

1. Purpose and Intent.

- It is the intent of this Ordinance to give effect to the intent of the Michigan Medical Marihuana Act (Initiated Law 1 of 2008, MCL 333.26421, *et seq.*), as approved by the electors of the State of Michigan.
- It is further the intent of this Ordinance to protect the public health, safety, and general welfare of persons and property, and to license certain locations as specified in this Ordinance.
- It is further the intent of this Ordinance to protect the health, safety, and welfare of law enforcement officers and other persons in the community, and also to address and minimize reasonably anticipated effects upon children, other members of the public, and upon significant areas of the community, that would be reasonably likely to occur in the absence of the provisions of this Ordinance.
- This Ordinance is designed to recognize the fundamental intent of the Michigan Medical Marihuana Act to allow the creation and maintenance of a private and confidential patient-caregiver relationship to facilitate the statutory authorization for the limited cultivation of marihuana for medical use, and to regulate in a manner that does not conflict with the Michigan Medical Marihuana Act, but addresses issues that would otherwise expose the community and its residents to significant adverse conditions and secondary effects including but not limited to the following:
 - adverse and long-term influence on children;
 - substantial serious criminal activity;
 - danger to law enforcement and other members of the public;
 - discouragement and impairment of effective law enforcement with regard to unlawful activity involving the cultivation, distribution, and use of marijuana;
 - the creation of a purportedly lawful commercial enterprise involving the cultivation, distribution and use of marihuana that is not reasonably susceptible of being distinguished from serious criminal enterprise; and,
 - the uninspected installation of unlawful plumbing, mechanical, and electrical facilities that create dangerous health, safety, and fire conditions.
- With the State's recent allowance of medical marihuana facilities pursuant to the Medical Marihuana Facilities Licensing Act (MMFLA), MCL 333.27101 *et. seq.*, it is expected that neighboring communities will have medical marihuana facilities, providing greater access to medical marihuana and marihuana products for registered patients.
- Additionally, the MMFLA requires safety and purity testing for marihuana and marihuana products before sale or distribution, and this same testing is not required for caregiver grow operations. Based on this, there are health, safety and welfare concerns that further justify a limit to the number of caregiver operations in the City.
- Furthermore, the MMFLA requires registered caregivers to choose between continuing a caregiver grow operation or being involved in a medical marihuana facility grow operation under the MMFLA. As a result, it is expected that there will be a reduction in caregiver grow operations in the City.

Chapter 104 – Medical Marihuana Grow Operation License Ordinance

- This Ordinance does not permit or allow licensed Medical Marihuana Facilities, as defined by the MMFLA, in the City.
- Nothing in this Ordinance shall be construed as allowing persons to engage in conduct that endangers others or causes a public nuisance, or to allow use, cultivation, growth, possession or control of marihuana contrary to the provisions of the Act and this Ordinance.
- Furthermore, nothing in this Ordinance shall be construed to undermine or provide immunity from Federal Law as it may be enforced by the Federal or State Government relative to the cultivation, distribution, or use of marijuana.
- The authorization of activity and/or approval of a license under this Ordinance shall not have the effect of superseding or nullifying Federal Law applicable to the cultivation, distribution, and use of marijuana.

2. Definitions:

For purposes of this Chapter, the following terms shall have the following meanings:

Act: The Michigan Medical Marihuana Act, MCL 333.26421 *et seq.*

Caregiver or Primary Caregiver: A caregiver or primary caregiver as defined in the Act, with a current and valid registration.

Chief Law Enforcement Officer: The Chief of Police of the City of Troy or his or her designee.

Grow Operation: Any location where the cultivation of marihuana by a patient or caregiver, as defined in the Act, takes place in the City of Troy.

Licensee. The individual listed as an applicant on the application for a Medical Marihuana Grow Operation license, or a person in whose name a license to operate a Medical Marihuana Grow Operation has been issued, as set forth in the Act.

Licensing Officer. The Clerk of the City of Troy or his or her designee.

Patient. A patient as defined in the Act, with a current and valid registration.

Plant. Any living organism that produces its own food through photosynthesis and has observable root formation or is in growth material.

Principal Residence. The place where a person resides for more than one half of the calendar year

3. License Required; Application Fee; Investigation Fee; License Fee:

- A. The cultivation of marihuana by a caregiver or a patient shall be permitted as allowed under the Act, provided that no grow operation shall be allowed within

Chapter 104 – Medical Marihuana Grow Operation License Ordinance

the City of Troy at a location unless such location has been licensed under this Ordinance.

