

PORTLAND CITY COUNCIL
Ionia County, Michigan

Council Member Fabiano, supported by Council Member VanSlambrouck, made a motion to adopt the following ordinance:

ORDINANCE NO. 175 CC

AN ORDINANCE TO AMEND SECTION 42-6 BY ADDING DEFINITIONS FOR MARIHUANA, MARIHUANA COLLECTIVE OR COOPERATIVE, MARIHUANA DISPENSARY OR DISPENSARY, AND MEDICAL USE OF MARIHAUNA AND TO AMEND SECTION 42-302 REGARDING HOME OCCUPATIONS

THE CITY OF PORTLAND ORDAINS:

SECTION 1. AMENDMENT. Section 42-6 of the City of Portland Code of Ordinances is amended to add definitions for Marihuana, Marihuana Collective or Cooperative, Marihuana Dispensary or Dispensary, and Medical Use of Marihauna which will read as follows:

Sec. 42-6 Definitions.

Marihuana, also known as Medical Marihuana, also known as Marijuana, also known as Cannabis: That term shall have the meaning given to it in Section 7601 of the Michigan Public Health Code, 1978 PA 368, as amended, MCL 333.7106 *et seq.*, as is referred to in Section 3(d) of the Michigan Medical Marihuana Act, PA 2008, Initiated Law 1, MCL 333.26423(d). Any other term pertaining to marihuana used in this Ordinance and not otherwise defined shall have the meaning given to it in the Michigan Medical Marihuana Act and/or in the General Rules of the Michigan Department of Community Health issued in connection with that Act.

Marihuana Collective or Cooperative: Any facility, structure, dwelling or other location where medical marihuana is grown, cultivated, processed, stored, transmitted, dispensed, consumed, used, given, delivered, provided, made available to and/or distributed by two or more of the following: a registered primary caregiver or a registered qualifying patient, as defined by the Michigan Medical Marihuana Act, PA 2008, Initiated Law 1, MCL 333.26421 *et seq.* (the "Act"), or a person in possession of an identification card issued under the Act or in possession of an application for such an identification card. The term "collective" or "cooperative" shall not apply to a registered primary caregiver that provides necessary care and marihuana for medical use exclusively to his/her five (5) or fewer designated qualifying patients in strict accordance with the Michigan Medical Marihuana Act, PA 2008, Initiated Law 1, MCL 333.26421 *et seq.* or the Administrative Rules of the Michigan Department of Community Health, Michigan Admin Code, R 333.101 through R 333.133. A "marijuana collective or cooperative" shall not include the following uses: a State-licensed health care facility; a State-licensed residential care facility for the elderly or infirmed; or a residential hospice care facility, as long as any such use complies strictly with applicable laws and rules of the State of Michigan. It is

unlawful to establish or operate a profit or nonprofit medical marihuana dispensary, collective or cooperative within the City.

Marihuana Dispensary or Dispensary: Any facility, structure, dwelling or other location where medical marihuana is grown, cultivated, processed, stored, transmitted, dispensed, consumed, used, given, delivered, provided, made available to and/or distributed by two or more of the following: a registered primary caregiver or a registered qualifying patient, as defined by the Michigan Medical Marihuana Act, PA 2008, Initiated Law 1, MCL 333.26421 *et seq.* (the "Act"), or a person in possession of an identification card issued under the Act or in possession of an application for such an identification card. The term "dispensary" shall not apply to a registered primary caregiver that provides necessary care and marihuana for medical use exclusively to his/her five (5) or fewer designated qualifying patients in strict accordance with the Michigan Medical Marihuana Act, PA 2008, Initiated Law 1, MCL 333.26421 *et seq.* or the Administrative Rules of the Michigan Department of Community Health, Michigan Admin Code, R 333.101 through R 333.133. A "marihuana dispensary" shall not include the following uses: a State-licensed health care facility; a State-licensed residential care facility for the elderly or infirmed; or a residential hospice care facility, as long as any such use complies strictly with applicable laws and rules of the State of Michigan. It is unlawful to establish or operate a profit or nonprofit medical marihuana dispensary, collective or cooperative within the City.

Medical Use of Marihuana: The acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer or 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 defined under the Michigan Medical Marihuana Act, PA 2008, Initiated Law 1, MCL 333.26421 *et seq.*

SECTION 2. AMENDMENT. Section 42-302 of the City of Portland Code of Ordinances is amended to read as follows:

Sec. 42-302. Home occupations.

(a) Home occupations shall be approved by the zoning administrator, who shall issue a certificate of occupancy specifying the use, size, and the specific measures by which compliance with this section will be maintained by the home occupation and provided the requirements of the residential district are met.

(b) Only members of the family residing in the home shall be engaged in connection with the home occupation.

(c) The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than 25 percent of the floor area or 500 square feet of the dwelling unit, whichever is less, shall be used in the conduct of the home occupation. Should part of the home occupation be conducted in an accessory building, not more than 50 percent of the floor area or 500 square feet of the accessory building, whichever is less, may be used for the home occupation.

