

The following Ordinance was adopted at the Township Board meeting held on May 19, 2011.

ORDINANCE NO.: 527

MEDICAL MARIJUANA LICENSING ORDINANCE

AN ORDINANCE to add Chapter 17 to the Code of Ordinances for the Charter Township of Holland, Ottawa County, Michigan, to regulate and license medical marijuana cultivation, use and distribution.

SECTION 1. Addition of Chapter 17. Chapter 17 of the Code of Ordinances of the Charter Township of Holland, Ottawa County, Michigan, is hereby added to read as follows:

Chapter 17

MEDICAL MARIJUANA LICENSING ORDINANCE

Sec. 17-1. Intent.

It is the intent of this ordinance to give effect to the intent of Initiated Act 1 of 2008, MCL 333.26421, *et seq.*, (the Act) as approved by the electors of the State of Michigan and made effective December 4, 2008, and not to determine and establish an altered policy with regard to medical marijuana. The Act authorizes a narrow exception to the general rule and state policy that the cultivation, distribution, and use of marijuana amount to criminal acts. It is the further intent of this ordinance to protect the public health, safety, and general welfare of persons and property, and to license certain locations as specified below. It is the further intent of this ordinance to comply with the Act while concurrently attempting to protect the health, safety, and welfare of law enforcement officers and other persons in the community, and also to address and minimize reasonably anticipated secondary effects upon children, other members of the public, and upon significant areas of the community, that would be reasonably expected to occur in the absence of the provisions of this ordinance.

Sec. 17-2. Definitions.

Act means Initiated Law of 2008, MCL 333.26421, *et seq.*, and Michigan Administrative Rules, R 333.101, *et seq.*

Department means the State of Michigan Department of Community Health or a successor agency.

Distribution means the physical transfer of any amount of medical marijuana in any form by one person to any other person or persons, whether or not any consideration is paid or received.

Distributor means any person, including but not limited to a caregiver, patient or any other person who engages in any one or more acts of Distribution.

Facility or *Premises* means one commercial business premises having a separate or independent postal address, one private office premises having a separate or independent postal address, one single family residence having a separate or independent postal address, one apartment unit having a separate or independent postal address, one condominium unit having a separate or independent postal address, or one free-standing industrial building having a separate or independent postal address.

Marijuana means that term as defined in section 7106 of the Public Health Code, 1976 PA 368, MCL 333.7106.

Primary caregiver or *caregiver* means a person who is at least 21 years old and who has agreed to assist with a patient's medical use of marijuana and who has never been convicted of a felony involving illegal drugs and who has been issued and possesses a Registry Identification Card under the Act

Principal residence means the place where a person resides more than half of the calendar year.

Qualifying patient or *patient* means a person who has been diagnosed by a physician as having a debilitating medical condition.

Registry Identification Card means the document issued by the Michigan Department of Community Health or a successor agency that identifies a person as a registered qualifying patient or registered primary caregiver.

Sec. 17-3. Requirement for license.

The cultivation of medical marijuana by a caregiver or any other person permitted under the Act, and the provision of caregiver services relating to medical marijuana use, shall be permitted in accordance with the Act. No cultivation, distribution, and other assistance to patients by a caregiver shall be lawful in this community at a location unless and until such location for such cultivation, distribution, and assistance shall have been licensed under this ordinance. Licensure shall be required for the facilities listed below in accordance with the following:

- a. The location of a Facility used for the cultivation of medical marijuana by caregivers or by other persons permitted under the Act;
- b. The location of a Facility used for distribution;
- c. The location of a Facility used to provide any other assistance to patients by caregivers or any other person permitted under the Act relating to medical marijuana;

- d. By way of exception, it is not the intent of this ordinance to require a license for the principal residence of a patient where medical marijuana is cultivated or used exclusively for such patient's personal consumption, however, a location other than a patient's principal residence where a patient cultivates or uses medical marijuana shall be subject to the licensure requirements of this ordinance.

Sec. 17-4. Application for license.

