

Committee of the Whole Work Session of December 19, 2017.

5:30 p.m.

Call to Order.

Roll Call.

A. Presentation and Review of Proposed Medical Marihuana Ordinances.

1. Communication from the City Manager recommending that City Council review the draft ordinance amendments authorizing Medical Marihuana facilities within the City of Portage - Information Only.

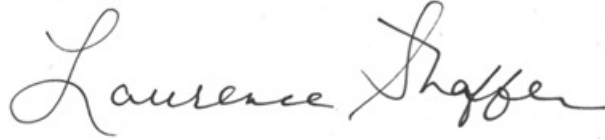
B. Petitions and Statements of Citizens:

C. Summary of Discussion on Proposed Medical Marihuana Ordinances.

Adjournment.

TO: Honorable Mayor and City Council

FROM: Laurence Shaffer, City Manager



SUBJECT: Draft Medical Marihuana Facilities Ordinance Amendments

SUPPORTING PERSONNEL: Randy Brown, City Attorney
Charlie Bear, Assistant City Attorney
Vicki Georgeau, Director of Community Development
Nicholas Arnold, Director of Public Safety - Police / Fire Chief

ACTION RECOMMENDED: Information Only

Attached for City Council review are draft ordinance amendments to Chapter 14, "Businesses" and Chapter 42, "Land Development Regulations," which together comprise the recommended local regulation and authorization of Medical Marihuana Facilities within the City of Portage.

For discussion purposes, the City Administration and City Attorney will provide a summary of the draft ordinance amendments during the December 19, 2017 Committee of the Whole meeting.

FUNDING: Not Applicable

Attachments:

1. Draft Ordinance Amendment - Chapter 14, Businesses, Article 12, Medical Marihuana Facilities
2. Draft Ordinance Amendment - Chapter 42, Land Development Regulations, Article 4, Zoning

**AN ORDINANCE TO AMEND THE CODE OF ORDINANCES
OF THE CITY OF PORTAGE, MICHIGAN BY ADDING ARTICLE 11, MEDICAL MARIHUANA
FACILITIES, OF CHAPTER 14, BUSINESSES**

THE CITY OF PORTAGE ORDAINS:

That Chapter 14 shall be amended to add Article 12, Medical Marihuana Facilities, as follows:

CHAPTER 14. BUSINESSES.

ARTICLE 12. MEDICAL MARIHUANA FACILITIES.

Sec. 14-245. Purpose.

(a) The purpose of this article is, pursuant to the Medical Marihuana Facilities Licensing Act, MCL 333.27101 *et seq.*, to: authorize the establishment of certain types of medical marihuana facilities in the City of Portage; provide for standards and procedures for the review, issuance, renewal, or revocation of permits for such facilities; and establish fees for such permits.

(b) 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 the growing, sale, consumption, use, distribution or possession of marihuana in any form or manner that is not in compliance with the Michigan Medical Marihuana Act, MCL 333.26421 *et seq.*, the Medical Marihuana Facilities Licensing Act, MCL 333.27101 *et seq.*, the Marihuana Tracking Act, MCL 333.27901 *et seq.*, and all other applicable rules promulgated by the state of Michigan.

(c) Because federal law is not affected by state law or 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 any provision of this article or this code, be construed as granting immunity from criminal prosecution under federal law. The Act does not protect patients, users, care givers or the owners of properties on which the medical use of marihuana is occurring from federal prosecution, or from having their property seized by federal authorities under the Federal Controlled Substances Act.

Sec. 14-246. Definitions.

As used in this article, the following terms shall have the meanings indicated:

(a) "Act" means the Medical Marihuana Facilities Licensing Act, MCL 333.27101 *et seq.*, as amended.

(b) "Board" means the medical marihuana licensing board created in section 301 of the Act.

(c) "Building" means a combination of materials forming a structure affording a facility or shelter for use or occupancy by individuals or property. Building includes a part or parts of the building and all equipment of the building. A building shall not be construed to mean a building

incidental to the use for agricultural purposes of the land on which the building is located, or a greenhouse.

(d) “Grower” means a licensee and permittee that is a commercial entity located in this city that cultivates, dries, trims, or cures and packages marihuana for sale to a processor or provisioning center.

(e) “LARA” means the Michigan Department of Licensing and Regulatory Affairs.

(f) “Licensee” means a person holding a state operating license issued under the Medical Marihuana Facilities Licensing Act, MCL 333.27101 *et seq.*

(g) “Marihuana” means that term as defined in section 7106 of the public health code, 1978 PA 368, MCL 333.7106.

(h) “Marihuana facility” means a location at which a licensee and permittee is licensed and permitted to operate as a grower, processor, provisioning center, safety compliance facility, or secure transporter under the Act and this article.

(i) “Marihuana plant” means any plant of the species *Cannabis sativa* L.

(j) “Marihuana-infused product” means 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. Marihuana-infused product shall not be considered a food for purposes of the food law, 2000 PA 92, MCL

(k) “Paraphernalia” means any equipment, product, or material of any kind that is designed for or used in growing, cultivating, producing, manufacturing, compounding, converting, storing, processing, preparing, transporting, injecting, smoking, ingesting, inhaling, or otherwise introducing into the human body, marihuana.

(l) “Permittee” means a person who has been issued a medical marihuana facilities permit pursuant to this article.

(m) “Person” means an individual, corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or other legal entity, as well as those persons defined as “true party of interest”.

(n) “Proposed marihuana facility” means a location at which an applicant plans to operate under the Act, rules, and this article if the applicant is issued a state license, and a permit under this article.

(o) “Provisioning center” means a licensee and permittee that is a commercial entity located in this city that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualifying patients, directly or through the patients’ registered primary caregivers. Provisioning center includes any commercial property where marihuana is sold at retail to registered qualifying patients or registered primary caregivers. A noncommercial location used by a primary caregiver to assist a qualifying patient connected to the caregiver through the Michigan Department of Licensing and Regulatory Affairs’ (LARA) marihuana

registration process in accordance with the Michigan medical marihuana act is not a provisioning center for purposes of this article.

(p) “Rules” mean the emergency and general rules of the Michigan Department of Licensing and Regulatory Affairs adopted pursuant to the Medical Marihuana Facilities Licensing Act, MCL 333.27101 *et seq.*, and the Marihuana Tracking Act, MCL 333.27901 *et seq.*, as may be amended from time to time.

(q) “Safety compliance facility” means a licensee and permittee that is a commercial entity that receives marihuana from a marihuana facility or registered primary caregiver, tests it for contaminants and for tetrahydrocannabinol and other cannabinoids, returns the test results, and may return the marihuana to the marihuana facility.

(r) “Secure transporter” means a licensee and permittee that is a commercial entity located in this city that stores marihuana and transports marihuana between marihuana facilities for a fee.

(s) “State operating license” or “license” means a license that is issued the Act that allows the licensee to operate as 1 of the following, specified in the license:

- (i) A grower.
- (ii) A processor.
- (iii) A secure transporter.
- (iv) A provisioning center.
- (v) A safety compliance facility.

(t) “Statewide monitoring system” or, unless the context requires a different meaning, “system” means an internet-based, statewide database established, implemented, and maintained by the department under the marihuana tracking act, that is available to licensees, law enforcement agencies, and authorized state departments and agencies on a 24-hour basis for all of the following:

- (i) Tracking marihuana transfer and transportation by licensees, including transferee, date, quantity, and price.
- (ii) Verifying in commercially reasonable time that a transfer will not exceed the limit that the patient or caregiver is authorized to receive under section 4 of the Michigan medical marihuana act.

(u) “Tracking Act” means the Marihuana Tracking Act, MCL 333.27901 *et seq.*

(v) “True party of interest” means the following:

- (1) For an individual or sole proprietorship: the proprietor and spouse.
- (2) For a partnership and limited liability partnership: all partners and their spouses. For a limited partnership and limited liability limited partnership: all general and limited partners and their spouses. For a limited liability company: all members, managers, and their spouses.
- (3) For a privately held corporation: all corporate officers or persons with equivalent titles and their spouses and all stockholders and their spouses.
- (4) For a publicly held corporation: all corporate officers or persons with equivalent titles and their spouses.

