

**TOWNSHIP OF MACOMB
MACOMB COUNTY, MICHIGAN**

ZONING ORDINANCE NO. 10-68

THE TOWNSHIP OF MACOMB ORDAINS:

Section 1. Article XXVII – MEDICAL MARIJUANA, of the Zoning Code of Ordinances, Township of Macomb, Michigan, is hereby created to read as follows:

ARTICLE XXVII – MEDICAL MARIHUANA

Sec. 10.2607 - Intent and purpose.

On November 4, 2008, Michigan voters approved a ballot initiative that legalized Medical Marihuana and on December 4, 2008, Michigan's Medical Marihuana Act, MCL 333.26421, et seq. ("MMMA"), took effect allowing both patients and/or their caregivers to cultivate Medical Marihuana within an enclosed, locked facility in order for those individuals to be entitled to the MMMA protections. As such, these enclosed locked facilities have been located on various locations of varying zoning classifications within the Township.

The Stille-Derossett-Hale Single State Construction Code Act 230 of 1972 (MCL 125. 1501, et seq.) allows a local unit of government to legally adopt and enforce the state building code at the local level. The purpose of the building code is to ensure public health, safety, and welfare by protecting life and property from all hazards related to the design, erection, repair, removal, demolition, or use and occupancy of buildings, structures, or premises. This is in relation to structural strength, adequate egress facilities, sanitary equipment, light and ventilation, and fire safety. Building permits are required when construction or alteration of a structure is in order when a patient caregiver has made alterations to a structure to support the cultivation of marihuana.

Since the passage of the Act, a caregiver's cultivation of marihuana particularly, within residential and town center zoning districts within the Township, has resulted in problems with insufficient or improper electrical supplies, problems with ventilation leading to mold, offensive odors, other health hazards and/or other hazards which are associated with the cultivation of marihuana in residential and commercial settings.

The Michigan Zoning Enabling Act, MCLA 125.3101 et. seq., ("MZEA") provides the Township with statutory authority to regulate land use within the Township through its Zoning Ordinance. The Michigan Supreme Court in the recent case of *DeRuiter v Byron Township*, No. 158311, Decided April 27, 2020, found that a township's zoning ordinance that geographically restricted such caregiver marihuana cultivation to a particular zoning district did not directly conflict with

the MMMA and the township had the authority under the MZEA to require zoning permits and permit fees for the use of buildings and structures within its jurisdiction.

Therefore, this Article as proposed, is intended to permit those persons in need of marihuana for medicinal purposes as allowed under the State Acts as defined herein, to be afforded a reasonable opportunity to be treated and for those persons who are permitted to furnish Medical Marihuana, to furnish it within the limitations of the State Acts and the geographical restriction imposed by the Zoning Ordinance in order to protect public health, safety, and welfare.

This Article is also intended to protect and preserve the public health, safety and welfare of the community, the quality of life and the stability of property values including but not limited to the value of residential, commercial, and industrial districts.

This Article is to protect and preserve peace, order, property and safety of persons as a result of issues associated with the growth of marihuana in residential and town center districts including problems with insufficient or improper electrical supply, problems with ventilation leading to mold, offensive odors, or other health hazards and other hazards which are associated with the cultivation of marihuana in Residential and Center Zoning Districts and which is otherwise often difficult to detect and regulate. The MZEA provides the Township with statutory authority to impose zoning limitations as set forth in this Article. The Township's zoning authority as it relates to Patient Caregiver Operations pursuant to the MMMA has also been upheld by the Michigan Supreme Court in the recent case of *DeRuiter v Byron Township*, No. 158311. Decided April 27, 2020.

Sec. 10.2608 - Definitions.

