

ORDINANCE NO. 80-737

AN ORDINANCE TO ADD AN ARTICLE TO CHAPTER 21 TO IMPOSE LOCAL REQUIREMENTS REGULATING THE USE AND GROWTH OF MEDICAL MARIHUANA AND PROHIBIT ODORS CAUSING NUISANCE; TO AMEND CHAPTER 22, RELATING TO POSSESSION, USE, AND TRANSPORT OF MARIHUANA; AND TO ADD A SECTION TO CHAPTER 22 PROHIBITING FRAUDULENT REPRESENTATION TO A POLICE OFFICER ABOUT MEDICAL USE OF MARIHUANA TO AVOID ARREST OR PROSECUTION.

THE CITY OF WARREN ORDAINS:

SECTION 1. That the Code of Ordinances of the City of Warren, Michigan, is hereby amended by adding Article VI to impose local standards for the use, growth and cultivation of Medical Marihuana, which shall read as follows:

ARTICLE VI. – LOCAL REQUIREMENTS FOR MEDICAL MARIHUANA

Sec. 21-81. – Purpose.

The City of Warren acknowledges that lawful medical use of marihuana serves the seriously ill, by alleviating their symptoms. It is in the public welfare to establish local standards to ensure that the procedures utilized to help the seriously ill with medicinal marihuana are compatible with the character of the community. The neighborhoods must be protected from any residual odors or dangerous heating processes that are associated with marihuana growth, as well as the explosions and fires caused by the grow process. This ordinance is intended to impose local requirements for those individuals registered as “qualifying patients” as defined under the Michigan Medical Marihuana Act, MCL 333.26421, *et seq.*, to contain growth of medical marihuana to specifically zoned areas, and to restrict presence in neighborhoods only to those qualifying patients who take safety measures to prevent hazards and odors associated with the growth and processing of marihuana. This ordinance is intended to preserve the character of the community, and protect the citizens from any disruption, traffic, offensive smell or nuisance due to the growth of medical marihuana, and the unexpected consequences of electrical fires and dangerous explosions.

Sec. 21-82. – Definitions.

The terms used in this article, whether lower case or capitalized, “qualifying patient(s)” or “primary caregiver” will have the meaning assigned to “registered qualifying patient” and “registered primary caregiver” in the Michigan Medical Marihuana Act, MCL 333.26421, *et al* (the Act). All other terms will have the meanings assigned to them in the Act.

21-83 - General.

- (a) The growth, manufacturing, processing, or storage of medical marihuana by a qualifying patient or his or her primary caregiver shall only occur at the residence of qualifying patient, or other location permitted by this ordinance, and shall only be allowed inside of an enclosed, locked facility, or other closed area equipped with locks or other security devices that permit access only by the qualifying patient or his or her primary caregiver. Such facility shall be under the exclusive control of the qualifying patient or his or her primary caregiver through written lease, contract or deed.
- (b) A qualifying patient, or his or her primary caregiver shall not distribute, transfer or sell the medical marihuana to another person other than to the qualifying patient on the qualifying patient's residential dwelling or premises. No person shall be allowed or have access to medical marihuana on the qualifying patient's property other than the qualifying patient and his or her primary caregiver or other persons who may lawfully assist the patient under the Act.
- (c) Only one qualifying patient, or his or her primary caregiver, may grow, store, cultivate, manufacture or store medical marihuana per residential dwelling, and only for the assistance to the qualifying patient residing in that dwelling.
- (d) No marihuana shall be cultivated, grown, manufactured or processed in any manner that would transmit or emit odor from the dwelling or property to neighboring private or public properties or areas.
- (e) The odor of marihuana from the growth, manufacturing, processing, or cultivation must be contained through use of operable filtration to ventilation and exhaust equipment. Odors must otherwise be effectively confined to the interior of the building or dwelling from which the odor is generated. No ventilation or exhaust system may be installed where marihuana is grown or cultivated without a filtration system approved by the Building Inspections Division.
- (f) If a qualifying patient or his or her primary caregiver intends to grow, manufacture, store, cultivate or process medical marihuana at a location other than at the qualifying patient's principal residence as defined by MCL 211.7u, such activities shall only occur within an industrial districts as may be designated and expressly allowed within the Zoning Ordinances of the City of Warren. The growth, manufacture, cultivation, or processing of medical marihuana shall not occur in connection with, or at a location at which, another commodity, product or service is also available, except to the extent permitted by law.

(g) All growth, storage, manufacturing and cultivation must otherwise comply with the following:

(i) the Michigan Medical Marihuana Act, and rules promulgated under the Act, and this Article and applicable ordinances;

(ii) The property has registered with the Division of Building Inspections, satisfies administrative safety inspections by the Fire Department and Division of Building Inspections; administrative safety inspections will include the property's heating equipment, filtration system, and electrical wiring, lighting, and watering disposal methods that support or are associated with the cultivation, growth or harvesting of marihuana, and the storage of any chemicals associated with the cultivation, growth, manufacturing or processing of medical marihuana, and which may include plant clipping discard methods.