(5) For a multilevel ownership enterprise: any entity or person that receives or has the right to receive a percentage of the gross or net profit from the enterprise during any full or partial calendar or fiscal year.

(6) For a nonprofit corporation: all individuals and entities with membership or shareholder rights in accordance with the articles of incorporation or the bylaws and their spouses.

“True party of interest” does not mean:

(1) A person or entity receiving reasonable payment for rent on a fixed basis under a bona fide lease or rental obligation, unless the lessor or property manager exercises control over or participates in the management of the business.

(2) A person who receives a bonus as an employee if the employee is on a fixed wage or salary and the bonus is not more than 25% of the employee's pre-bonus annual compensation or if the bonus is based on a written incentive/bonus program that is not out of the ordinary for the services rendered.

(w) Unless the context requires a different meaning, any term used in this article that is defined by the Michigan Medical Marihuana Act, MCL 333.26421 *et seq.* shall have the definition given in that act.

(x) Unless the context requires a different meaning, any term used in this article that is defined by the Medical Marihuana Facilities Licensing Act, MCL 333.27101 *et seq.*, shall have the definition given in that act.

(y) Unless the context requires a different meaning, any term used in this article that is defined by the Marihuana Tracking Act, MCL 333.27901 *et seq.* shall have the definition given in that act.

Sec.14-247. Adoption of state rules and regulations.

All activities related to medical marihuana shall be in compliance with the Medical Marihuana Facilities Licensing Act, MCL 333.27101 *et seq.*, the Marihuana Tracking Act, MCL 333.27901*et seq.*, and all other applicable rules promulgated by the state of Michigan.

Sec. 14-248 Marihuana facilities allowed.

(a) Pursuant to Section 205(1) of the Act the city authorizes the following types of marihuana facilities that may be allowed under the Act be permitted in the city: class A, B, and C growers, processors, secure transporters, provisioning centers, and safety compliance facilities.

(b) During the initial permit application period as established by the city manager pursuant to section 14-250, the maximum number of each type of facility allowed in the city shall be as follows:

- class A, B, and C growers, 12 facilities;
- processors, 12 facilities;
- secure transporters, no limitation;
- provisioning centers, 12 facilities;

- safety compliance facilities, no limitation.

(c) After the initial permit application period for each annual permit application period class A, B, and C growers, processors, secure transporters, provisioning centers, and safety compliance facilities will be allowed in the city without limitation as to the number of facilities.

(d) Operation of provisioning centers, processors and growers at the same location is not authorized.

Sec.14-249. Permit required.

No person shall own or operate a marihuana facility in the city without first applying for and receiving a permit from the city clerk and state operating license.

Sec. 14-250. Application for permit.

(a) Permit applications for medical marihuana facilities shall be received by the city annually during a period specifically designated by the city manager for that purpose, and at no other time. The city will initially begin receiving permit applications for marihuana facilities on a date determined by the city manager as soon after the effective date of this article as the city manager deems practicable.

(b) Except as provided in this article, the city manager shall be responsible for establishing the procedure for receiving, reviewing and processing permits, establishing the beginning and ending dates during which permits will initially be received, establishing the beginning and ending dates during which permits may be received each year, and providing public notice regarding the permitting process and of the time period within which the city will receive permits.

(c) Any person desiring to secure a permit shall make application to the city clerk upon a form provided by the city clerk. All permit applicants must be prequalified by the Michigan Department of Licensing and Regulatory Affairs (LARA) before submitting an application. A copy of all applications received shall be distributed by the city clerk to the office of the city manager, department of public safety and department of community development for review to determine that the application is complete. If an application is incomplete, the applicant shall within 10 days of the date of written notice from the city clerk that identifies the incomplete or missing information, provide all such information to the city clerk.

(d) Information requested in the application shall be provided for each true party of interest in the applicant; any other person who controls, directly or indirectly, the applicant; any other person who is controlled, directly or indirectly, by the applicant or by a person who controls, directly or indirectly, the applicant; and each stockholder or other person having a 1% or greater beneficial interest in the proposed marihuana facility. The application for a permit shall include at a minimum the information and documentation listed below under oath:

- (1) The name, business address, business telephone number, social security number, and, if applicable, federal tax identification number of the applicant.
- (2) All residential addresses of the applicant for the past 3 years.

- (3) The business, occupation or employment of the applicant for 5 years immediately preceding the date of application.
- (4) Documentation evidencing that the applicant has been prequalified by LARA.
- (5) Whether the applicant has been indicted for, charged with, arrested for, convicted of, pled guilty or nolo contendere to, or forfeited bail concerning, a felony under the laws of this state, any other state, or the United States, or a controlled substance-related felony, within the past 10 years preceding the date of the application.
- (6) Whether the applicant has been indicted for, charged with, arrested for, convicted of, pled guilty or nolo contendere to, or forfeited bail concerning, a misdemeanor involving a controlled substance, theft, dishonesty, or fraud in any state or been found responsible for violating a local ordinance in any state involving a controlled substance, dishonesty, theft, or fraud that substantially corresponds to a misdemeanor in that state within the past five years.
- (7) Whether the applicant has previously violated this article or a substantially similar ordinance in another municipality preceding the date of the application.
- (8) A comprehensive operating plan for the marihuana facility for which the application is being submitted that includes all of the information required for the Marihuana Facilities Plan to be submitted in connection with a state license pursuant to the rules, the operational standards in sections 14-262 through 14-267 of this article, as applicable, and the following at a minimum:
 - a) A description of the type of marihuana facility applied for.
 - b) A security plan for the marihuana facility including, but not limited to, fencing, gates, locks, alarms, entry and exit protocols, lighting, video cameras, alarms, barriers, recording/monitoring devices, and security guard arrangements, proposed for the exterior and interior of the facility and premises. The security plan must contain the specification details of each piece of security equipment and comply with the provisions of article 2 and article 3 of chapter 26 of this code, sections 14-261(c) and (d), as well as any other applicable provisions of this code and the rules. The security plan shall also include the means of storing security camera videos off-site and identification of the location of, or service provider for, off-site storage.
 - c) An HVAC plan for the marihuana facility describing in detail among other things the equipment or systems that will be

used to prevent any odor of marihuana from leaving the premises.

- d) A staffing plan that addresses the number of persons estimated to be employed at the facility, estimated employee salaries, employee training, and employee hiring.
- (e) A marketing plan.
- (f) An inventory and record keeping plan.
- (g) A technology plan.
- (h) A scaled conceptual plan.
- (j) A worker safety plan.
- (k) Written policies and procedures to timely address any concerns or complaints expressed by residents and businesses within the neighborhood surrounding the proposed location of the medical marihuana facility.
- (l) For growers, the operational plan shall also include a cultivation plan that includes but is not limited to:
 - i. the cultivation process or processes that will be used including a description of the grow medium, the equipment, and the fertilizer to be used;
 - ii the estimated electrical and water usage and a statement of the projected daily average and peak electrical load anticipated to be used by the marihuana facility, a certification from a licensed electrician that the premises are equipped to safely accept and utilize the required or anticipated electric load for the facility, and a certification from the electrical utility supplying electricity to the facility that the anticipated electrical loads required for the facility will not exceed the capacity of the electrical supply system;
 - iii. a waste water plan;
 - iv. a plant waste disposal plans indicating how the waste will be stored and disposed of and how marihuana will be rendered unusable upon disposal. Disposal by on-site burning or via the sewer system is prohibited;
 - v. a mold, mildew and pest prevention plan;

- vi. an air quality plan addressing monitoring, clearance, temperate and humidity control, Co2, Ozone, fumigation, and odor mitigation;
 - vii. a pesticide and chemical safety plan which shall include a detailed description of all toxic, hazardous, or flammable materials, chemicals and pesticides, that will be kept or used at the marihuana facility, and a detailed plan describing where and how such materials, chemicals and pesticides will be stored in the marihuana facility, and the means of disposing of unused toxic or flammable materials, chemicals, and pesticides.
- (m) For a provisioning center, the operational plan shall also include:
 - i. a detailed description of the products and services to be provided;
 - ii. a plan for the disposal of marihuana or marihuana-infused products.
- (9) The address of the proposed marihuana facility to be operated by the applicant.
- (10) Proof that the applicant has or will have lawful possession of the premises proposed for the marihuana facility for the period during which the permit will be issued, which proof may consist of: a deed, a lease, a real estate contract contingent upon successful licensing, or letter of intent by the owner of the premises indicating an intent to lease the premises to the applicant contingent upon the applicant successfully obtaining a state operating license and local permit.
- (11) Whether the applicant holds an elective office of a governmental unit of this state, another state, or the federal government; is a member of or employed by a regulatory body of a governmental unit in this state, another state or the federal government; or is employed by a governmental unit of this state.
- (12) The address which the applicant desires to receive notification under the article.
- (13) Whether the applicant has ever applied for or has been granted any commercial license or certificate issued by LARA or any other jurisdiction concerning medical marihuana or marihuana that has been denied, restricted, suspended, revoked or not renewed, and a statement describing the facts and circumstances concerning the application, denial, restriction,

suspension, revocation, or nonrenewal, including the licensing authority, the date each action was taken, and the reason for each action.