The following words, terms and phrases, when used in this subsection, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) "*Enclosed locked facility*" means a closet, room, or other comparable stationary and fully enclosed area equipped with secure locks or other functioning security devices that permit access only by a registered primary caregiver, or registered qualifying patient. Marihuana plants grown outdoors, are considered to be in an enclosed, locked facility if they are not visible to the unaided eye from an adjacent property when viewed by an individual at ground level, or from a permanent structure and are grown within a stationary structure that is enclosed on all sides, except for the base, by chain-link fencing, wooden slats, or a similar material that prevents access by the general public and that it is anchored, attached, or affixed to the ground; located on land that is owned, leased, or rented by either the registered qualifying patient, or a person designated through the department registration process, as the primary giver, for the registered

qualifying patient, or patients for whom the marihuana plants are grown; and equipped with functioning locks or other security devices that restrict access only to the registered qualifying patient, or the registered primary caregiver, who owns, leases, or rents the property on which the structure is located. Enclosed, locked facility includes a motor vehicle if both of the following conditions are met:

- (a) The vehicle is being used temporarily to transport living marihuana plants from one location to another with the intent to permanently retain those plants at the second location.
 - (b) An individual is not inside the vehicle unless he or she is either the registered qualifying patient to whom the living marihuana plants belong, or the individual designated through the Department of Registration process as the primary caregiver for the registered qualifying patient.
- (2) "*Marihuana*" means that term as defined in Section 7106 of the Public Health Code, 1978 PA 368, MCL 333.7106.
 - (3) "*Medical use*" means the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transportation of marihuana, or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition, or symptoms associated with the debilitating medical condition, as further defined under the MMMA.
 - (4) "*MMMA*" means to the Michigan Medical Marihuana Act, MCL 333.26421 et seq. currently, or as amended. ("Act" or "MMMA")
 - (5) "*MRTMA*" means to the Michigan Regulation and Taxation of Marihuana Act Initiated Law 1 of 2018, MCL 333.27952 et. seq currently, or as amended. ("MRTMA")
 - (6) "*Registered primary caregiver*" means to a person meeting the definition of caregiver under the MMMA and who has been issued and possesses a registry identification card and possesses the documentation that constitutes a valid registry under the MMMA.
 - (7) *Registered qualifying patient* means a person meeting the definition under state law and who has been issued and possesses a registry identification card which is valid under the MMMA, as amended.
 - (8) *Transfer* means to convey, sell, give, deliver, or allow the possession by another person or entity
 - (9) Other provisions and terms. The other provisions and terms of the MMMA and MRTMA for purposes of deferential context are incorporated by reference as though more fully restated herein.

Sec. 10.2609 - Medical Marihuana for registered qualifying patients or any individual over the age of twenty-one (21).

Registered qualifying patients, or visiting qualified patients and individuals over the age of twenty-one years old, may use, possess, and store Medical Marihuana as provided in the MMMA, MCL 333.26421 et seq as amended, and marihuana as provided in the MRTMA, MCL 333.27952 et. seq as amended, and as further regulated herein.

- (1) Registered qualifying patient and individuals over the age of twenty-one years of age:
 - (a) May use, possess and store marihuana in their principal residence within the Township for personal use only, and shall comply at all times and in all circumstances with the Act, MRTMA and the General Rules of the Michigan Community Health or the Michigan Department of Licensing and Regulatory Affairs, as they may be amended from time to time.
 - (b) May only cultivate marihuana for him or herself in compliance with the MMMA and the MRTMA, on a residentially zoned parcel or otherwise authorized for residential use and on an industrial zoned parcel, in an enclosed locked facility, inaccessible on all sides and equipped with locks or other security devices that permit access only by the registered qualifying patient and individuals twenty-one years or older.
 - (c) All necessary building, electrical, plumbing, and mechanical permits shall be obtained for any alterations of any portion of the structure in support of or in association with the cultivation of marihuana.
 - (d) The storage of any chemicals such as herbicides, pesticides, and fertilizers, shall be subject to inspection and approval by the Macomb Township Building Department and Fire Department.
 - (e) The separation of plant resin from a marihuana plant by butane extraction or any other method that utilizes a substance with a flashpoint below 100 degrees Fahrenheit in any public place, a motor vehicle, inside a residential structure or the curtilage of a residential structure is prohibited.
 - (f) If a room with windows is utilized as a marihuana-cultivation 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 or dwelling unit, to prevent ambient light spillage that causes or creates a distraction or nuisance to adjacent residential properties.

