Hagopian, Commissioners Abdelnour, El-Gamal, Rosenberg, Santourian, Stokes

Members absent: Matthews

Staff present: Gordon Bowdell, AICP, Zoning and Planning Manager
Michael Sulhaney, Township Attorney
Byron Turnquist, Fire Marshal
Pamela St. Peter, Recording Secretary

Others present &
General public: None

CALL TO ORDER Chairman Hagopian called the meeting to order at 6:00 p.m.

PUBLIC HEARING

APPROVAL OF AGENDA

Motion: Motion by El-Gamal, supported by Santourian, to APPROVE the agenda.

Ayes: El-Gamal, Hagopian, Rosenberg, Santourian

Nays: None

Absent: Abdelnour, Matthews, Stokes

MOTION CARRIED

PUBLIC COMMENT

None.

REGULAR BUSINESS

1. Marihuana Text Amendment Discussion (CZ21-01)

Discussion of proposed ordinance to amend the Zoning Ordinance, Chapter 26 of the Charter Township of West Bloomfield Code of Ordinances to incorporate language and restrictions related to marihuana, specifically Medical Marihuana Registered Primary Caregivers as a Home Occupation.

Discussion: Chairman Hagopian gave a brief overview of the proposed request. Mr. Bowdell

stated that this matter was last discussed at the April 13, 2021 meeting. This originated due to complaints that the Township received. The Township Board requested the Township Attorney draft this proposed amendment for Planning Commission review and Township Board review. Since the last meeting, Mr. Sulhaney has altered the text amendment. Michael Sulhaney, Esq said he took notes from the last meeting and incorporated the suggestions that were made at that meeting. He has added language to strengthen the sign language of the ordinance; added language regarding inspections and requirements related to ventilation, fire safety and plumbing; added language regarding caregiver proof of insurance. Mr. Sulhaney said that this area of municipal law continues to evolve.

Dr. El-Gamal asked about outdoor growing of marijuana plants and if that is something the township has control over. Mr. Sulhaney said the initiative that was passed by the voters took away municipal control over that issue. The language in the paragraph Dr. El-Gamal is referencing is in the statute so it must be included in the ordinance. He thinks that changing the separation requirements to 1000 ft and allowing only one registered caregiver per home will help control the number of plants that are grown in any house. Dr. El-Gamal said there are not enough restrictions on plants grown outdoors. Mr. Sulhaney said the state statute allows for it and the supreme court says there cannot be a regulation that contradicts the statute. A caregiver operation can grow marihuana outdoors but all business related to the harvest must be conducted indoors. Mr. Abdelnour said the Township needs to push the ordinance to the limit to prevent what they can.

Dr. Rosenberg appreciates everyone's deep look at this ordinance and noted that there is a sense of urgency to get this done. He asked if Mr. Sulhaney recommends any changes to the language of the ordinance. Mr. Sulhaney said he recommends changing the special distancing from 500 ft to 1000 ft. He also recommends striking the 2-acre size requirement and changing the language to "no more than one" registered primary caregiver.

The Planning Commission continued a page-by-page review of the text amendment. Dr. El-Gamal asked if advertising should be prohibited via social media and websites. Mr. Sulhaney said that would be protected commercial speech under the First Amendment. The commissioners discussed language related to access of a home for inspection of a grow operation. Dr. Stokes asked what if an operation is emitting noxious odor or fumes. Mr. Sulhaney said the Township can issue a ticket or that can be the basis for revoking their permit to operate as a caregiver operation. Dr. El-Gamal said she is in support of extending the separation requirement beyond 1000 ft. Mr. Sulhaney said the language of the ordinance has to be reasonable; the Township has seen distances of both 500 and 1000 ft in other ordinances such as liquor licensing requirements so he considers 1000 ft reasonable. He has never seen 1500 ft or 2000 ft in any type of regulatory statute or ordinance across other industries. Chairman Hagopian said she supports the 1000 ft distance requirement. Dr. Rosenberg said he is also in favor of the 1000 ft distance requirement and eliminating the 2-acre parcel size requirement. Mr. Sulhaney said the Township Board will have the final say on the language and the 2-acre parcel size can be kept in as a discussion point for the Township Board; that was agreeable to all the commissioners.

Mr. Sulhaney said he has enough information to go back and prepare a next draft off of this redline and he can have that ready for the next Planning Commission meeting. Chairman Hagopian opened the meeting to the public. Lisa Burke, Executive Director of Greater West Bloomfield Community Coalition which does drug and alcohol prevention education for youth. She thanked everyone for their hard work and all the detailed information they are going through and her goal as well is to keep the community and youth safe.

Mr. Bowdell said that if the Planning Commission is willing to do a conditional motion, it will not have to return to the Planning Commission. The commissioners agreed to a conditional motion to expedite this matter.

Motion: Motion by Santourian, supported by Abdelnour, to conditionally recommend approval of the proposed text amendment CZ21-01, to modify the zoning ordinance language to incorporate regulations for Medical Marihuana Caregiver facilities to the Township Board with the following corrections and modifications to be incorporated as discussed, this evening:

Section 2 to capitalize “Home Occupation” and clarify (F) that the size requirement be limited to the home occupation within the residence.

Section 2(A)(iv) Changing the language to “not more than one” registered primary caregiver

Section 2(A)(xvii) Add “activities and operations”

Section 2(A)(xxii) Add “all electrical and mechanical must meet all applicable codes”

Section 2(B)(i) Change separation requirement to 1000 ft

Section 2(B)(xxii) Instead of the word “potential” substitute “remediation of” and finish the word “structure”

Section 2(C)(i)(c) Strengthen language related to the submittal requirements for the site plan to require that the applicant provide accurate information.

Ayes: Abdelnour, El-Gamal, Hagopian, Rosenberg, Santourian, Stokes

Nays: None

Absent: Matthews

MOTION CARRIED

REGULAR BUSINESS

1.The Preserve of Walnut Creek Work Session (PSP21-0019)

Request for work session with Planning Commission to discuss the development of a 36-unit, 18-building development.

Discussion: Mr. Bowdell said this is a work session request for the Planning Commission. There are two parcels zoned residential currently, across from the Walnut Lake Middle School close to the Reserve of West Bloomfield subdivision. The petitioner is seeking to develop this through a Planned Development District in which they are seeing 36 units or 18 duplexes within that site. The proposed development would not be permitted through the single-family zoning district for the density and setbacks. They have reduced setbacks, primarily 50 ft for the perimeter although near Unit 26 the setback has been reduced. The applicant has indicated that only 51% of the site will be developed and the rest will be open space. There are a