(d) There shall be no change in the outside appearance of the building that would indicate the presence of a home occupation or depart from the residential character of the

dwelling, and have any visible evidence of the conduct of the home occupation, except for a home occupation sign that complies with the City sign ordinance.

(e) There shall be no sale of products or services except as are produced on the premises or those products which may be directly related to and incidental to the home occupation.

(f) There shall be no outdoor, on-site storage of materials, equipment, or accessory items and/or display of materials, goods or supplies used in the conduct of the home occupation.

(g) The home occupation will not create traffic congestion, parking shortages, or otherwise adversely affect the pedestrian or vehicular circulation of the area. The following factors shall be considered by the zoning administrator to determine whether the traffic effects on a neighborhood may be excessive:

(1) Whether the subject parcel is located at the entrance or the interior of a residential development where increased traffic volumes may be otherwise anticipated;

(2) Whether the nature of the proposed home occupation requires scheduled appointments or whether traffic volumes may be higher at certain times of the day;

(3) Whether traffic volumes may vary on a seasonal basis; and

(4) Whether the home occupation could be conducted in a manner that reduces traffic generated in the area.

(h) Any parking for vehicles associated with the home occupation shall be provided off the street. No commercial vehicles exceeding a rated capacity of one ton may be parked on the premises.

(i) No equipment or process shall be used in the home occupation that creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the premises. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises or causes fluctuations in the line voltage off the premises.

(j) No more than two customers, clients, students or patients shall be on the premises in which a home occupation is located at any one time.

(k) Visits by customers, clients, students or patients to a dwelling unit in which a home occupation is located shall be limited to between the hours of 7:00 am to 8:00 pm, local time.

(l) All building, housing, fire and other local or state codes and ordinances shall be adhered to for home occupations.

(m) A registered primary caregiver, as defined by and in compliance with the General Rules of the Michigan Department of Community Health, Michigan Admin Code, R 333.101 through R 333.133 (the "General Rules"), the Michigan Medical Marihuana Act, PA 2008, Initiated Law 1, MCL 333.26421 *et seq* (the "Act"), and the requirements of this

section, shall be allowed as a home occupation. Nothing in this section, or in any companion regulatory section adopted in any other provision of this Ordinance, is intended to grant, nor shall they be construed as granting immunity from prosecution for growing, sale, consumption, use, distribution or possession of marihuana not in strict compliance with the Act and the General Rules. Also, since federal law is not affected by the Act or the General Rules, nothing in this section, or in any companion regulatory section adopted in any other provision of this Ordinance, is intended to grant, nor shall they be construed as granting immunity from criminal prosecution under federal law. The Act does not protect users, caregivers or the owners of properties on which medical use of marihuana is occurring from federal prosecution, or from having their property seized by federal authorities under the Federal Controlled Substances Act. The following requirements for a registered primary caregiver shall apply:

- (1) The medical use of marihuana shall comply at all times and in all circumstances with the Michigan Medical Marihuana Act and the General Rules of the Michigan Department of Community Health, as they may be amended from time to time.
- (2) A registered primary caregiver must be located outside of a 1,000-foot radius from any school or library, as defined by the Michigan Public Health Code, 1978 PA 368, as amended, MCL 333.7410, to insure community compliance with federal "Drug-Free School Zone" requirements.
- (3) Not more than one primary caregiver shall be permitted to service qualifying patients on a parcel.
- (4) Not more than five qualifying patients shall be assisted with the medical use of marihuana within any given calendar week.
- (5) All medical marihuana shall be contained within the main building in an enclosed, locked facility inaccessible on all sides and equipped with locks or other security devices that permit access only by the registered primary caregiver or qualifying patient, as reviewed and approved by the City Building Official and the City Police Department.
- (6) All necessary building, electrical, plumbing and mechanical permits shall be obtained for any portion of the residential structure in which electrical wiring, lighting or watering devices that support the cultivation, growing or harvesting of marihuana are located.
- (7) If a room with windows is utilized as a growing location, any lighting methods that exceed usual residential periods between the hours of 11:00 pm to 7:00 am, local time, shall employ shielding methods, without alteration to the exterior of the residence, to prevent ambient light spillage that may create a distraction for adjacent residential properties.
- (8) That portion of the residential structure where energy usage and heat exceeds typical residential use, such as a grow room, or where the storage of any chemicals such as herbicides, pesticides and fertilizers occurs, shall be subject to inspection and approval by the City Building Official or Fire Department to ensure compliance with applicable provisions of the fire code.
- (9) No signage is permitted for a home occupation as a registered primary caregiver.

SECTION 3. PUBLICATION AND EFFECTIVE DATE. This Ordinance must be published and recorded as provided in the City Charter and takes effect on the date of publication, but not less than ten (10) days after its adoption by the City Council.

Ayes: Fabiano, VanSlambrouck, Clement, Barnes

Nays: Calley

Absent: None

Abstain: None

ORDINANCE DECLARED ADOPTED.

Dated: January 3, 2011

James E. Barnes, Mayor

Monique I. Miller, City Clerk

Introduced: December 20, 2010

Adopted: January 3, 2011

Published: January 16, 2011

Effective: January 16, 2011