- (14) Whether the applicant has an interest in any other marihuana facility under the Act, and if so the type of facility, name, and location of the facility the applicant has an interest in.
- (15) A statement that the applicant will not violate any of the laws of the State of Michigan or the ordinances of the City of Portage in conducting the business in which the license will be used, and that a violation on the premises may be cause for nonrenewal of a permit issued under this article, or for revocation of the permit.
- (16) A statement that the applicant understands that the issuance of a permit under this article is not intended to grant, nor shall be construed as granting, immunity from criminal prosecution for growing, sale, consumption, use, distribution, or possession of marihuana in any form or manner that is not in compliance with the Michigan Medical Marihuana Act, MCL 333.26421 *et seq.*, the Medical Marihuana Facilities Licensing Act, MCL 333.27101 *et seq.*, the Marihuana Tracking Act, MCL 333.27901 *et seq.*, and all other applicable rules promulgated by the state of Michigan, or from criminal prosecution or the seizure of property by federal authorities under the Federal Controlled Substances Act.
- (17) All marijuana facilities licensed and permitted to operate in the city shall at all times maintain in full force and effect workers compensation insurance as required by state law, and general liability insurance with minimum limits of \$1,000,000.00 per occurrence and a \$2,000,000.00 aggregate limit issued by the company licensed to do business in Michigan having an A.M. Best rating of at least A-. Applicants shall provide evidence of such insurance in the form of a certificate of insurance evidencing the existence of a valid and effective policy, or, evidence that the applicant is able to obtain such insurance and state the limits of each policy, the name of the insurer, the effective date and expiration date of each policy, policy number if known, and the names of additional insured which shall include the city of Portage, its officials, and employees.
- (18) Whether the applicant has filed, or been served with a complaint or other notice filed with any public body regarding the delinquency in the payment of or dispute over the filings concerning the payment of any tax required under federal, state, or local law, including the amount of any tax, taxing agency and time periods involved.
- (19) The city manager may from time to time establish other qualifications for licensing which shall be provided in writing to prospective applicants with the application form.

Sec. 14-251. Fees.

A nonrefundable permit fee set by resolution of city council, but not to exceed \$5,000.00, shall be submitted with the application for a permit. This fee shall be in addition to, and not in lieu of, any other fees for licensing or permitting requirements including but not limited to site plan review, zoning, or building permits.

Sec. 14-252. Acceptance of application.

- (a) Applications received will be accepted if all of the standards listed below are met.
 - (1) The applicant has been prequalified for a state license by LARA.
 - (2) The applicant has paid the required application fee.
 - (3) The application is complete in all respects and all required supplemental documentation or information has been provided as required by section 14-250.
 - (4) The applicant has provided satisfactory proof that the applicant has or will have lawful possession of the premises proposed for the location of the marihuana facility for the period during which the permit will be issued, and the proposed location complies with the zoning regulations in article 4 of chapter 42 of this code.
 - (5) The applicant is in compliance with all qualifications established by the city manager, if any, pursuant to section 14-250(d)(19).
 - (6) The applicant has not previously violated this article or a substantially similar ordinance within one year preceding the date of the application.
 - (7) The applicant has not been granted a commercial license or certificate issued by a licensing authority in Michigan or any other jurisdiction concerning medical marihuana or marihuana that has been denied or not renewed, or is currently restricted suspended or revoked.
 - (9) The applicant has not knowingly submitted an application containing false, misleading, or fraudulent information, or who has intentionally omitted pertinent information on the application for a medical marihuana facilities permit.
 - (10) The applicant is the applicant is not delinquent in the payment of any taxes, fees or other charges owed to or collected by the city.
 - (11) The applicant does not hold an interest in any medical marihuana facility that is prohibited by the Act.

(b) The city clerk shall accept all complete applications that comply with the standards for acceptance. Each application that is accepted shall be stamped by the city clerk with the date the application is accepted.

Sec. 14-253. License application evaluation.

(a) For the initial application period the city manager shall develop a scoring and ranking procedure to assess, evaluate, score, and rank all applications for facilities other than secure transporter and safety compliance facilities accepted pursuant to this article. The procedure to assess, evaluate, score, and rank all applications accepted pursuant to this article does not create or vest any right, title, franchise or other property interest in the applicant, and the ranking of a particular applicant is non-transferable.

(b) In the event the number of applications accepted for a particular facility during the initial application period, other than secure transporters and safety compliance facilities, exceed the number of that facility allowed by this article the top 12 applicants as determined by the procedure to assess, evaluate, score and rank applications will receive a provisional permit. If two or more applicants receive a tie score, the scoring-tied applicants shall be entered in a random drawing following procedures established by the city manager. Those applicants randomly selected shall receive a provisional permit, provided however that in no event shall the number of provisional permits issued for a particular facility exceed 12.

(c) In the event the number of applications accepted for a particular facility is less than the number of that facility allowed by this article all applicants will receive a provisional permit.

Sec. 14-254. Provisional Permit.

(a) A provisional permit does not authorize the applicant to operate a marihuana facility without first obtaining a state operating license for the facility, and obtaining all other permits, inspections, and approvals required by this article and all other applicable ordinances of the city of Portage. Upon issuance of a provisional permit the city clerk will be authorized to execute an affirmation to accompany an application for a facilities license that discloses that the city has adopted an ordinance under section 205 of the act, the limitations on the number and type of each facility if any imposed by the ordinance, a description of the city zoning regulations that apply, and any other information that may be required by the act or the rules for such an attestation.

(b) A provisional permit will lapse and be void 6 months from the date it has been issued if a state operating license, or all inspections and other permits and approvals required by city ordinance are not diligently pursued to completion or not obtained, or if an applicant is denied a state operating license. The city manager or his or her designee shall notify LARA of all persons whose provisional permit has lapsed or become void. A provisional permit may be extended by the city manager upon a showing of good cause, such as a delay in obtaining a state license, or other good cause that is not the fault of the applicant, for an additional period not to exceed 6 months.

(c) A provisional permit may be revoked for any of the following reasons:

- (1) The provisional permittee is denied a state operating license;
- (2) The proposed marihuana facility is substantially different from the comprehensive operating plan, marihuana facility plan and conceptual plan;

- (3) Officers of the city are unable to access the proposed facility for permit inspections or are denied access by the provisional permittee;
- (4) The provisional permittee fails, refuses, or becomes unable to obtain site plan approval and an occupancy permit issued by the city.
- (5) Any violation of the act, rules, or this article.

Sec. 14-255. Medical marihuana facilities permit.

(a) An applicant who holds a valid provisional permit shall submit proof to the city clerk of obtaining a state operating license, all other permits and approvals required by all other applicable ordinances of the city including an approved site plan, and proof of insurance required by this article in the form of a certificate of insurance evidencing the existence of a valid and effective policy, stating the limits of each policy, the name of the insurer, the effective date and expiration date of each policy, policy number, and the names of additional insureds which shall include the city of Portage, its officials, and employees. An applicant who has applied for a secure transporter permit shall additionally show proof of auto insurance, vehicle registration and registration as a commercial motor vehicle as applicable for any transporting vehicles used to transport marihuana product.

