

CITY OF KALAMAZOO, MICHIGAN
ORDINANCE NO. _____

**AN ORDINANCE TO AMEND SECTION 4.3 OF THE CITY OF KALAMAZOO ZONING
CODE ADDRESSING MEDICAL MARIHUANA AS A HOME OCCUPATION**

THE CITY OF KALAMAZOO ORDAINS:

Section 1. Section 4.3 G. 16 of the City of Kalamazoo Zoning Code is amended to read as follows:

“16. Medical Marihuana. A primary caregiver who has agreed, and is registered with the State of Michigan to assist with a qualifying patient’s use of medical marihuana, shall be allowed as a home occupation. The following requirements for a primary caregiver as a home occupation shall apply:

a) The medical use of marihuana and marihuana-infused products shall comply at all times and in all circumstances with the Michigan Medical Marihuana Act, 2008 Initiated Law #1, MCL 333.26421 et seq. (“Act”) and the Administrative Rules promulgated by the State of Michigan (“Administrative Rules”), as they may be amended from time to time;

b) A primary caregiver must be located outside of a one-thousand-foot radius from the real property comprising a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university, or a playground, or housing facility owned by a public housing authority or public library or private library open to the public, nor within 100 feet of a public or private youth center, public swimming pool, or video arcade facility to insure community compliance with State and Federal “Drug-Free School Zone” requirements;

c) Not more than one primary caregiver within a single dwelling unit shall be permitted to service qualifying patients who do not reside with the primary caregiver;

d) Not more than five qualifying patients shall be assisted with the medical use of marihuana by any primary caregiver;

e) If the primary caregiver is not the owner of the premises, then either written consent must be obtained from the property owner to ensure the owner’s knowledge of the use of the premises as permitted by this subsection or the primary caregiver shall maintain written proof that the use of the property as a home occupation under this section is not prohibited by the property owner;

f) All medical marihuana plants shall be contained within a structure that is an

enclosed, locked facility inaccessible on all sides and equipped with locks or other security devices that permit access only by the primary caregiver or qualifying patient; provided however, outdoor cultivation may occur if the marijuana plants are fully enclosed by fences or barriers that block outside visibility of the plants from public view, with no plants visibly growing above the fence or barrier, and the fence or barrier is locked or otherwise secured to limit access only to the primary caregiver or qualifying patient engaged in cultivating the plants.

g) All necessary building, electrical, plumbing and mechanical permits shall be obtained for any portion of the residential structure in which electrical wiring lighting, and/or watering devices are located, installed or modified that support the cultivation, growing or harvesting of marijuana;

h) If a room with windows is utilized as a marijuana-growing location, any lighting methods that exceed usual residential use 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, to prevent ambient light spillage that causes or creates a distraction or nuisance to adjacent residential properties;

i) The separation of plant resin from a marijuana plant by butane extraction in any public place, a motor vehicle, inside a residential structure or the curtilage of a residential structure is prohibited.

j) Nothing in this subsection, or in any companion regulatory provision adopted in any other provision of this Code, is intended to grant, nor shall they be construed as granting, immunity from criminal prosecution for growing, sale, consumption, use, distribution, or possession of marijuana not in strict compliance with that Act and the Administrative Rules and this subsection. To this end, the sale, distribution, cultivation, manufacture, possession, delivery or transfer of marijuana to treat or alleviate a qualifying patient shall only be conducted as a home occupation, and shall not be permitted as a commercial use in any other zoning classification of this Zoning Code. Also, since federal law is not affected by that Act or the Administrative Rules, nothing in this chapter, or in any companion regulatory provision adopted in any other provision of this Code, is intended to grant, nor shall they be construed as granting, immunity from criminal prosecution under federal law. Neither this ordinance nor the Michigan Medical Marijuana Act protects users, caregivers or the owners of properties on which the medical use of marijuana is occurring from federal prosecution, or from having their property seized by federal authorities under the Federal Controlled Substances Act.

k) The location and operation of a marijuana facility pursuant to the provisions of the Michigan Medical Marijuana Facilities Licensing Act, Public Act 281 of 2016, MCL 333.27101 et seq., as a home occupation is prohibited.

l) Definitions. As used in this subsection:

MARIHUANA — This term shall have the meaning given to it in Section 7106 of the Michigan Public Health Code, 1978 PA 368, MCLA 333.7106.

MARIHUANA-INFUSED PRODUCT— A topical formulation, tincture, beverage, edible substance, or similar product containing any usable marihuana that is intended for human consumption in a manner other than smoke inhalation.

MEDICAL USE OF MARIHUANA — The acquisition, possession, cultivation, manufacture, extraction, use, internal possession, delivery, transfer, or transportation of marihuana, marihuana-infused products, 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 or symptoms associated with a debilitating condition.

PRIMARY CAREGIVER — A person who is at least 21 years old who has agreed to assist with a patient’s medical use of marihuana, and who has not been convicted of any felony within the past 10 years and has never been convicted of a felony involving illegal drugs or a felony that is an assaultive crime as defined by Public Act 175 of 1927, MCL 770.9a.

QUALIFYING PATIENT — A person who has been diagnosed by a physician as having a debilitating medical condition and includes a person who has obtained a physician’s professional opinion, made in the course of a bona fide physician patient relationship, that the person is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient’s serious or debilitating medical condition or symptoms of the person’s serious or debilitating medical condition.

USABLE MARIHUANA—The dried leaves, flowers, plant resin, or extract of the marihuana plant, but does not include the seeds, stalks, and roots of the plant.”

Section 2. Repealer. All former ordinances or parts of ordinances conflicting or inconsistent with the provisions of this ordinance are repealed.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, said portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity and enforceability of the remaining portions of this ordinance.

CERTIFICATE

The foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Kalamazoo at a regular meeting held on _____,

2017. Public notice was given and the meeting was conducted in full compliance with the Open Meetings Act, (PA 267, 1976, M.C.L. § 15.261 et. seq). Minutes of the meeting will be available as required by the Act, and the ordinance was duly recorded, posted and authenticated by the Mayor and City Clerk as required by the Charter of said City.

Bobby Hopewell, Mayor

Scott Borling, City Clerk