- B. Based on past history and articulated health, safety and welfare concerns, and the increased availability of marihuana for patients through the MMFLA, the City intends to issue a maximum of 36 Medical Marihuana Grow Operation Licenses each calendar year. All existing caregiver operations that as of January 1, 2018 were issued a City certificate of occupancy as part of the building permit process, with modifications specific to the growth, cultivation or storage of medical marihuana will be considered a “current facility,” and any current facility is eligible to apply for a Medical Marihuana Grow Operation License, even if the issuance of such a license temporarily results in more than 36 Medical Marihuana Grow Operation Licenses in the City for the calendar year. However, in order to remain eligible, any current facility must apply for a license within 30 days of the effective date of this Ordinance, and satisfy the criteria to be eligible for a license. Additionally, any revocation, suspension, business interruption or rescission renders an applicant ineligible for a Medical Marihuana Grow Operation License.
- C. Applicants for a Medical Marihuana Grow Operation License shall pay an application fee as set by Chapter 60 of the Ordinances of the City of Troy. Applicants requesting a renewal of an annual license shall submit a complete renewal application at least 30 days prior to the expiration of the current license, and shall also submit the fees as set forth in Chapter 60 of the Ordinances of the City of Troy.
- D. In the event an application or a renewal application for a Medical Marihuana Grow Operation license is withdrawn or denied, the application fee shall be forfeited. Fees are not transferrable.
- E. All existing caregiver operations that as of January 1, 2018 were issued a City certificate of occupancy as part of the building permit process, with modifications specific to the growth, cultivation or storage of medical marihuana, do not have a vested right or nonconforming use right, and are required to comply with this Ordinance.
- F. No Medical Marihuana Grow Operation License is required if a maximum of one patient per residential unit grows, cultivates or stores marihuana for their own personal consumption at the patient’s principal residence, as long as the growth, cultivation or storage is in compliance with the Act, and there is no prohibition in any lease or rental agreement or other binding legal document.
- G. If a Medical Marihuana Grow Operation is in a home, all requirements for a Home Occupation, as set forth in Chapter 39, Section 7.10 of the City of Troy Ordinances must be met.

4. License Application:

- A. Every applicant for an initial or an annual renewal of a Medical Marihuana Grow Operation License shall file an application with the City Clerk’s Office on the form provided by the City of Troy and pay the nonrefundable application fee(s) set forth in Chapter 60. The information obtained as a result of the license application process shall be used only for administrative purposes, and the information shall not be disclosed pursuant to any Freedom of Information Act

Chapter 104 – Medical Marihuana Grow Operation License Ordinance

request under MCL 15.231. The applicant shall provide all of the following information, the truthfulness of which shall be sworn to under oath:

1. The name of the caregiver or patient(s), the total number of patients assisted by a caregiver applicant, and a copy of the current and valid State of Michigan Registry Identification Card(s), issued pursuant to the Act.
 2. The marihuana grow operation history of the applicant; including but not limited to disclosure of any revocation or suspension of any business license in the State of Michigan or any other State in the United States, the reason for such revocation or suspension, and the type or nature of the business license, and applicant's business activity or occupation subsequent to such suspension or revocation.
 3. The address of the premises for the proposed growth, cultivation or storage of marihuana, and evidence of property ownership.
 4. If the premises is not owned by the applicant, the landlord/owner of the premises must sign the application or provide a written statement acknowledging that she or he is aware of and consents to the proposed growth, cultivation or storage of marihuana plants on the premises.
 5. The name and address of the place where all unused portions of the marihuana plants cultivated in connection with the medical use of marihuana will be disposed, and the manner of disposition.
 6. A description of how the applicant satisfies the requirement that the marihuana for each patient is kept in a fully enclosed locked facility including the location in the building, including but not limiting to precise measurements of the floor dimensions and the height (in feet), and the security devices employed.
 7. Detailed specifications of all lights, equipment, building, electrical, mechanical and plumbing permit requirements and modifications and operations for the proposed cultivation or storage of marijuana, including but not limited to the proposed methods for odor and light control.
 8. A phone number or other means for the City to contact the applicant or his or her designee on a seven day, twenty four hour basis in the event that there is an urgent situation that requires immediate response or action.
- B. Applicants for a license under this Ordinance shall have a continuing duty to promptly supplement the above referenced application information required by this section to the City Clerk when there is any change. The failure to comply with this continuing duty within fifteen (15) days from the date of any such change shall be grounds for the suspension, revocation or denial of a Medical Marihuana Grow Operation License.

5. Investigation:

On receipt of a properly completed application and the payment of the application fee, the City Clerk shall simultaneously submit the relevant documentation to the Chief of Police, or his or her designee, the Fire Chief, or his or her designee, the Zoning Administrator, or his or her designee, the City Treasurer or his or her designee, and the Building Official or his or her designee.