(b) The site plan required for issuance of a medical marihuana facilities permit shall be consistent with the requirements of section 42-482(A) of this code. The site plan will be reviewed administratively consistent with section 42-482(B) and in accordance with the standards of section 42-483, except that no review by the planning commission of the site plan will be made. The site plan will be approved consistent with the provisions of section 42-484 except that any appeal of a site plan approval shall be to the city manager who will have the discretion whether or not to reverse an order of the director.

(c) Before such applicant is issued a marihuana facilities permit the city shall conduct an inspection of the proposed marihuana facility to verify that the marihuana facility is ready to open for business, the premises of facility are constructed and can be operated in accordance with the application submitted, the approved site plan, the requirements of this code and any other applicable law, rule, or regulation. No marihuana facilities permit may be issued and no marihuana facility may conduct any business or operations until the inspection is completed and it is determined that the marihuana facility is ready to open for business, the premises of facility are constructed and can be operated in accordance with the application and comprehensive operating plan submitted with the application as well as the approved site plan, and the facility is in compliance with the requirements of this code and any other applicable law, rule, or regulation.

(d) The marihuana facilities permit shall be issued only in the name of the true party of interest.

(e) A marihuana facilities permit issued under this article is a revocable privilege granted by the city and is not a property right. Granting the permit does not create or vest any right, title, franchise or other property interest.

(f) Each permit is exclusive to the person who is issued the permit and that person must apply for and receive approval of the city manager pursuant to section 14-258 before a permit is transferred, sold, or purchased.

(g) The city marihuana facilities permit and state operating license shall be displayed in a conspicuous public place in the business establishment.

(h) Acceptance of a permit granted under this article shall constitute permission to any officer of the city, within the authority granted him or her by this code under which such permit was granted, to enter upon and inspect the premises of the marihuana facility at all reasonable times.

Sec. 14-256. Renewal of permit.

(a) A marihuana facilities permit shall run concurrent with the state operating license issued for the facility and shall be renewed annually unless revoked as provided by law.

(b) Renewal of marihuana facilities permit shall be made by application to the city clerk. The application for renewal must be filed before the permit expires at such time as is established by the city manager. The application for renewal shall be upon a form provided by the city clerk and shall contain the same information required for an application for a new permit, be given under oath or affirmation, and shall be reviewed and approved in the same manner.

(c) The city clerk shall notify the permittee by mail or electronic mail at the last known address on file with the city, advising of the time, and procedure for renewing the permit. Failure of the permittee to receive notice under this subsection does not relieve the permittee of the responsibility for renewing the permit.

(d) A permit will be renewed if the following conditions are met:

- (1) The permit to be renewed has not been terminated or revoked.
- (2) The permit is not suspended or restricted.
- (3) The renewal application is received by the city clerk on or before the expiration date of the permit to be renewed.
- (4) A nonrefundable renewal fee set by resolution of city council, not to exceed \$5,000.00, is paid with the renewal application.
- (5) At the time of submission of the renewal application the applicant is not delinquent in the payment of any taxes, fees or other charges owed to or collected by the city.
- (6) The applicant for renewal is in compliance with the provisions of this article, this code, the Act, the Tracking Act, and all other applicable rules promulgated by the state of Michigan.
- (7) The applicant for renewal is not in violation of any of the standards for acceptance of an application for a permit found in sec. 14-252.
- (8) An inspection has been conducted by the city to ensure compliance with this article, this code, and applicable state law and regulations.

(e) The city manager or his or her designee shall inform the Michigan Department of Licensing and Regulatory Affairs of all permittees whose permit is renewed and if a permittee fails to renew a permit, or the permittee's renewal application is denied.

Sec. 14-257. Revocation, termination or suspension of permit.

(a) Any marihuana facilities permit shall automatically terminate and become void if the state license for the permitted use is revoked.

(b) Any marihuana facilities permit may be revoked upon the occurrence of any of the following:

- (1) Operation of the permitted use is not commenced within 1 year of the date of issuance of the marihuana facilities permit.
- (2) If the permitted use ceases or is discontinued for 90 days or more.
- (3) Failure to comply with the provisions of this article, this code, the Act, the Tracking Act, and all applicable rules promulgated by the state of Michigan.
- (4) Any violation of this article.
- (5) The conduct of business in an unlawful manner or in such a way as to constitute a public nuisance or menace to the health, safety, or general welfare of the public.

(c) A medical marihuana facilities permit will be suspended for the transfer or attempted transfer of the permit or any interest in such permit without first obtaining approval of the city manager to do so.

(d) Any marihuana facilities permit shall automatically be suspended if the state operating license for the permitted use is suspended. The terms and conditions of suspension shall correspond to the suspension of the state operating license.

(e) Any medical marihuana facilities permit shall automatically be restricted if the state license for the permitted use is restricted. The terms and conditions of the restriction shall correspond to the restriction of the state license.

(f) If a medical marihuana facilities permit is terminated, revoked, suspended or restricted, the city manager or his or her designee will notify the permit holder and the Michigan Department of Regulatory Affairs of the termination, revocation, suspension, or restriction of the permit and the reasons therefore in writing.

(g) The holder of a marihuana facilities permit under this article that is revoked may appeal the revocation to the city council within ten days of receipt of the notice of revocation.

Sec. 14-258. Transfer, sale or purchase of permits or licenses.

A permittee or any other person must apply for and receive approval of the city manager before a permit may be transferred, sold, or purchased. Any transferee, buyer or purchaser of a permit must meet all requirements and conditions for the issuance of a permit under this article and have a state license for the type of facility the permit was issued for before the transfer, sale or purchase of the permit will be finally approved. The transfer, sale, or purchase may be conditionally approved if the transferee, buyer or purchaser meets the qualifications for the issuance of a permit and has obtained prequalification from LARA on the condition that the transferee, buyer or purchaser obtain a state license for the type of facility the permit was issued for within 180 days of the conditional approval. Transfer or attempted transfer of a medical marihuana facilities permit or any interest in such permit without first obtaining approval of the city manager to do so will be grounds for suspension of the permit pursuant to section 14-257(c).

Sec. 14-259. Changes to marihuana facilities.

(a) Any change or modification of a marihuana facility after it begins operation is governed by the standards and procedures of the act and rules, and the standards and procedures of this code including but not limited to standards and procedures relating to site plans, and building, plumbing, electrical, mechanical, and fire safety codes. Changes or modifications must be approved by LARA with evidence of such approval provided to the city, and all appropriate city permits must be obtained before the change or modification is commenced.

(b) Change of location of a marihuana facility requires a new permit application requiring the same information as an initial application pursuant to this article and an application fee. The permit will be submitted and approved in the same manner, and provisional and full permits issued, as the initial permit application.

Sec. 14-260. Disclosure of information.

Consistent with MCL 333.27205(4), and to the extent otherwise permitted by law, all information submitted in conjunction with an application for a marihuana facilities permit or permit renewal required under this article is exempt from disclosure under the Michigan Freedom of Information Act, MCL 15.231 *et seq.*

Sec. 14-261. Minimum operational standards for all marihuana facilities.

All marihuana facilities shall at a minimum comply with the following operational standards:

(a) Marihuana facilities shall be open for inspection upon request by the building official, the fire division, or law enforcement officials for determination of compliance with all applicable laws and rules, during the stated hours of operation/use and at such other times as anyone is present on the premises. Inspections may include inspection of the facility premises, surveillance records, camera recordings, reports, records or other materials required as a condition of a permit under this article or a state operating license. Acceptance of a marihuana facilities permit or leasing property to a marihuana facility constitutes consent to such inspections and the seizure of any surveillance records, camera recordings, reports record or other materials required as a condition of the permit under this article or a state operating license without a search warrant. The person issued a permit, or an employee or agent of the thereof shall not hinder or obstruct a law enforcement officer or employee of the city from conducting inspections pursuant to this section, and shall not refuse, fail, or neglect to cooperate with a law enforcement officer or

city employee in the performance of his or her duties in enforcing this article, the act, or applicable state administrative rules.

(b) Marihuana facilities shall conduct the activities of the marihuana facility, including, without limitation, the cultivating, growing, processing, displaying, manufacturing, selling, storage of marihuana and marihuana-infused products, and storage of all materials used in connection with the cultivating, growing, processing, displaying, manufacturing, and selling of marihuana and marihuana-infused products indoors in a building and out of public view.

