

**CITY OF ALBION
ORDINANCE #2021-02**

**AN ORDINANCE TO AMEND CHAPTER 100, ARTICLE VII, TO ADD SECTION
7.10a, MEDICAL USE OF MARIHUANA**

Purpose and Finding: As the council is already aware, commercial medical marihuana facilities in Michigan are currently regulated by the Michigan Medical Marihuana Facilities Licensing Act (MMFLA). Caregiver grows are subject to the Michigan Medical Marihuana Act (MMMA) as they are not intended to be commercial operations. Recently, however, some individuals have developed more sophisticated operations claiming to operate under the MMMA, but becoming more commercialized. i.e. multiple caregivers operating at a single location. This issue was recently addressed in the Michigan Supreme Court case of *Deruiter v Township of Byron*, 505 Mich 130, 949 NW2d 91 (2020). The *Deruiter* Court unanimously ruled that Byron Township could regulate caregiver operations as a home occupation under the Township's zoning ordinance, including, but not limited to limiting operations to residentially zoned areas and instituting a permit process. The following ordinance is a nearly identical version of the Byron Township ordinance adapted for the City of Albion to regulate caregiver grows. Given that this Ordinance implicates a change to zoning, it has been submitted to the City of Albion Planning Commission, who has recommended approval. Approval is recommended.

THE CITY OF ALBION ORDAINS:

Section 1. Chapter 100, Article VII, of the Codified Ordinances of the City of Albion, is hereby amended, by adding Section 7.10a, as follows:

Sec. 7.10a. – Medical Use of Marihuana

1. A registered primary caregiver, operating in compliance with the Michigan Medical Marihuana Act, hereinafter ("MMMA"), the MMMA General Rules, and the requirements of this section, shall be permitted as a home occupation, as regulated by this subsection. The City of Albion makes the following findings, in support of its determination that the regulation of registered primary caregivers as a permitted home occupation is consistent with the purposes and intent of the MMMA:
 - a. The MMMA does not create a general right for individuals to use, possess, or deliver marihuana in Michigan.
 - b. The MMMA's protections are limited to individuals suffering from serious or debilitating medical conditions or symptoms, to the extent

that the individuals' marihuana use is carried out in compliance with the provisions of the MMMA, including the provisions related to the operations of registered primary caregivers.

- c. The MMMA's definition of "medical use" of marihuana includes the "transfer" of marihuana "to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition," but only if such "transfer" is performed by a registered primary caregiver who is connected with the same qualifying patient through the registration process established by the Department of Licensing and Regulatory Affairs, and who is otherwise operating in strict compliance with the MMMA and the MMMA General Rules.
 - d. The MMMA provides that a registered primary caregiver may assist no more than five (5) qualifying patients with their medical use of marihuana.
 - e. The MMMA does not, therefore, create a new vocation for entrepreneurs or others who wish to engage in the sale of marihuana to more than five persons in a commercial setting. Instead, the MMMA is directed at improving the health and welfare of qualifying patients.
 - f. The health and welfare of qualifying patients is improved by permitting the operations of registered primary caregivers as a home occupation, because this allows qualifying patients who suffer from serious or debilitating medical conditions symptoms to obtain the benefits of the medical use of marihuana in a residential setting, without having to unnecessarily travel into commercial areas.
 - g. By permitting the operations of registered primary caregivers as a home occupation, rather than in a commercial setting, this promotes the MMMA's purpose of ensuring that:
 - i. a registered primary caregiver is not assisting more than five (5) qualifying patients with their medical use of marihuana, and
 - ii. a registered primary caregiver does not unlawfully expand its operations beyond five (5) qualifying patients, so as to become an illegal commercial operation, in the nature of a marihuana collective, cooperative or dispensary.
2. The following standards and requirements shall apply to the location at which the medical use of marihuana is conducted by a primary caregiver:

- a. A registered primary caregiver shall not engage in the medical use of marihuana as a home-based occupation except in those areas of the City of Albion zoned: R-1 and R-2.
- b. 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 any correctional facility.
- c. Not more than two (2) registered primary caregivers, who shall also be full-time residents of the dwelling, shall be permitted to operate at any one property.
- d. The medical use of marihuana shall be conducted entirely within a dwelling or attached garage, except that a registered primary caregiver may keep and cultivate, in an "enclosed, locked facility" (as that phrase is defined by the MMMA), up to twelve (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 twelve (12) additional marihuana plants for personal use, if the primary caregiver is also registered as a qualifying patient under the MMMA.
- e. 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.
- f. 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.
- g. Distribution of marihuana or use of items in the administration of marihuana shall not occur at or on the premises of the primary caregiver. A qualifying patient shall not visit, come to, or be present at the residence of the primary caregiver to purchase, smoke, consume, obtain or receive possession of any marihuana.
- h. Except for the primary caregiver, no other person shall deliver marihuana to the qualifying patient.