The Chief of Police or his or her designee is responsible for investigating the background of each individual applicant, and shall provide the background report to the City Clerk or his or her designee within 21 business days

The Zoning Administrator or his or her designee shall review the documentation to determine if the proposed location of the Grow Operation complies with the locational requirements of this Ordinance and the Zoning Ordinance, and shall provide the zoning report to the City Clerk or his or her designee within 21 business days.

The Fire Chief or his or her designee shall issue a report determining whether or not the proposed Grow Operation complies with the applicable fire codes, and this report shall be submitted to the City Clerk or his or her designee within 21 business days.

The City Treasurer or his or her designee is responsible for checking to verify that the applicant and the property does not have any overdue payment of City taxes, fines, fees, or penalties owing to the City.

The Building Official or his or her designee shall issue a report determining whether or not the proposed Grow Operation complies with applicable building codes. The Building Official shall issue his or her report within 21 business days.

6. Approval/Denial of License:

A. The application of any applicant shall be approved or denied by the City Clerk 30 business days of the date the complete application is officially filed with the City Clerk. The City Clerk shall deny a license for one or more of the following:

1. The applicant is under the age of twenty-one (21) years of age;
2. The applicant has made a false statement upon the application or has given false information in connection with an application;
3. The applicant has had a business license revoked or suspended anywhere within the State of Michigan or any other state in the United States within one (1) year prior to the application;
4. The applicant has operated a medical marihuana grow operation which was determined to be a public nuisance in the State of Michigan or any state,

Chapter 104 – Medical Marihuana Grow Operation License Ordinance

- county, city or any other governmental subdivision in the United States within one (1) year prior to the application;
5. The applicant is overdue in the payment of City taxes, fees, fines or penalties assessed against him or her.
 6. The applicant has been convicted of any felony or drug related misdemeanor conviction.
- B. In the event the City Clerk denies a license, he/she shall notify the applicant of the denial in writing by first class mail to the address on the application and shall specify the reason(s) for the denial. In the event of a denial, the applicant shall have the right to appeal to the City Manager as set forth in this ordinance. Any written appeal request must be submitted to the City Manager within fourteen (14) days of the date on the denial notice sent by the City Clerk. The City Manager shall promptly review all appeal materials.
1. The City Manager may request information from representatives of the Police Department, the City Clerk, the Zoning Administrator, the Building Official, the Fire Chief, City Treasurer, Code Enforcement, the applicant or other interested parties, or any other individual who may have information relevant to the denial of the license. The City Manager may accept written documentation or hear statements and consider other evidence offered which is relevant to the denial by the City Clerk.
 - a. If after this review, the City Manager determines that the applicant remains ineligible for a license under this ordinance, he/she shall notify the applicant in writing at the address on the application within fourteen days after receipt of the appeal or any requested materials, whichever is later, and shall state the reason(s) for the decision.
 - b. If after this review, the City Manager determines that that a Medical Marihuana Grow Operation license should be issued to the applicant, the City Manager shall notify the City Clerk of this decision, and the City Clerk shall process the application within fourteen days of notification.
 - c. The City Manager's decision is the City's final decision. Failure of an applicant to timely meet the filing deadlines as set out in this Ordinance constitutes a waiver of any right the applicant may otherwise have to contest the denial of the application.

7. Number of Plants/Secure Facility:

A caregiver who obtains a license for a Medical Marihuana Grow Operation under this Ordinance shall not cultivate more than twelve plants at any one time per registered patient, and in no event grow more than 72 plants at any one time. The caregiver shall cultivate each individual registered patient's plants in a separate locked facility that is

Chapter 104 – Medical Marihuana Grow Operation License Ordinance

enclosed on all sides with a floor, walls, and a ceiling or roof, and accessible only to the registered caregiver and registered patient.

8. Location of Grow Operations:

- A. Medical Marihuana Grow Operations requiring a license under this ordinance may only be permitted in locations that are zoned IB, Integrated Industrial and Business District under the City of Troy Zoning Ordinance.
- B. No Medical Marihuana Grow Operation shall be located within 1000 feet of a public or private elementary school, vocational, or secondary school or a public or private college, junior college or university or a library or a public outdoor playground, as defined in 21 USCA Section 860 (e)(1). Measurements for purposes of this section shall be made from property boundary to property boundary.

9. Additional Requirements for Medical Marihuana Grow Operations.

- A. All necessary building, electrical, plumbing and other permits shall be obtained for all improvements used to facilitate the cultivation of marihuana plants.
- B. Signage identifying the location of a Medical Marihuana Grow Operation is prohibited.
- C. The consumption of medical marihuana or alcoholic beverages on the licensed premises is prohibited.
- D. A license issued under this Ordinance is only for the location identified in the application for the license and cannot be transferred to another location.
- E. A license issued under this Ordinance is only for the applicant identified in the application for the license, and cannot be transferred to another person.
- F. Licensees must maintain air cleaning systems or scrubbers or exhaust ventilation systems to mitigate any odor associated with the Medical Marihuana Grow Operation, and contain any noxious gases or fumes or odors on the property.