(c) Marihuana facilities shall install a fire alarm and a burglar alarm system. The fire alarm system shall meet the requirements of this code for a newly installed system and be monitored by a listed central station. All burglar alarm systems shall be monitored by a company that is staffed twenty-four hours a day, seven days a week.

(d) Marihuana facilities shall continuously monitor the entire premises of the facility (excluding restrooms) by security systems, including security cameras. Video recordings from the security cameras shall be transmitted to and maintained in a secure off-site location, or through a secure service provider that provides on-demand access, for a period of forty-five days.

(e) Marihuana facilities shall utilize sufficient measures and means to prevent smoke, odor, debris, dust, fluids and other substances from exiting the premises of the facility at any time. In the event that any smoke, odor, debris, dust, fluids or other substances exit the marihuana facility in a detectable amount sufficient to interfere with the reasonable and comfortable use and enjoyment of adjacent property, or that causes damage to property, the permittee for the facility and the owner of the premises shall be jointly and severally liable for such conditions and shall be responsible for immediate, full cleanup and correction of such condition. The permittee shall properly dispose of all such materials, items and other substances in a safe, sanitary, and secure manner in compliance with all federal and state laws and regulations, and this code.

(f) Marihuana facilities shall install and maintain in operable condition a system to preclude marihuana odors from emanating from the premises of the marihuana facility in a detectable amount sufficient to interfere with the reasonable and comfortable use and enjoyment of adjacent property as determined by the objective standards of a reasonable person of normal sensitivity.

(g) Subject to the laws of this state, before hiring a prospective employee, a permittee shall conduct a background check of the prospective employee. If the background check indicates a pending charge or conviction within the past 10 years for a controlled substance-related felony, the permittee shall not hire the prospective employee without written permission of the board.

(h) Access to the marihuana facility is restricted to the permittee, employees of the permittee, and registered qualifying patients and registered primary caregivers with valid registry cards, if applicable, LARA through its investigators, agents, auditors or the state police, and, local law and code enforcement officers.

(i) All marihuana facilities must be at a fixed location. Mobile marihuana facilities and drive through operations are prohibited. Sale or transfer of marihuana product by internet or mail order, consignment, or wholesale is prohibited.

(j) All marihuana facilities shall comply with all provisions of this code, state law and administrative rules regulating signs and advertising. No marihuana facility or permittee shall advertise marihuana product where the advertisement is visible to members of the public from any street, sidewalk, park, or other public place.

(k) The business, operations, marketing and advertising of all marihuana facilities and marihuana product shall comply at all times with applicable state law and regulations, and this code.

Sec. 14-262. Minimum Operational standards applicable to provisioning centers.

All provisioning centers shall, in addition to the operational standards in Section 14-262, comply with the following operational standards at a minimum:

(a) Provisioning centers shall open no earlier than 8:00 a.m. and close no later than 8:00 p.m.

(b) No alcohol or tobacco products may be sold, used, or consumed on the premises. No marihuana or marihuana-infused products may be used or consumed on the premises.

(c) No marihuana plants shall be allowed on the premises.

(d) Disposal of marihuana and marihuana-infused products shall be accomplished in a safe, sanitary, and secure manner that prevents its acquisition by any person who may not lawfully possess it, and is otherwise in compliance with all applicable federal and state law and regulations, and this code. Disposal by on-site burning or via the sewer system is prohibited.

(f) During times when the provisioning center is not open to the public, processed marihuana, cash and currency shall be stored in a safe that is incorporated into the building structure or securely attached to the building structure. Medical marihuana-infused products that must be kept refrigerated or frozen may be stored in a locked refrigerated or freezer compartment, during such times, that is incorporated into the building structure or securely attached to the building structure.

(g) A provisioning center shall purchase marihuana only from a grower or processor.

(h) All transfers of marihuana to a provisioning center from a separate marihuana facility shall be by means of a secure transporter.

(i) A provisioning center sell or transfer marihuana only to a registered qualifying patient or registered primary caregiver.

(j) A provisioning center may transfer marihuana to or from a safety compliance facility for testing by means of a secure transporter.

(k) The sale or transfer marihuana to a registered qualifying patient or registered primary caregiver shall only occur after it has been tested and bears the label required for retail sale by the Act and the rules.

(l) Before selling or transferring marihuana to a registered qualifying patient or to a registered primary caregiver on behalf of a registered qualifying patient, a provisioning center shall inquire of the statewide monitoring system to determine whether the patient and, if applicable, the caregiver hold a valid, current, unexpired, and unrevoked registry identification card and that the sale or transfer will not exceed the daily purchasing limit established by the board under The Act.

(m) All transactions, current inventory, and other information of the provisioning center shall be entered into the statewide monitoring system as required by the Act, rules, and the marihuana tracking act.

(n) A provisioning center shall not allow a physician to conduct a medical examination or issue a medical certification document on the premises for the purpose of obtaining a registry identification card.

(o) Marijuana and marihuana paraphernalia shall not be sold, given away, or dispensed from any outdoor location.

(p) A provisioning center shall have a separate room that is dedicated as the point of sale area for the transfer or sale of marihuana products. All marihuana products shall be kept behind a counter or other barrier to ensure a registered qualifying patient or registered primary caregiver does not have direct access to the marihuana products.

Sec. 14-263. Minimum Operational standards applicable to grow facilities.

All grow facilities shall, in addition to the operational standards in Section 14-262, comply with the following operational standards at a minimum:

(a) Until December 31, 2021, the permittee or an active employee shall have, a minimum of 2 years' experience as a registered primary caregiver.

(b) While holding a permit for grower facility, no permittee shall be a registered primary caregiver and shall not employ an individual who is simultaneously a registered primary caregiver.

(c) All transactions, current inventory, and other information of the grow facility shall be entered into the statewide monitoring system as required by the act, rules, and the tracking act.

(d) All activities and operations of the grow facility, including cultivation, shall take place indoors within a building.

(e) Disposal of marihuana and plant material shall be accomplished in a safe, sanitary, and secure manner that prevents its acquisition by any person who may not lawfully possess it, and is otherwise in compliance with all applicable federal and state law and regulations, and this code. Disposal by on-site burning or via the sewer system is prohibited.

Section 14-264. Minimum Operational standards applicable to processor facilities.

All processor facilities shall, in addition to the operational standards in Section 14-262, comply with the following operational standards at a minimum:

- (a) A processor shall purchase marihuana only from a grower and shall sell marihuana-infused products or marihuana only to a provisioning center.
- (b) A processor shall transfer marihuana only by means of a secure transporter.
- (c) Until December 31, 2021, the permittee or an active employee shall have, a minimum of 2 years' experience as a registered primary caregiver.
- (d) While holding a permit for processor facility, no permittee shall be a registered primary caregiver and shall not employ an individual who is simultaneously a registered primary caregiver.
- (e) All transactions, current inventory, and other information of the processor facility shall be entered into the statewide monitoring system as required by the Act, rules, and the marihuana tracking act.
- (f) Disposal of marihuana, marihuana derivatives and marihuana-infused products shall be accomplished in a safe, sanitary, and secure manner that prevents its acquisition by any person who may not lawfully possess it, and is otherwise in compliance with all applicable federal and state law and regulations, and this code. Disposal by on-site burning or via the sewer system is prohibited.

Sec. 14-265. Minimum standards applicable to secure transporters.

All secure transporter facilities shall, in addition to the operational standards in Section 14-262, comply with the following operational standards at a minimum:

- (a) May take physical custody of marihuana or money but legal custody belongs to the transferor or transferee.
- (b) May not sell or purchase marihuana products.
- (c) May store and transport marihuana and money associated with the purchase or sale of marihuana between marihuana facilities for a fee.
- (d) Marihuana may not be transported to a registered qualifying patient or registered primary caregiver.
- (e) Marihuana product may only be transported in a locked, secured, sealed container that is not accessible while in transit. Money associated with the purchase or sale of marihuana product between facilities shall be locked in a sealed container kept separate from the marihuana product and only accessible to the secure transporter licensee/permittee and its employees.
- (f) Each driver transporting marihuana must have a chauffeur's license issued by this state.