(iii) All medical marihuana shall be grown and contained within the structure, and in an enclosed, locked facility inaccessible and equipped with locks to restrict access from any person other than the qualified patient and his or her primary caregiver, or person authorized to assist the patient, under the Act.

(iv) On-site lighting in rooms with windows where medical marihuana is grown shall employ shielding methods between 11 p.m. and 7 a.m., without alteration to the exterior of the residence, to prevent ambient light spillage that may create a distraction for neighboring property.

(v) Any portion of dwelling or structure where heating equipment is used to grow, process, manufacture, or cultivate medical marihuana, or where chemicals such as herbicides, pesticides, and fertilizers are stored, shall be subject to mandatory inspection and approval by the City of Warren Fire Department.

(vi) Upon registration, a plan is submitted to and approved by the Division of Building Inspections for the processing, storage and cultivation of medical marihuana, identifying the heating equipment and processes, chemical storage, filtration equipment, electrical wiring, and lighting, and plant material and water disposal methods, utilized in connection with the growth, processing or cultivation of medical marihuana.

(vii) Information and records obtained through the registration process that are deemed confidential under the Act will be withheld from public disclosure, unless disclosure is compelled by law.

(viii) Medical marihuana is to be grown, processed, manufactured, or cultivated with the filtration, heating, lighting and electrical wiring, and chemical storage, water disposal, and usage methods and equipment approved by the Division of Building Inspections and the Fire Department, following administrative safety inspections.

(viii) All discarded marihuana must be disposed of in non-transparent containers that are placed in waste receptacle containers, or by any other means necessary to prevent persons or animals from accessing the marihuana plant materials.

21-84. Cost recovery.

In the event of any explosion, release, hazard that results from the growth, cultivation or processing of medical marihuana, the responsible party will be responsible for reimbursement of any emergency response costs which were deployed to remediate, contain or respond to the explosion, fire, release or hazard, including transportation, overtime costs, special equipment or testing, and shall be responsible for the repair of property damages, remediation, or medical expenses for injuries resulting from such explosion, release, harmful emission, or hazard.

21-85. Consumption or use by qualifying a patient.

A person within the City of Warren who has been issued and possesses a lawful registry identification card as a qualifying patient as set forth in MCL 333.26421, et seq. (the Act), shall not consume or use marihuana in any of the following places:

(a) any public place;

(b) a common area of a hotel, motel, apartment building, condominium complex, or other business establishment, including the driveways, entrance areas, parking lots, areas open to the public or other residents and/or guests;

(c) a hotel, motel, apartment building, rental dwelling or similar facility or any other establishment at which the owner or property manager has prohibited marihuana growth, cultivation, manufacture, or transfer on the premises.

21-86. Punishment.

The growth, cultivation, storage, or processing marihuana in violation of section 22-83(g)(ii), (v), (vi) and (viii) is a misdemeanor punishable by up to \$500 and/or 90 days in jail. Any use, manufacturing, growth, or cultivation of medicinal marihuana shall otherwise be in compliance with the Act, and the provisions of this Article are intended to supplement the requirements and remedies provided under the Act.

Sec. 21-87 – 21-89. Reserved.

SECTION 2. That the Code of Ordinances of the City of Warren, Michigan, is hereby amended by adding Article VII to control and prohibit the infiltration of offensive odors in the City of Warren, and which shall read as follows:

ARTICLE VII. ODORS CAUSING NUISANCE

Sec. 21-90. – Purpose.

It is the purpose of this Article to promote the health, safety, and general welfare of the citizens of the City by prohibiting offensive odors, protecting citizens from harmful air quality, and preserving the comfortable and enjoyable use of property.

Sec. 21-91. – Short title.

This Section shall be known and cited as “The Fresh Air Ordinance”.

Sec. 21-92. Definitions.

An *offensive odor* is a strong or foul odor, which includes, but is not limited to odors caused by:

- (a) animals;
- (b) stagnant pools, garbage;
- (c) chemicals or industrial activities;
- (d) burning garbage, rubber, and/or other materials or substances; or
- (e) growth, cultivation, and/or excessive use or consumption of marihuana.

Sec. 21-93. – Prohibition.

- (a) Except as listed in Section 21-94, a person is prohibited from causing or allowing the transmission or emission of an odor from his or her property that:
 - 1) a reasonable person would consider an offensive odor;
 - 2) endangers the public health or welfare; or
 - 3) unreasonably interferes with another person’s health, safety, peace, comfort, or enjoyment of property.

Section 21-94. – Exceptions.

- (a) Offensive odors do not include ordinary odors associated with:
 - 1) cooking or preparing food; or
 - 2) composting food

Section 21-95. - Odor Nuisance Determination.

