

STATE OF MICHIGAN
COUNTY OF WAYNE
CITY OF ALLEN PARK

ORDINANCE #03-2017

AN ORDINANCE OF THE CITY OF ALLEN PARK CODE OF ORDINANCES; AMENDING CHAPTER 12, “BUSINESSES”, BY ADDING ARTICLE IV, “MEDICAL MARIJUANA / SD; M-1 AND M-2”, TO REGULATE THE LOCATION AND OPERATION OF MEDICAL MARIJUANA PRIMARY CAREGIVERS IN THE CITY.

The City of Allen Park Ordains:

SECTION 1. Amendment to Code.

That Article IV “Medical Marijuana” is added under Chapter 12 “Businesses”, to hereafter read as follows:

Chapter 12 “Businesses”
Article IV “Medical Marijuana / SD; M-1 and M-2”

Section 12-100. –Definitions.

The following words shall have the meanings ascribed to them except where the context clearly indicates a different meaning:

City means the City of Allen Park.

Caregiver facility means a facility where a "primary caregiver" who is legally registered by the Michigan Department of Community Health may lawfully assist up to five qualifying patients" who are also legally registered by the department with the acquisition of medical marijuana in accordance with the Michigan Medical Marijuana Act of 2008.

Marijuana means that term as defined in section 7106 of the Public Health Code, 1978 PA 368, MCL 333.7106.

Medical use means the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer or transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a registered "qualifying patients" debilitating medical condition.

Primary caregiver means a person who is licensed to supply "medical marijuana" for up to five "qualifying patients," and who is registered with the state department of community health for such purpose.

Qualifying patient means a person who has obtained a valid registration card from the Michigan Department of Community Health allowing them to possess and purchase medical marijuana.

Sec. 12-101. - Purpose and intent.

A registered primary caregiver, acting in compliance with the General Rules of the Michigan Department of Community Health, the Michigan Medical Marijuana Act, P.A. 2008, Initiated Law, MCL 333.26423(d) and the requirements of this Chapter, who is licensed to supply "medical marijuana" for up to five "qualifying patients", in addition to themselves, shall be allowed to obtain a primary caregiver's license from the City Clerk. Nothing in this Article, 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 General Rules. Also, since Federal law is not affected by that Act or the General Rules, nothing in this Article, 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. The Michigan Medical Marijuana Act does not protect 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.

Nevertheless, it is determined necessary for the health, safety and welfare of the city to adopt this article regulating the location and operation of medical marijuana "primary caregivers" due to the following factors:

- (1) Outside the purview of the Michigan Medical Marijuana Act the possession and use of marijuana (a schedule I drug) in the State of Michigan remains a misdemeanor offense. Possession with intent to deliver, delivery or manufacture of marijuana, remain felonies.
- (2) Marijuana is classified federally as a "Schedule I Drug" under the Controlled Substances Act and is illegal to possess, manufacture, distribute or dispense. Schedule I drugs, which include heroin and LSD, have a high potential for abuse and serve no legitimate medical purpose in the United States.
- (3) In May, 2001, the United States Supreme Court issued its decision in *United States v. Oakland Buyers' Cooperative and Jeffery Jones* holding that distribution of medical marijuana is illegal under the Federal Controlled Substances Act, 21 U.S.C. Section 841 ("CSA"), and there is no medical necessity defense allowed under federal law.
- (4) The location of and easy access to "primary caregivers" in close proximity to homes, apartments, schools, churches, licensed day care centers and public parks give an impression of legitimacy to such uses and have adverse effects upon children, established family relations, property values and public safety.

- (5) The Michigan Medical Marijuana Act states that registered "primary caregivers" may receive compensation for assisting "qualified patients" in the medical use of marijuana, making them a likely commercial activity.

Sec. 12-102. - Locations.

A primary caregiver growing and providing marijuana for one or more patients, other than themselves, shall be located in a building within the following zoning districts only: SD, M-1 and M-2. However, even within these districts, a primary caregiver may not be located within 300 feet of another primary caregiver.

Sec. 12-103. – Restrictions.

A primary caregiver with multiple patients shall be permitted to administer care only in conformity with the following restrictions:

- (1) The medical use of marijuana shall comply at all times and in all circumstances with the Michigan Medical Marijuana Act of 2008 (MCL 333.26421) and the General Rules of the Michigan Department of Community Health, as they may be amended from time to time.
- (2) A primary caregiver must possess a valid registration card issued by the Michigan Department of Community Health and shall at all times comply with each and every provision of the Michigan Medical Marijuana Act.
- (3) A primary caregiver, growing and providing marijuana, may assist no more than five (5) patients with the medical use of marijuana and may not cultivate more than twelve (12) plants per patient.
- (4) A primary caregiver may not cultivate, store or provide medical marijuana to patients who are cultivating their own supply, or are receiving care from another primary caregiver.
- (5) A primary caregiver must maintain a list of its "qualifying patients by registration number." This list is subject to inspection during business hours by members of law enforcement and by members of the Michigan Department of Community Health.
- (6) A primary caregiver shall obtain, and at all times maintain, a City of Allen Park primary caregiver's license before providing care.
- (7) The hours of operation shall be restricted to between 8:00 a.m. and 8:00 p.m., daily.
- (8) The facility in which care is administered shall be subject to inspection by law enforcement and city code officials during the hours of operation.