A. The requirement of this ordinance is to license a location, and not to license persons. A confidential application for a license under this section shall be submitted to the person appointed as the Medical Marijuana Officer of Holland Charter Township or their designee, and shall conform to the following specifications. An application shall:

1. Not require the name, home address, or date of birth of a patient or caregiver.
2. Include the address and legal description of the precise premises, other than a patient's principal residence, at which there shall be possession, cultivation, distribution or other assistance in the use of medical marijuana. The fact that a caregiver or other person providing assistance to patients also has an ID card as a patient shall not relieve the obligation to provide this information.
3. Specify the name and address of the place where all unused portions of medical marijuana plants cultivated in connection with the use of medical marijuana or caregiver activity at the premises shall be disposed.
4. Describe the enclosed, locked facility in which any and all cultivation of medical marijuana is proposed to occur, or where medical marijuana is stored, with such description including: the location in the building; precise measurements in feet of the floor dimensions and height; and the security devices for the facility.
5. Describe all locations in the premises where a caregiver or other person authorized under the Act shall render assistance to a qualifying patient.
6. Specify the number of patients to be assisted, including the number of patients for whom medical marijuana is proposed to be cultivated, and the number of patients to be otherwise assisted on the premises, and the maximum number of plants to be grown or cultivated at any one time. If the location at which patients will be assisted is different from the licensed premises, the application shall provide the address of all such other locations (other than the address of a patient being assisted).
7. For safety and other code inspection purposes, it shall describe and provide detailed specifications of all lights, equipment, and all other electrical, plumbing, and other means proposed to be used to facilitate the cultivation of medical marijuana plants as such specifications relate to the need for the installation of

facilities. Information regarding the electrical, mechanical or plumbing permits required for the subject equipment shall be provided.

8. The Facility is subject to inspection annually to ensure that the operation is developed as presented in the application and that the operation is safe, not posing any threats to the occupants, and the general environment does not pose a threat to the immediate environs.
- B. Requirements and standards for approval of a growing or assistance license.
1. Locations used for the cultivation of medical marijuana by caregivers and any other person permitted under the Act, and the location used for the provision of assistance to patients by caregivers or any other person authorized under the Act relating to medical marijuana use, including distribution or other assistance, but in all events not including a patient's principal residence which is not used to cultivate medical marijuana or assist in the use of medical marijuana for persons other than the patient at such residence, shall be prohibited under the following situations:
 - a. Within 1,000 feet from sites where children are regularly present in large numbers not under the supervision of their parents, and specifically a recreational park, a public community center, a public or private pre-school, elementary school, middle school, high school, community college, and all other schools that have different name references but serve students of the same age.
 - b. Within 1,000 feet of a Sexually Oriented Business, as defined in the zoning ordinance.

Measurement purposes of this subsection 17-4.B.1.b. shall be made from front door of a facility to the nearest door or primary use area of the designated uses requiring separation.

2. The location of the Facility at which a caregiver or any other person permitted under the Act cultivates medical marijuana, or assists a patient in the use of medical marijuana shall not be the same Facility at which any other caregiver or person cultivates medical marijuana, or assists a patient in the use of medical marijuana. Accordingly, at a patient's principal residence used by such patient to cultivate medical marijuana for his or her personal use as permitted under the Act, there shall be not more than twelve medical marijuana plants being cultivated at any one time; only at a licensed Facility may there be more than twelve medical marijuana plants being cultivated at any one time; and, at a Facility at which a caregiver or any other person permitted under the Act cultivates medical marijuana for use by patients, there shall not be more than twelve medical marijuana plants being cultivated at any one time per patient, and in no event

more than seventy-two medical marijuana plants being cultivated at any one time (which assumes cultivation for five patients, plus an additional twelve plants if the caregiver is also a patient that has not designated a caregiver to assist in providing medical marijuana). If two patients share the same residence and are related by blood or law, then they are not required to be registered; if the residents housed exceed two patients, it must be licensed as a Facility.