(g) Each employee who has custody of marihuana or money that is related to a marihuana transaction shall not have been convicted of or released from incarceration for a felony under the laws of this state, any other state, or the United States within the past 5 years or have been convicted of a misdemeanor involving a controlled substance within the past 5 years.

(h) Each vehicle shall be operated with a 2-person crew with at least 1 individual remaining with the vehicle at all times during the transportation of marihuana.

(i) A route plan and manifest shall be entered into the statewide monitoring system, and a copy shall be carried in the transporting vehicle and presented to a law enforcement officer upon request.

(j) A secure transporting vehicle shall not bear markings or other indication that it is carrying marihuana or a marihuana-infused product.

(k) A secure transporter is subject to administrative inspection by a law enforcement officer at any point during the transportation of marihuana to determine compliance with the act and this article.

(l) All transactions, current inventory, and other information of the secure transporter shall be entered into the statewide monitoring system as required by the act, rules, and the tracking act.

Sec. 14-266. Minimum standards applicable to safety compliance facilities.

All safety compliance facilities shall, in addition to the operational standards in Section 14-262, comply with the following operational standards at a minimum:

(a) A safety compliance facility is authorized to only receive marihuana from, test marihuana for, and return marihuana to a marihuana facility.

(b) A safety compliance facility must be accredited by an entity approved by the board by 1 year after the date the license is issued or have previously provided drug testing services to this state or this state's court system and be a vendor in good standing in regard to those services unless a variance from this requirement is granted by the board as provided by the act.

(c) A safety compliance facility shall:

- (1) Perform tests to certify that marihuana is reasonably free of chemical residues such as fungicides and insecticides.
- (2) Use validated test methods to determine tetrahydrocannabinol, tetrahydrocannabinol acid, cannabidiol, and cannabidiol acid levels.
- (3) Perform tests that determine whether marihuana complies with the standards the board establishes for microbial and mycotoxin contents.
- (4) Perform other tests necessary to determine compliance with any other good manufacturing practices as prescribed in rules.

- (5) Enter all transactions, current inventory, and other information into the statewide monitoring system as required in this act, rules, and the marihuana tracking act.
- (6) Have a secured laboratory space that cannot be accessed by the general public.
- (7) Retain and employ at least 1 staff member with a relevant advanced degree in a medical or laboratory science.

Sec. 14-267. Conflicts, Future laws and regulations.

In the event of any conflict between the provisions of this article and the provisions of the act or the rules, the conflicting provisions of this article will be preempted and the provisions of the act or the rules will control. Should the State of Michigan in the future adopt additional or stricter laws or regulations governing the production, processing, transporting, testing, sale and distribution of marihuana, the additional or stricter laws and regulations shall control the establishment or operation of any marihuana facility in the city, as well as the issuance, denial, suspension, or revocation of any permit under this article.

Sec. 14-268. Penalty and remedies.

(a) Any violation of this article is a municipal civil infraction subject to penalties imposed on municipal civil infractions by section 1-7(e) of this code and state law.

(b) In addition to the penalties provided in this section, any condition caused or permitted to exist in violation of the provisions of this code, or any ordinance, shall be deemed a new and separate offense for each day that such condition continues to exist.

(c) Nothing in this article shall prevent the city from pursuing any other remedy provided by law and equity, including an injunction, in conjunction with or in lieu of prosecuting persons under this section for violation of this article.

Dated: _____

Patricia M. Randall, Mayor

FIRST READING:
SECOND READING:
ORDINANCE #:
EFFECTIVE DATE:

CERTIFICATION

I, Adam Herringa, do hereby certify that I am the duly appointed and acting City Clerk of the City of Portage and that the foregoing ordinance was adopted by the City of Portage on the ____ day of _____, 201__.

Adam Herringa, City Clerk

PREPARED BY:
Charles R. Bear (P34107)

Approved as to Form:
Date: _____

Portage Assistant City Attorney
1662 East Centre Avenue
Portage, MI 49002
(269) 323-8812

City Attorney

Z:\jody\crbdictation\Medical Marihuana Facilities Licensing Ordinance 121517.dox

**AN ORDINANCE TO AMEND THE CODE OF ORDINANCES
OF THE CITY OF PORTAGE, MICHIGAN BY AMENDING SECTION 42-262, 42-280, and 42-
281 OF ARTICLE 4, DIVISION 4, AND SECTION 42-129 ARTICLE 4, DIVISION 3, OF
CHAPTER 42, LAND DEVELOPMENT REGULATIONS**

THE CITY OF PORTAGE ORDAINS:

That Chapter 42 shall be amended to add Section 42-262(B)(16) to Article 4, Division 4, Zoning Districts and District Regulations, as follows:

CHAPTER 42. LAND DEVELOPMENT REGULATIONS.

ARTICLE 4. ZONING.

Subdivision 6. Business Districts.

Section 42-262. B-3 general business district.

A. No change.

B. Principal permitted uses.

1 through 15 no change.

16. Medical marihuana provisioning center as defined by the Medical Marihuana Facilities Licensing Act, MCL 333.27101 *et seq.*

a. The provisioning center shall not be located:

- i. Adjacent to or abutting a residential zoning district; and
- ii. Within 1000 feet from the real property comprising a public or private elementary, vocational or secondary school or a public or private college, junior college or university, a library, a substance abuse treatment facility, a park or a playground, public or private youth center, public swimming pool, video arcade facility, recreational facility, religious institution or housing facility owned by a public housing authority; and
- iii. Within 1000 feet of any other medical marihuana facility permitted under Article 11, Chapter 14 of this Code. This provision will not apply to medical marihuana facilities issued a permit under article 12, chapter 14 of this code during the initial permit application period pursuant to section 14-250 of this code. The waiver of this provision will apply so long as the property is continuously used as a provisioning center. "Continuous use" for the purposes of this provision means that the use of the property as a provisioning center has not ceased to occur for a period of 90 days or more. This separation provision will apply to medical marihuana facilities issued a permit under Article 12, Chapter 14 of this Code during all permit application periods after the initial permit application period.

iv. Measurements for purposes of subsection (B)(16)(a)(i), (ii) *and* (iii) above shall be made from the property boundary of the zoning lot occupied by the provisioning center to the nearest point of the property occupied by any of the uses listed above, using an uninterrupted straight line without regard to intervening structures or objects. "Zoning lot" is defined in Section 42-112 of this code. A map showing the uses and facilities listed in subsection (B)(16)(a) above, as well as the protected areas, is available for review in the department of community development at the Portage City Hall and on the city's website under the department of community development.

b. Buildings or structures for the distribution, and sale of medical marihuana and medical marihuana infused products shall comply all State of Michigan Construction Codes (building, electrical, plumbing and mechanical) in regard to occupancy classification, building design, construction and fire suppression. Medical marihuana facilities shall not be located within greenhouses and similar buildings.

c. No drive-through facilities are permitted for provisioning center facilities.

d. No alcohol or tobacco products may be sold, used, or consumed on the premises of a provisioning center. No marihuana or marihuana-infused products may be used or consumed on the premises of a provisioning center.

e. The activities and operations of the provisioning center shall be indoors within a building and out of public view.

f. The provisioning center shall be located in a single tenant building, or partitioned from any other activity or business, have a separate entrance, and have a separate HVAC system for the portion of the building occupied by the medical marihuana facility.

g. The business and operations of all marihuana facilities shall comply at all times with applicable state law and regulations, and this code.

C. No change.

D. No change.

That Chapter 42 shall be amended to add Section 42-280(B)(21), and Section 42-280(B)(22) to Article 4, Division 4, Zoning Districts and District Regulations, as follows:

CHAPTER 42. LAND DEVELOPMENT REGULATIONS.

ARTICLE 4. ZONING.

Subdivision 7. Industrial Districts.

Section 42-280. I-1 light industrial district.

A. No change.

B. Principal permitted uses.

1 through 20 No change.