- (9) The manufacture of marijuana oils/edibles/elixirs and the use of butane, carbon dioxide or any other chemical enhancements to process marijuana plants in facilities, is strictly prohibited.
- (10) All medical marijuana shall be contained within the main building in an enclosed, locked facility inaccessible on all sides and equipped with locks or other security devices that permit access only by the registered primary caregiver, as reviewed and approved by the Building Official, the Fire Department, and the Police Department. A primary caregiver must segregate and independently secure each patient's medical marijuana in a locked container accessible only to that patient, and may not jointly, cultivate, store, share or co-mingle one patient's medical marijuana with that of another.
- (11) All necessary building, electrical, plumbing and mechanical permits shall be obtained for the structure in which electrical wiring, lighting and/or watering devices that support the cultivation, growing or harvesting of marijuana are located.
- (12) Use or consumption in any manner of marijuana or any illegal controlled substance is not permitted by a qualified patient on the premises of any primary caregiver.
- (13) No alcoholic beverage shall be sold, conveyed or consumed on the premises of any primary caregiver. Nor shall any person be present on the premises of a primary caregiver while intoxicated and/or under the influence of alcohol or any controlled substance.
- (14) Persons under the age of 18 years of age are not permitted to be on the premises of any primary caregiver unless they possess a valid medical marijuana registry card issued by the State of Michigan or another state.
- (15) All litter must be removed from the premises, including the parking lot, sidewalk and all areas visible to the public.
- (16) It shall be in violation of this ordinance for any primary caregiver to employ any person who is not at least 18 years of age in caregiving. No employee can have been convicted of a drug related felony. A primary caregiver is required to provide the local law enforcement agency within whose boundaries it is located, with a list of all its employees, including full name and date of birth, by January 15th of each year, or any time a new employee is hired.
- (17) It is the sole responsibility of each primary caregiver to provide a safe product. When the product is provided it shall be packaged in child proof tamper resistant packaging.

- (18) A ledger must be maintained of all transactions. This ledger shall contain the following information: type and source of medical marijuana provided; the "qualifying patients" marijuana registry ID number; and the date and time provided.
- (19) Every primary caregiver must comply with all local, county and state laws.
- (20) Each primary caregiver shall be liable for all costs associated with the investigation, prosecution, incarceration, booking, medical treatment, storage and destruction of evidence, and any other unspecified costs for the failure to comply with the provisions of this article resulting in the arrest and prosecution of any employees, owners or patrons.

Sec. 12-104. – Grow and Provide Prohibited.

No person shall grow or provide medical or other marijuana in the City except as permitted and in compliance with this Article or as permitted in Article III, Division 2.1 of Chapter 52 of the Allen Park Code of Ordinances.

Sec. 12-105. - Criminal penalty.

Any person violating any of the provisions of this article and any of the articles stated within, shall upon conviction, be guilty of a misdemeanor, and shall be punished by a fine of not more than \$500.00 and up to 93 days in jail, plus the revocation of the business license issued by the City.

Sec. 12-106. – Enforcement actions under other ordinances or codes; of nuisances.

Nothing in this article shall prevent the City from taking action under any of its city fire, housing, zoning or other health safety codes for violations thereof to seek injunctive relief or criminal prosecution of such violations in accordance with the terms and conditions of the particular ordinance or code under which the City would proceed against the property owner, designated property manager or occupant of any facility covered by this article.

Sec. 12-107. – Abatement.

Any violation of this article is hereby declared to be a nuisance. In addition to any other relief provided by this article, the city attorney may apply to a court of competent jurisdiction for an injunction to prohibit the continuation of any violation of this article. Such application for relief may include seeking a temporary restraining order, temporary injunction and permanent injunction.

SECTION 2. Repeal.

All ordinances or parts of ordinances in conflict herewith are repealed only to the extent necessary to give this ordinance full force and effect.

SECTION 3. Saving Clause.

Nothing in this Ordinance or in the code hereby adopted shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquiring or existing, under any act or ordinance hereby repealed; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

SECTION 4. Severability.

Should any word, sentence, phrase or any portion of this Ordinance be deemed invalid by any court of competent jurisdiction or by any state agency having authority to do so for any reason whatsoever, such holdings shall be construed and limited to such work, sentence, phrase, or any portion of the Ordinance deemed invalid and shall not be construed as affecting the validity of any of the remaining words, sentences, phrases or portions of this Ordinance.

SECTION 5. Publication.

The Clerk for the City of Allen Park shall cause this ordinance to be published in the manner required by law.

SECTION 6. Adoption.

This Ordinance is hereby declared to have been adopted by the City Council of the City of Allen Park, County of Wayne, State of Michigan, at a regular meeting, called and held on the 28th day of March, 2017.

WILLIAM MATAKAS, Mayor
City of Allen Park

MICHAEL I. MIZZI, City Clerk
City of Allen Park