3. In order to insulate children and other vulnerable individuals from such actions, all medical marijuana cultivation, and all assistance of a patient in the use of medical marijuana by a caregiver, shall occur within the confines of a building licensed under this section, and such activities shall occur only in locations not visible to the public and adjoining uses, provided, this subsection shall not prohibit a caregiver from assisting a patient at the patient's principal residence or at a hospital.
4. The electrical, mechanical and plumbing inspectors must require that any necessary permits be secured, and after inspection, attest that all electrical, mechanical and plumbing equipment, and all other means proposed to be used to facilitate the growth or cultivation of medical marijuana plants is in accordance with applicable code.
5. Considering that the distribution of marijuana is generally unlawful, and that the Act authorized "caregivers," and does not authorize any activity such as a retail facility (authorized by statutes in other states), and reading the Act as a whole, the activities of caregivers are interpreted as being limited to private and confidential endeavors. Moreover, the location and identity of a caregiver is known to patients. Accordingly:
 - a. There shall be no signage identifying a caregiver use or a place at which medical marijuana is distributed.
 - b. Unless conducted as part of a related licensed professional medical or pharmaceutical practice, caregiver activity shall not be advertised as a "clinic," "hospital," "dispensary," or other name customarily ascribed to multi-patient professional practice.
 - c. An approval of licensure may include reasonable conditions requested in writing by the Township during the application and review process.
6. If approved, all use of property shall be in accordance with an approved application, including all information and specifications submitted by the applicant in reliance on which the application shall be deemed to have been approved.

7. A Facility that exists on the effective date of this ordinance must make application for and receive approval to continue to operate; provided an application shall be filed within fifteen days following the effective date of this ordinance. If an application for licensure under this ordinance is denied due to the minimum distance requirement standards, and a timely application has been filed seeking licensure under this ordinance, such Facility shall have sixty days from the date of application denial to cease operating at the denied site.
8. There shall be no visible change to the outside appearance of the primary caregiver's residence or other visible evidence of the conduct of the medical marijuana operation occurring inside the dwelling.
9. Use of the residential dwelling (which is the residence of the primary caregiver) for medical marijuana-related purposes shall be clearly incidental and subordinate to its use for single family residential purposes. Not more than 25% of the gross finished floor area of the dwelling shall be used for the growing, processing and handling of the medical marijuana. No part of an accessory building, detached garage, pole barn or similar building or structure shall be used for the growing processing or distribution of medical marijuana.
10. No growing, processing, smoking, use or distribution of medical marijuana shall occur outdoors. All medical marijuana growing, processing and handling shall occur entirely within the dwelling.
11. Considering the health issues presented, no food shall be sold from the Facility used for the distribution of medical marijuana.

Sec. 17-5. Restriction on Distribution and Possession of Medical Marijuana.

- A. Qualifying Patients.
 1. No qualifying patient shall receive compensation for costs associated with assisting any other qualifying patient with the medical use of marijuana unless the patient providing the assistance is a registered primary caregiver connected to the qualifying patient receiving the marijuana through the Michigan Department of Community Health's or successor agency's registration process and the transaction is otherwise in accordance with the Michigan Medical Marijuana Act.
 2. No qualifying patient shall undertake any task under the influence of medical marijuana, when doing so would constitute negligence or professional malpractice, nor shall they possess or engage in the use of medical marijuana while in a school bus, on the grounds of any state-licensed daycare facility, preschool, primary school, or secondary school. No qualifying patient shall

smoke or use marijuana in any public place or operate or be in actual physical control of any motor vehicle or boat, while under the influence of medical marijuana.

3. No qualifying patient shall possess medical marijuana or medical marijuana plants in excess of the amount he or she is allowed to possess under MCL 333.26424(b), the Medical Marijuana Act.

B. Caregivers.

1. A caregiver and any other person authorized under the Act to assist patients, if any, shall distribute medical marijuana only on a confidential, one-to-one basis with no other caregiver being present at the same Facility at the same time, and no other patient or other person being present at the same Facility at the same time, provided, that a patient's immediate family members or guardian may be present in any Facility other than the patient's private residence. For purposes of this subsection, the phrase "same time" shall mean and include concurrently as well as within a time interval of one hour.
2. No primary caregiver or qualifying patient shall possess medical marijuana or medical marijuana plants in excess of the amount he or she is allowed to possess under MCL 333.26424 (b), the Medical Marijuana Act, and no more than 5 patients shall be connected to or served by a single caregiver.
3. It shall be a violation of this ordinance for any person to participate as a registered primary caregiver in a jointly operated facility where primary caregivers jointly share building space which is used in common to assist more than 5 qualifying patients with the medical use of marijuana. Use "in common" as that phrase is used in this subparagraph, shall include a shared or common reception area or shared or common customer service area.
4. It shall be a violation of this ordinance for a primary caregiver to delegate to an employee or other person not independently and specifically authorized by the Michigan Medical Marijuana Act to provide assistance with the medical use of marijuana to the specific qualifying patient.
5. No caregiver shall undertake any task under the influence of medical marijuana, when doing so would constitute negligence or professional malpractice, nor shall they possess or engage in the use of medical marijuana while in a school bus, on the grounds of any state-licensed daycare facility, preschool, primary school, or secondary school. No caregiver shall smoke medical marijuana in any public place or operate or be in actual physical control of any motor vehicle or boat, while under the influence of medical marijuana.