- (g) If the registered patient, or individual twenty-one years or older, is not the owner of the premises, then written consent must be obtained from the property owner to ensure the owner's knowledge of the use of the premises as permitted by this section, and the registered patient and individual twenty-one years or older shall maintain written proof that the use of the property under this section is approved by the property owner.
- (h) No person other than the registered patient or individual twenty-one years or older shall be engaged or involved in the growing, processing, handling of marihuana.
- (i) Use of the registered patient's residential dwelling unit for Medical Marihuana or an individual twenty-one (21) years or older for recreational marihuana related purposes, shall be clearly incidental and subordinate to its use for residential purposes. Not more than one hundred (100) square feet of any residential dwelling unit and/or accessory structure on a residential lot, shall be used for the growing, processing, storage, and handling of medical or recreational marihuana. Any modifications to the dwelling unit made for the purpose of cultivating medical or recreational marihuana shall comply with all applicable building, electrical, mechanical, and fire safety code requirements, including all requisite permit applications and related inspections. No part of an accessory building, detached garage, pole barn, or similar building or structure shall be used for the growing, processing, storage, or distribution of medical or recreational marihuana unless such building or structure has been inspected and approved for the building, electrical, mechanical, and fire safety requirements of such use and fits the definition of an enclosed, locked facility.
- (j) No equipment or process shall be used in growing, processing, or handling medical or recreational Marihuana which creates noise, vibration, glare, light, fumes, odors, or electrical interference detectable to the normal senses at or beyond the property line of the registered patient's or individuals over the age of twenty-one's residential property. In case of electrical interference, no equipment or process shall be used which creates visual or audible interference with any radio, television, or similar receiver off the premises or causes fluctuation of line voltage off the premises.
- (k) The registered qualifying patient, individuals over the age of twenty-one and the owners, agents, and employees of the parcel at which marihuana for personal or medical use is present are responsible jointly and severally for compliance with this section.

Sec. 10.2610 – Registered Primary Caregiver Operations.

Any registered primary caregiver may acquire, possess, cultivate, manufacture, transfer, or transport Medical Marihuana compliant with the MMMA, MCL 333.26421 et seq. as amended. Cultivation of Medical Marihuana by a registered primary caregiver as defined under the MMMA, is prohibited in any zoning district, except the Local Commercial District (C-1), General Commercial District (C-2), Commercial (Shopping Center) District (C-3), General Highway Commercial District (C-4), Warehouse District (WH) Individual Research District (MR), Light Industrial District (M-1) and Heavy Industrial District (M-2); Sections 10.1501 through 10.2204 of this Ordinance respectively and further subject to the following:

- (1) A registered primary caregiver may only grow, cultivate, manufacture, process, and store marihuana on a parcel in the Local Commercial District (C-1), General Commercial District (C-2), Commercial (Shopping Center) District (C-3), General Highway Commercial District (C-4), Warehouse District (WH) Individual Research District (MR), Light Industrial District (M-1) and Heavy Industrial District (M-2); Sections 10.1501 through 10.2204 of these ordinances and in an enclosed locked facility.
- (2) The registered primary caregiver is responsible for utilizing an enclosed locked facility upon the warehouse or industrial zoned parcel, compliant with the MMMA for cultivating, growing, manufacturing, processing, and storing marihuana for medical use only. The enclosed locked facility utilized by the primary registered caregiver, shall provide separation by fully enclosed walls, or fences, for plants that are grown on behalf of each registered qualifying patient, on whose behalf the registered primary caregiver is furnishing Marihuana for medical use, so it is accessible only to the primary caregiver and registered patient. The processing and storing of Medical Marihuana are permitted only by registered primary caregivers and registered qualifying patients.
- (3) The registered primary caregiver may grow up to a maximum of seventy-two (72) plants, but no more than twelve (12) plants for each individual registered qualifying patient as set forth in the MMMA.
- (4) The registered primary caregiver is responsible for providing the security necessary to assure that the growing marihuana and usable product are accessible for use only by the primary registered caregiver for transfer to, only to registered qualifying patients who are registered to the registered primary caregiver and must fully comply with the provisions of the MMMA.
- (5) Each parcel upon which enclosed locked facilities with marihuana for medical use are present, must be a minimum of 1000 feet from any parcel upon which any school, school facility, child care facility, place of worship, or public park is situated. Measurement of the buffer shall be from property line to property.