An authorized code official may determine that an odor violates Section 21-93 by:

- (a) Detecting an odor that he or she determines is exceedingly pungent or foul and of such intensity that it does any of the following:

- 1) Potentially causes distress, discomfort or injury to a person with ordinary sensibilities;
- 2) Substantially interferes with the comfortable enjoyment of residential dwellings by a person of ordinary sensibilities; or
- 3) Has the propensity to induce nausea in a person of ordinary sensibilities.

Section 21-96. Punishment.

Except for an offense that is designated as a misdemeanor, a violation of Article VI and Article VII is a municipal civil infraction, punishable by a fine of not less than one hundred dollars (\$100.00) but not more than one thousand dollars (\$1,000.00) per violation; and/ or costs; assessments; and damages and expenses, as provided by MCL 600.8727(3).

Cross-reference – Nuisances, Ch. 21; Local Requirements for Medical Marihuana, § 21-81 *et seq.*

SECTION 3. That Chapter 22, Article VIII, Division I, Section 22-191 of the Code of Ordinances of the City of Warren, Michigan

WHICH PRESENTLY READS:

Sec. 22-191. - Possession, use, and transport prohibited.

(a) Except as lawfully allowed by applicable state or federal law, it shall be unlawful for any person to possess, use, or provide to another person marihuana as defined in the Michigan Public Health Code, MCL 333.7101 *et seq.*; or the United States Controlled Substances Act, 21 USC Section 801 *et seq.*

(b) A person shall not transport or possess usable marihuana as defined by the Michigan Medical Marihuana Act in or upon a motor vehicle or any self-propelled vehicle designed for land travel unless the usable marihuana is one (1) or more of the following:

- (1) Enclosed in a case that is carried in the trunk of the vehicle; or
- (2) Enclosed in a case that is not readily accessible from the interior of the vehicle, if the vehicle in which the person is traveling does not have a trunk.

(c) A person who violates subsection (b) is guilty of a misdemeanor punishable by imprisonment for not more than ninety-three (93) days or a fine of not more than five hundred dollars (\$500.00), or both.

IS HEREBY AMENDED TO READ AS FOLLOWS:

Sec. 22-191. Marihuana possession, use, or transfer prohibited; Medical marihuana transport or possession in a vehicle limited to a locked case.

- (a) Except as permitted by state or federal law, it is unlawful for person to possess, use, or transfer marihuana as defined in the Michigan Public Health Code, MCL 333.7101 *et seq.* as amended; or the United States Controlled Substances Act, 21 USC Section 801 *et seq.* as amended.
- (b) Except as lawfully permitted by state or federal law, it is unlawful for a person to use marihuana as defined in the Michigan Public Health Code, MCL 333.7101 *et seq.* as amended; or the United States Controlled Substances Act, 21 USC Section 801 *et seq.* as amended.
- (c) It is unlawful for a person to transport or possess usable marihuana as defined by the Michigan Medical Marihuana Act, MCL 333.26421, *et seq.* as amended, in or on a motor vehicle or self-propelled vehicle designed for land travel, except if the usable marihuana is either:
 - (1) Enclosed in a closed case that is carried in the trunk of the vehicle; or
 - (2) Enclosed in a closed case that is not readily accessible from the interior of the vehicle, if the vehicle in which the person is traveling does not have a trunk.
- (d) A case is a portable, non-transparent container with a lid, top, cover, or cap which can be used to enclose an object, substance, or material.
- (e) A person who violates subsection (a) is guilty of a misdemeanor punishable by imprisonment for not more than ninety (90) days or a fine of not more than five hundred dollars (\$500.00), or both. A person who violates subsection (b) is guilty of a misdemeanor punishable by imprisonment for not more than ninety (90) days and/or a fine of not more than five hundred dollars (\$500.00). A person who violates subsection (c) is guilty of a misdemeanor punishable by imprisonment for not more than ninety-three (93) days and/or a fine of not more than five hundred dollars (\$500.00).

SECTION 4. That Chapter 22, Article VIII, Division I of the Code of Ordinances of the City of Warren, Michigan, is hereby amended to add Section 22-193, which shall read as follows:

Sec. 22-193. Fraudulent representation relating to the medical use of marihuana to avoid arrest or conviction.

- (a) It is illegal for a person or entity to make a fraudulent representation of any fact or circumstance relating to the medical use of marihuana, as defined by Medical Marihuana Act, MCL 333.26423(e)–(f), to a police officer in order to avoid arrest or prosecution.
- (b) A violation of subsection (a) is punishable by a fine of not more than five hundred dollars (\$500.00).
- (c) A violation of this section may be grounds for an arrest or charges under a separate ordinance or law for making a false statement to a police officer, and may otherwise be subject to penalty or punishment under such other offense.

SECTION 5. This Ordinance shall take effect on May 4, 2016.

I HEREBY CERTIFY that the foregoing Ordinance No. 80-737 was adopted by the Council of the City of Warren at its meeting held on April 12, 2016.

PAUL WOJNO
City Clerk

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