- i. No one under the age of 18 years shall have access to medical marihuana.
- j. No on-site consumption or smoking of medical marihuana by qualifying patients shall be permitted within the dwelling (or on the property) of a primary caregiver, except for lawful medical marihuana consumption by the primary caregiver if registered as a qualifying patient under the MMMA.
- k. Medical marihuana shall not be grown, processed, handled or possessed at the dwelling of the primary caregiver beyond that which is permitted by law.
- l. 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.
- m. 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.
- n. The registered primary caregiver, tenant, occupant, or property owner shall not permit the emission of Marihuana odor from any source to result in detectable odors that leave the premises upon which they originated and interfere with the reasonable and comfortable use and enjoyment of another's property. Whether or not a Marihuana odor emission interferes with the reasonable and comfortable use and enjoyment of a property shall be measured against the objective standards of a reasonable person of normal sensitivities. The registered primary caregiver, tenant, occupant, or property owner shall install and maintain in operable condition a system which precludes the emission of Marihuana odor from the property or dwelling;
- o. Related merchandise or products shall not be sold or distributed from the dwelling or property of the primary caregiver, apart from the permitted quantity of medical marihuana or medical marihuana derivatives.
- p. 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, are subject to inspection and approval by the City of Albion Planning and Zoning

official, the Chief of Public Safety, or other individual designated by the city.

- q. The property, dwelling and all enclosed, locked facilities shall be available for inspection upon request by the City of Albion Planning and Zoning official, the Chief of Public Safety, any law enforcement officer, or other individual designated by the city.
- r. The operations of a registered primary caregiver, as a home occupation, shall be permitted only with the prior issuance of a City permit.
- s. A complete and accurate application shall be submitted on a form provided by the City and an annual application fee in an amount determined by resolution of the City Council shall be paid.
- t. The permit 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 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 City of Albion Planning and Zoning official may require additional information necessary to demonstrate compliance with all requirements. The Planning and Zoning official shall review the application to determine compliance with this Ordinance.
- u. A permit shall be granted if the application demonstrates compliance with this Ordinance. The use shall be maintained in compliance with the requirements of this Ordinance. Any departure shall be grounds to revoke the permit and take other lawful action. If a permit is revoked, the applicant shall not engage in the activity unless and until a new permit is granted.
- v. Information treated as confidential under the MMMA, including the primary caregiver registry identification card and any information about qualifying patients associated with the primary caregiver, which is received by the City, 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.
- w. Permits issued pursuant to this ordinance shall be valid for a period of one (1) year.

3. Except as otherwise permitted by City ordinance, or the Michigan Medical Marihuana Facilities Licensing Act, it is unlawful to establish or operate a for-profit or nonprofit medical marihuana dispensary, collective or cooperative within the City, even if such use is intended for the medical use of marihuana.
4. The use of the dwelling or other permitted facility of a 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 City ordinance requirements must be met.
5. The provisions of this section do not apply to the personal use and/or internal possession of marihuana by a qualifying patient in accordance with the MMMA, for which a permit is not required.

Section 2. Severability. This ordinance and each article, section, subsection, paragraph, subparagraph, part, provision, sentence, word and portion thereof are hereby declared to be severable, and if they or any of them are declared to be invalid or unenforceable for any reason by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.

Section 3. Repeal. Any ordinance(s) inconsistent with this ordinance are hereby repealed.

This Ordinance shall take effect on April 15, 2021 after publication.

First Reading:


Second Reading & Adoption:

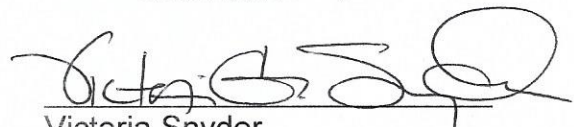
March 1, 2021

March 15, 2021

Ayes 7
Nays 0
Absent 0

Ayes 6
Nays 0
Absent 1 (clerk)


Jill Domingo,
Clerk


Victoria Snyder,
Mayor