21. Medical Marihuana class A, B, and C growers, and processors as those facilities are defined by the Medical Marihuana Facilities Licensing Act, MCL 333.27101 *et seq.*

a. The facility shall not be located:

- i. Adjacent to or abutting a residential zoning district; and
- ii. Within 1000 feet from the real property comprising a public or private elementary, vocational or secondary school or a public or private college, junior college or university, a library, a substance abuse treatment facility, park or a playground, public or private youth center, public swimming pool, video arcade facility or recreation facility or religious institution or housing facility owned by a public housing authority; and
- iii. Within 1500 feet of any other medical marihuana facility permitted under Article 11, Chapter 14 of this Code. This provision will not apply to medical marihuana facilities issued a permit under article 12, chapter 14 of this code during the initial permit application period pursuant to section 14-250 of this code. The waiver of this provision will apply so long as the property is continuously used for the type of medical marihuana facility initially established on the property. "Continuous use" for the purposes of this provision means that the use of the property for the type of medical marihuana facility initially established on the property has not stopped or ceased to occur for a period of 90 days or more. This provision will apply to medical marihuana facilities issued a permit under Article 12, Chapter 14 of this Code during all permit application periods after the initial permit application period.
- iv. Measurements for purposes of subsection (B)(21)(a)(i), (ii) and (iii) above shall be made from the property boundary of the zoning lot occupied by the medical marihuana facility to the nearest point of the property occupied by any of the uses listed above, using an uninterrupted straight line without regard to intervening structures or objects. "Zoning lot" is defined section 42-112 of this code. A map showing the uses and facilities listed in subsection (B)(21)(a) above, as well as the protected areas, is available for review in the department of community development at the Portage City Hall and on the city's website under the department of community development.

b. Buildings or structures for the growing, production or processing of medical marihuana shall comply all State of Michigan Construction Codes (building, electrical, plumbing and mechanical) in regard to occupancy classification,

building design, construction and fire suppression. Medical marihuana facilities shall not be located within greenhouses and similar buildings.

- c. No drive-through facilities are permitted for medical marihuana facilities.
 - d. No alcohol or tobacco products may be sold, used, or consumed on the premises of a medical marihuana facility. No marihuana or marihuana-infused products may be used or consumed on the premises of a medical marihuana facility.
 - e. Marihuana grow and processing facilities shall conduct the activities of the marihuana facility, including, without limitation, the cultivating, growing, processing, manufacturing, or storage of marihuana and marihuana-infused products, and all materials used in connection with the cultivating, growing and processing of marihuana, indoors and out of public view.
 - f. The grow and processing facilities shall be located in a single tenant building, or partitioned from any other activity or business, have a separate entrance, and have a separate HVAC system for the portion of the building occupied by the medical marihuana facility.
 - g. The business and operations of all marihuana facilities shall comply at all times with applicable state law and regulations, and this code.
22. Medical Marihuana secure transporter and safety compliance facilities as those facilities are defined by the Medical Marihuana Facilities Licensing Act, MCL 333.27101 *et seq.*
- a. The facility site shall not be located:
 - i. Adjacent to or abutting a residential zoning district; and
 - ii. Within 1000 feet from the real property comprising a public or private elementary, vocational or secondary school or a public or private college, junior college or university, a library, a substance abuse treatment facility, park or a playground, public or private youth center, public swimming pool, video arcade facility or recreation facility or religious institution or housing facility owned by a public housing authority; and
 - iii. Measurements for purposes of subsection (B)(9)(a)(i) and (ii) above shall be made from the property boundary of the zoning lot occupied by the medical marihuana facility to the nearest point of the property occupied by any of the uses listed above, using a straight line without regard to intervening structures or objects. "Zoning lot" is defined section 42-112 of this code. A map showing the uses and facilities listed in subsection (B)(9)(a) above, as well as the protected areas, is available for review in the department of community development at the Portage City Hall and on the city's website under the department of community development.

- b. Buildings or structures in connection with the transport and storage of medical marihuana and medical marihuana infused products or for safety compliance facilities shall comply with all State of Michigan Construction Codes (building, electrical, plumbing and mechanical) in regard to occupancy classification, building design, construction and fire suppression. Medical marihuana facilities shall not be located within greenhouses and similar buildings.
- c. No drive-through facilities are permitted for medical marihuana facilities.
- d. No alcohol or tobacco products may be sold, used, or consumed on the premises of a medical marihuana facility. No marihuana or marihuana-infused products may be used or consumed on the premises of a medical marihuana facility.
- e. The secure transporter facility or safety compliance facility shall be located in a single tenant building, or partitioned from any other activity or business, have a separate entrance, and have a separate HVAC system for the portion of the building occupied by the medical marihuana facility.
- f. The business and operations of all medical marihuana secure transporter facilities or safety compliance facilities shall comply at all times with applicable state law and regulations, and this code.

C. No change.

D. No change.

That Chapter 42 shall be amended to add Section 42-281(B)(7), and Section 42-281(B)(8) to Article 4, Division 4, Zoning Districts and District Regulations, as follows:

CHAPTER 42. LAND DEVELOPMENT REGULATIONS.

ARTICLE 4. ZONING.

Subdivision 7. Industrial Districts.

Section 42-281. I-2 heavy industrial district.

A. No change.

B. Principal permitted uses.

1 through 6 No change.

7. Medical Marihuana class A, B, and C growers, and processors as those facilities are defined by the Medical Marihuana Facilities Licensing Act, MCL 333.27101 *et seq.*
- a. The facility shall not be located:
 - i. Adjacent to or abutting a residential zoning district; and
 - ii. Within 1000 feet from the real property comprising a public or private elementary, vocational or secondary school or a public or private college, junior college or university, a library, a substance abuse treatment facility, park or a playground, public or private youth center, public swimming pool, video arcade facility or recreation facility or religious institution or housing facility owned by a public housing authority; and
 - iii. Within 1500 feet of any other medical marihuana facility permitted under Article 11, Chapter 14 of this Code. This provision will not apply to medical marihuana facilities issued a permit under article 12, chapter 14 of this code during the initial permit application period pursuant to section 14-250 of this code. The waiver of this provision will apply so long as the property is continuously used for the type of medical marihuana facility initially established on the property. "Continuous use" for the purposes of this provision means that the use of the property for the type of medical marihuana facility initially established on the property has not stopped or ceased to occur for a period of 90 days or more. This provision will apply to medical marihuana facilities issued a permit under Article 12, Chapter 14 of this Code during all permit application periods after the initial permit application period.
 - iv. Measurements for purposes of subsection (B)(21)(a)(i), (ii) and (iii) above shall be made from the property boundary of the zoning lot occupied by the medical marihuana facility to the nearest point of the property occupied by any of the uses listed above, using a straight line without regard to intervening structures or objects. "Zoning lot" is defined section 42-112 of this code. A map showing the uses and facilities listed in subsection (B)(21)(a) above, as well as the protected areas, is available for review in the department of community development at the Portage City Hall and on the city's website under the department of community development.
 - b. Buildings or structures for the growing, production or processing of medical marihuana shall comply all State of Michigan Construction Codes (building, electrical, plumbing and mechanical) in regard to occupancy classification, building design, construction and fire suppression. Medical marihuana facilities shall not be located within greenhouses and similar buildings.
 - c. No drive-through facilities are permitted for medical marihuana facilities.
 - d. No alcohol or tobacco products may be sold, used, or consumed on the premises of a medical marihuana facility. No marihuana or marihuana-

infused products may be used or consumed on the premises of a medical marihuana facility.