- (6) A Certificate of Occupancy is required and must be obtained from the Township before the presence of marihuana is allowed on the parcel.
- (7) Marihuana plants grown outdoors in an enclosed, locked facility shall be subject to the requirements of this Article.
- (8) The consumption, transfer, or use of Marihuana, in public, or a place opened to the public is prohibited.

Sec. 10.2611 – Certificate Required.

The operations of a registered primary caregiver within an approved zoning district shall only be permitted upon the issuance of a *Zoning Certificate to Cultivate Medical Marihuana*. Such certificate is required to be renewed annually and is subject to inspections by the building and fire department as well as the law enforcement representative for compliance with the provisions of this Ordinance and for the issuance of the certificate and its renewals.

- (1) A complete and accurate application shall be submitted on a form provided by the Township along with submission of the application fee. The application fee and renewal fee shall be an amount determined by resolution of the Township Board.
- (2) The certificate application shall include the name and address of the applicant; the address of the property; a copy of the current state registration card issued to the primary caregiver; a full description of the nature and types of equipment which will be used in marihuana cultivation and processing; and a description of the location at which the use will take place. The Township may require additional information necessary to demonstrate compliance with all requirements. The Township shall review the application to determine compliance with this Ordinance, the MMMA and the MRTMA and any applicable Michigan Regulatory Agency General Rules. A certificate shall be granted if the application demonstrates compliance with this Ordinance and the MMMA
- (3) The use shall be maintained in compliance with the requirements of this Ordinance and the MMMA. Any departure shall be grounds to revoke the certificate and take other lawful action. If a certificate is revoked, the applicant shall not engage in the activity unless and until a new Zoning Authorization to Cultivate Medical Marihuana certificate is granted.
- (4) Information treated as confidential under the MMMA, including the primary caregiver registry identification card and any information about qualifying patients associated with the primary caregiver, which is received by the Township, shall be maintained separately from public information submitted in support of the application. It shall not be distributed or otherwise made available to the public and shall not be subject to disclosure under the Freedom of Information Act.

Section 2. Repealer. 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. Severability. This Ordinance is declared to be severable. If any part, section, subsection, provision, sentence, or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, it is declared that the remainder shall not be affected thereby.

Section 4. Effective Date. This Ordinance to the Macomb Township Code of Ordinances shall become effective immediately from the date of publication hereof.

MOTION by Oliver seconded by Nevers to adopt and publish a Macomb Township Ordinance to amend the Macomb Township Zoning Ordinance by adding Article XXVII – Medical Marijuana to regulate patient caregiver activities pursuant to the Michigan Medical Marihuana Act, to provide for repealer, severability and effective date.

Roll Call:

Ayes: Oliver, Nevers, Cusumano, Lucido, Drolet, Pozzi, Viviano

Nays: None

Absent: None

ORDINANCE DECLARED ADOPTED this 14th day of April, 2021



Frank Viviano, Supervisor



Kristi L. Pozzi, Clerk

CERTIFICATION OF CLERK

I, Kristi L. Pozzi, Clerk of Macomb Township, Macomb County, Michigan, do hereby certify that Zoning Ordinance No. 10-68 was adopted by the Macomb Township Board, assembled in regular session on April 14, 2021. I hereby certify that the ordinance or a summary of the ordinance was published in a paper of general circulation on April 23, 2023.