The licensee must comply with all City of Troy ordinances and state statutes.

10. Inspection of Premises:

- A. The Chief of Police, Fire Chief, police officers, Fire Department personnel, code enforcement officers, or other authorized inspectors from the City of Troy shall have the right from time to time to inspect each Medical Marihuana Grow Operation for the purposes of determining that the operation is in full compliance

Chapter 104 – Medical Marihuana Grow Operation License Ordinance

with the provisions of this Ordinance, all other City of Troy ordinances, and State Law.

- B. It shall be deemed a violation of this ordinance for any Licensee to refuse or fail to allow such inspection or to hinder such officer or inspector in any manner.
- C. In an emergency, if there is not an imminent threat to persons or property, the authorized City official will use the emergency contact information provided on the application to notify the applicant that immediate access is needed. If the applicant or his or her designee does not respond, or is not able to provide the authorized City officials with access to the property within fifteen minutes, then the authorized City official may take whatever reasonable means are necessary to access the property, and the City will not be responsible for any resulting damage to the applicant's property.

11. Suspension or Revocation of License; Notice and Hearing:

- A. When any of the provisions of this Ordinance are violated by the licensee, the City Manager or his or her designee may immediately suspend the Medical Marihuana Grow Operation License. If a license is suspended, then the licensee may appeal this determination to the Troy City Council by filing a written request with the Troy City Clerk within ten business days. Upon receipt of a written request, the Troy City Clerk shall schedule a due process hearing at the earliest regular meeting of the Troy City Council, and shall provide notice of the date and time of the hearing to the licensee.
- B. The notice of hearing shall indicate that the City of Troy has initiated suspension and/or revocation proceedings, and shall state the reason for the suspension or requested revocation. The notice shall state the location of the hearing and the date and time that the licensee may appear before City Council to give testimony and show cause why the Medical Marihuana Grow Operation License should not be suspended or revoked.
- C. At the due process hearing, City staff and/or other concerned individuals will have the opportunity to present evidence and testimony supporting the suspension or requested revocation. The licensee shall be allowed to present evidence and testimony at the hearing as to why the license should not be suspended or revoked. After the hearing, the City Council may revoke the Medical Marihuana Grow Operation license, suspend the license, or reinstate the license. If City Council suspends the Medical Marihuana Grow Operation License, then Council shall clearly specify the length of the suspension, as well as any conditions that must be satisfied or corrective action that must be taken prior to restoration of the license.
- D. If the licensee fails to satisfy Council's articulated conditions for restoration of a suspended Medical Marihuana Grow Operation License within the time allocated to the licensee, then Council can revoke the license. The licensee may seek relief of the City Council decision through the Oakland County Circuit Court, but must file any action within 21 days of the final decision.

Chapter 104 – Medical Marihuana Grow Operation License Ordinance

- E. Suspension or revocation of a license is not an exclusive remedy and nothing contained in this Ordinance is intended to limit the City's ability to prosecute the violations of this or any other City of Troy ordinance or State Law that may have been the cause of the suspension and/or revocation.

12. Penalty for Violation.

A person who violates any provision of this Ordinance, or the terms, conditions or provisions of a license, is responsible for a misdemeanor, punishable by up to 90 days in jail and/or fines up to \$500. Nothing in this section shall be construed to limit the remedies available to the City in the event of a violation by any person of this Ordinance or a condition of a license. Each violation, and each day upon which a violation exists or continues, shall constitute a separate offense.

13. Savings.

All proceedings pending, and all rights and liabilities existing, acquired or incurred, at the time this Ordinance takes effect are hereby saved. Such proceedings may be consummated under and according to the Ordinance in force at the time such proceedings were commenced. This Ordinance shall not be construed to alter, affect, or abate any pending prosecution, or prevent prosecution hereafter instituted under any ordinance specifically or impliedly repealed or amended by this ordinance adopting this regulation, for offenses committed prior to the effective date of this Ordinance; and new prosecutions may be instituted and all prosecutions pending at the effective date of this Ordinance may be continued, for offenses committed prior to the effective date of this Ordinance, under and in accordance with the provisions of any Ordinance in force at the time of the commission of such offense.

14. Severability Clause.

Should any word, phrase, sentence, paragraph or section of this Ordinance be held invalid or unconstitutional, the remaining provisions of this ordinance shall remain in full force and effect.

(Adopted: 04-23-2018; Enacted: 05-03-2018)