- e. Marihuana grow and processing facilities shall conduct the activities of the marihuana facility, including, without limitation, the cultivating, growing, processing, manufacturing, or storage of marihuana and marihuana-infused products, and all materials used in connection with the cultivating, growing and processing of marihuana, indoors and out of public view.
 - f. The grow and processing facilities shall be located in a single tenant building, or partitioned from any other activity or business, have a separate entrance, and have a separate HVAC system for the portion of the building occupied by the medical marihuana facility.
 - g. The business and operations of all marihuana facilities shall comply at all times with applicable state law and regulations, and this code.
8. Medical Marihuana secure transporter and safety compliance facilities as those facilities are defined by the Medical Marihuana Facilities Licensing Act, MCL 333.27101 *et seq.*
- a. The facility site shall not be located:
 - i. Adjacent to or abutting a residential zoning district; and
 - ii. Within 1000 feet from the real property comprising a public or private elementary, vocational or secondary school or a public or private college, junior college or university, a library, a substance abuse treatment facility, park or a playground, public or private youth center, public swimming pool, video arcade facility or recreation facility or religious institution or housing facility owned by a public housing authority; and
 - iii. Measurements for purposes of subsection (B)(9)(a)(i) and (ii) above shall be made from the property boundary of the zoning lot occupied by the medical marihuana facility to the nearest point of the property occupied by any of the uses listed above, using a straight line without regard to intervening structures or objects. "Zoning lot" is defined section 42-112 of this code. A map showing the uses and facilities listed in subsection (B)(9)(a) above, as well as the protected areas, is available for review in the department of community development at the Portage City Hall and on the city's website under the department of community development.
 - b. Buildings or structures in connection with the transport and storage of medical marihuana and medical marihuana infused products or for safety compliance facilities shall comply with all State of Michigan Construction Codes (building, electrical, plumbing and mechanical) in regard to occupancy classification, building design, construction and fire suppression. Medical marihuana facilities shall not be located within greenhouses and similar buildings.

- c. No drive-through facilities are permitted for medical marihuana facilities.
- d. No alcohol or tobacco products may be sold, used, or consumed on the premises of a medical marihuana facility. No marihuana or marihuana-infused products may be used or consumed on the premises of a medical marihuana facility.
- e. The secure transporter facility or safety compliance facility shall be located in a single tenant building, or partitioned from any other activity or business, have a separate entrance, and have a separate HVAC system for the portion of the building occupied by the medical marihuana facility.
- f. The business and operations of all medical marihuana secure transporter facilities or safety compliance facilities shall comply at all times with applicable state law and regulations, and this code.

C. No change.

D. No change.

That Chapter 42 shall be amended as follows to amend Section 42-129(C), Article 4, Division 3, General Provisions, as follows:

CHAPTER 42. LAND DEVELOPMENT REGULATIONS.

ARTICLE 4. ZONING.

Division 3. General Provisions.

Section 42-129. Home occupations.

A. No change.

B. No change.

C. *Medical marihuana home occupation.* A primary caregiver acting in compliance with the General Rules of the Michigan Department of Licensing and Regulatory Affairs ("general rules"), the Michigan Medical Marihuana Act, MCL 333.26421 et seq., (the "Act") and the requirements of this section, may be allowed as a home occupation. The conditions and requirements contained in section 42-129(A) and (B) (passive and active home occupations) shall not be applicable to medical marihuana home occupations under this section and no permit under the Portage Zoning Code is required for a medical marihuana home occupation. The following requirements for a primary caregiver as a home occupation shall apply:

1. A primary caregiver shall comply at all times and in all circumstances with the Act and the general rules of the department as they may be amended from time to time.
2. The home occupation may be conducted in a dwelling unit (as defined by the Zoning Code where no more than one primary caregiver:
 - a. Cultivates up to the maximum number of marihuana plants permitted by the Act (12 for each qualifying patient);
 - b. Possesses up to the maximum amount of marihuana or marihuana-infused products permitted by the Act;
 - c. Assists no more than the maximum number of qualifying patients permitted by the Act (maximum of five) who have been issued and possess a registry identification card and who are connected with the primary caregiver through the department's registration process for the medical use of marihuana. Assistance to a qualifying patient by someone other than his or her designated primary caregiver is prohibited;
 - d. Does not separate marihuana resin from marihuana plants by butane extraction on the premises of the medical marihuana home occupation;
 - e. Does not store any chemicals such as herbicides, pesticides, and fertilizers inconsistent with the provisions of the Portage Code of Ordinances including but not limited to the International Fire Code as adopted by the code; and
 - f. Does not produce or generate, in any way, noise, odor, dust, fumes, smoke, glare or comparable nuisances which would cause negative effects on surrounding property.
3. The following shall apply to a primary caregiver conducting a home occupation under this section:
 - a. Considering the federal "Drug Free School Zone" requirements, the medical marihuana home occupation shall not be located:
 - i. Within 500 feet 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
 - ii. Within 100 feet of a public or private youth center, public swimming pool, or video arcade facility.
 - b. Measurements for purposes of subsection (C)(3)(a)(i) and (ii) above shall be made from the property boundary of the zoning lot occupied by the home occupation to the nearest point of the property occupied by any of the uses listed above, using a straight line without regard to intervening structures or objects. "Zoning lot" is defined by article 42, section 42-112, definitions, of the Portage Code of Ordinances, as amended. A map showing the uses and facilities listed in subsection (C)(3)(a) above, as well as the protected areas, is available for review in the department of community development at the Portage City Hall and on the city's website under the department of community development.
 - c. The distance provisions of this subsection do not apply to a primary caregiver whose qualifying patient(s) (up to the maximum permitted under the Act) are permanent residents of the primary caregiver's household and whose residence is shared with the primary caregiver.

4. If the primary caregiver is not an owner of the premises, nothing contained in this section shall limit an owner of the premises from prohibiting the home occupation on the premises occupied by the primary caregiver nor limit an owner's right to pursue any private right of action allowed by law.
5. All medical marihuana plants and medical marihuana-infused products shall be contained in 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.
6. The home occupation shall be conducted consistent with the Portage Code of Ordinances including but not limited to securing all building, electrical, plumbing and mechanical permits 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 marihuana, compliance with article 4, chapter 24, noise, article 5, chapter 24, safety, sanitation and health, as well as article 14, chapter 42, Housing/Property Maintenance Code. 7. If a room with windows is utilized as a marihuana 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.
7. Off street parking provided for the home occupation shall be provided on an improved driveway that fulfills the requirements of article 5, section 24-111, definitions, of the Portage Code of Ordinances, as amended. There shall be no other vehicular parking other than the off street parking facilities normally required for the residential use.
8. There shall be no sign of any nature identifying the home occupation and the use of window displays are not permitted.
9. The location and operation of a marihuana facility pursuant to the provisions of the Michigan Medical Marihuana Facilities Licensing Act, Public Act 281 of 2016, MCL 333.27101 et seq., as a home occupation is prohibited.
10. Nothing in this section, 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 marihuana not in strict compliance with the Act and the general rules and this section. To this end, the sale, distribution, cultivation, manufacture, possession, delivery or transfer of marihuana to treat a qualifying patient shall only be conducted as a home occupation, and shall not be permitted in any other zoning classification of this Zoning Code. Also, since federal law is not affected by the Act or the general rules, nothing in this section, 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 section nor the Michigan Medical Marihuana Act protects users, caregivers or the owners of properties on which the medical use of marihuana is occurring from federal prosecution, or from having their property seized by federal authorities under the Federal Controlled Substances Act.
11. Definitions. As used in this section:
 - a. *Marihuana*. This term shall have the meaning given to it in Section 7601 of the Michigan Public Health Code, 1978 PA 368, MCL 333.7106, as is referred to in

Section 3(d) of the Michigan Medical Marihuana Act, PA 2008, Initiated Law, MCL 333.26423(d).

- b. *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
- c. *Primary caregiver.* A person who is at least 21 years old who has agreed to assist with a patient's medical use of marihuana, who has never been convicted of a felony involving illegal drugs and who has been issued and possesses a registry identification card.
- d. *Qualifying patient.* A person who has been diagnosed by a physician as having a debilitating medical condition.
- e. *Registry identification card.* A document issued by the department that identifies a person as a registered qualifying patient or a registered primary caregiver or a document or its equivalent that is issued under the laws of another state, district, territory, commonwealth, or insular possession of the United States that allows the medical use of marihuana by a visiting qualifying patient, or to allow a person to assist with a visiting qualifying patient's medical use of marihuana.

Dated: _____

Patricia M. Randall, Mayor

FIRST READING:
SECOND READING:
ORDINANCE #:
EFFECTIVE DATE:

CERTIFICATION

I, Adam Herringa, do hereby certify that I am the duly appointed and acting City Clerk of the City of Portage and that the foregoing ordinance was adopted by the City of Portage on the _____ day of _____, 2017.

Adam Herringa, City Clerk

PREPARED BY:
Charles R. Bear (P34106)
Portage City Attorney
1662 East Centre Avenue
Portage, MI 49002
(269) 323-8812

Approved as to Form:
Date: _____

City Attorney

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