A handwritten signature in cursive script, reading "Kristi L. Pozzi", written over a horizontal line.

Kristi L. Pozzi, Clerk
Macomb Township



Macomb Township Fire Department



PREVENTION BULLETIN

Title: Request for Electrical Service and Air Conditioning Upgrades

Date: May 24, 2021

Bulletin No. P21-001

By: Fire Chief Robert Phillips

Replaced:

The Macomb Township Fire Department has identified an increase in the number of fires in and around residential homes due to excessive use of electrical power, as well as an increased risk of the occurrence of such fires. Due to uses of power in residential homes that far exceed the usage levels for which most residential homes are designed, the electrical grid system cannot supply the power required, especially for older systems, and infrastructure is being damaged as a result. Further, during a fire or other emergency situation, the Fire Department may not be able to pull meter systems over 200 amps, as this is a life safety issue for the firefighters on scene. Commercial meters installed in residential structures will delay firefighter activity and delay rescue operations.

Therefore, the Fire Marshal is requiring the following for the installation of electrical system and air conditioning upgrades in residential homes:

- Residential homes cannot exceed electrical services over 200 amps.
- Any residential requests for residential service over 200 amps must include an electric load information sheet supplied to the Fire Marshal via email (phillipsr@macomb-mi.gov) by a licensed electrical contractor.
- The applicant must be the owner and provide proof of ownership of the home.
- All service requests must represent an actual need for a residential use; for example, an increase for service for installation of a swimming pool or hot tub must also have the required pool permit or hot tub permit request.
- All approved service installations over 200 amps must have a service disconnect by the meter to allow for power disconnect during a fire or hazardous conditions.
- Exterior main service disconnect(s) must be a circuit breaker(s).
- All approved service installations over 200 amps must have signage placed above the meter stating "Do not pull meter, use disconnect."
- The combined electrical service can NOT exceed the rating of the meter cabinet.
- Residential homes may only utilize air conditioning units in accordance with the attached chart.
- Air conditioning units installed must comply with all requirements in Township codes, including the mechanical code, and necessary permits and inspections must be obtained from the Township.
- All requests for permits and inspections must be submitted in writing to the Building Department for review by the Building Official, the Fire Marshal, and the appropriate inspector licensed in that trade.
- If a home is proposing electrical or air conditioning exceeding the limitations in this Bulletin, the owner will be required to provide supporting documentation and explain why the increases are necessary for residential use. Requests will be denied if deemed to create unsafe conditions and/or if the proposed use poses a danger of fire or nuisance conditions to the neighborhood.

- If the applicant is denied the request, he/she can apply for a variance to the Board of Code Appeals.

RESIDENTIAL HOME SQUARE FOOTAGE	PERMISSIBLE A/C TONNAGE	PERMISSIBLE A/C UNITS
UNDER 1800	3	1
1800-2100	3.5	1
2100-2800	4	1
2800-3300	4.5	1
OVER 3300	5	1 HOWEVER, 2 UNITS MAY BE CONSIDERED DEPENDING ON CONFIGURATION OF HOME A/C "ZONES," DECIBEL LEVELS, ELECTRICAL PANEL STABILITY, NEED, AND PROXIMITY TO OTHER HOMES

Authority: Section 110.1.1 of the International Fire Code (IFC) governs unsafe buildings, structures, and building systems. Violations of Section 110.1.1 are misdemeanors pursuant to Chapter 6, Section 6-22 of the Township Code. Section 104.1.2 and 104.1.3. of the IFC is a local amendment indicating that the rules promulgated by the Fire Marshal shall have the same effect and enforceability as any other provision of the IFC. This Bulletin has been issued pursuant to Section 104.1.2 as a safety measure designed to prevent unsafe buildings, structures, and building systems. Therefore, violations of this Bulletin are misdemeanors, punishable as set forth in the Township Code. In addition, violations of this Bulletin will subject the property to disconnection of utility service pursuant to Section 112 of the IFC.