6. It shall be unlawful for any “primary caregiver,” as defined by the Michigan Medical Marijuana Act, to dispense or grow medical marijuana within any retail store, storefront, office building, manufacturing building, processing facility, any other type of commercial or industrial building, any residential duplex, residential triplex, apartment building, residential condominium or any residential apartment located within the Township. Such activities shall only be carried out within single-family residences where the caregiver resides.

7. A person who has been issued a Michigan registration identification card as a “primary caregiver” and who conducts medical marijuana operations with the Township shall:
 - a. Comply with all applicable statutes, including the Michigan Medical Marijuana Act;
 - b. Have hours of operation which do not extend beyond 8:00 a.m. to 9:00 p.m.

- C. Dispensaries, Collectives, Industries, Entities and Individuals.
 1. The sale, distribution, cultivation, possession and use of medical marijuana or medical marijuana plants is prohibited to the extent it is in violation of the Michigan Marijuana Act or other Michigan statutes;
 2. No person may dispense or grow medical marijuana for other qualifying patients within any retail store, storefront, office building, manufacturing building, processing facility, any other type of commercial or industrial building, any residential duplex, residential triplex, apartment building, residential condominium or any residential apartment located within the Township.
 3. No person shall receive or share in compensation for the costs associated with assisting a qualifying patient with the medical use of marijuana to a qualifying patient except for a registered caregiver who is distributing medical marijuana to a qualifying patient that the registered caregiver is connected to through the Michigan Department of Community Health’s or a successor agency’s registration process and the transaction is otherwise in compliance with the Michigan Medical Marijuana Act.
 4. Corporations, limited liability companies, and partnerships, or any other entity other than an individual registered caregiver are expressly prohibited from receiving compensation for costs associated with assisting a registered qualifying patient in the medical use of marijuana.

Sec. 17-6. Inspection of Patient and Caregiver Cultivation.

All lights, plumbing, equipment, and all other means used to facilitate the cultivation of medical marijuana plants must be installed and inspected in accordance with applicable code. In carrying out the provisions of this subsection, community officials shall not require the name of the patient. The laws regulating permits do not require names when licensed contractors are requesting the permits. If homeowners are seeking permits, names of the homeowner only are required to determine that they are eligible for an owner occupant permit. Permit materials do not have to have a reference to the permit being used for the growth of medical marijuana. Rather, the intent of this subsection is to focus on the premises, and to insure resident safety for the benefit of the resident of the premises and others who may be affected by one or more code violations.

Sec. 17-7. Penalty for Violation.

- a. Civil infraction, with penalty of \$1,000 (or the maximum permitted by law if less than \$1,000) for each violation.
- b. In the event of two or more violations, fines and penalties may increase as permitted by law, and multiple violations may be grounds for revocation of license, following a hearing.

Sec. 17-8. No Vested Rights.

A property owner shall not have vested rights or nonconforming use rights what would serve as a basis for failing to comply with this ordinance or any amendment of this ordinance.

Sec. 17-9. Severance Clause.

If a section, subsection, sentence, clause or phrase of this code is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this code.

SECTION 2. Effective Date.

This Ordinance was approved and adopted by the Township Board of Holland Charter Township, Ottawa County, Michigan, on May 19, 2011, after introduction and first reading on May 5, 2011, and publication after first reading as required by Act 359 of the Michigan Public Acts of 1947, as amended. This Ordinance shall be effective on June 5, 2011.

Township Supervisor

Township Clerk