

**TO ADOPT AN ORDINANCE OF THE CITY OF BROWN CITY
AMENDING THE CITY OF BROWN CITY TITLE XV LAND USAGE
CODE BY ADDING SECTION 152.400 PROVIDING FOR CULTIVATION
OR OTHER MEDICAL USE OF MARIJUANA AS A MEDICAL
MARIJUANA HOME OCCUPATION IN SINGLE-FAMILY DWELLINGS,
THEIR LOCATION, DEFINITIONS, CONDITIONS AND STANDARDS**

THE CITY OF BROWN CITY, MICHIGAN ORDAINS:

Section 152.400: An Ordinance of the City of Brown City amending the City of Brown City Title XV Land Usage Code by adding Section 152.400 by providing for Cultivation or Other Medical Use of Marihuana as a Medical Marihuana Home Occupation in Single-Family Dwellings, their location, definitions, conditions and standards.

Section 152.400.1: Medical use of marijuana:

The acquisition, possession, cultivation, use, delivery or distribution of marijuana to treat or alleviate a debilitating medical condition is prohibited except in compliance with the Michigan Medical Marijuana Act (“MMMA”) of 2008 and applicable provisions of the Brown City Land Use Ordinance.

A registered primary caregiver, operating in compliance with the MMMA General Rules, the MMMA and the requirements of this subsection, shall be permitted as a home occupation, as regulated by this subsection. The City makes the following findings, in support of its determination that the regulation of registered primary caregivers as a permitted home occupation is consistent with the purposes and intent of the MMMA:

- a. The MMMA does not create a general right for individuals to use, possess, or deliver marijuana in Michigan.
- b. The MMMA’s protections are limited to individuals suffering from serious or debilitating medical conditions or symptoms, to the extent that the individuals’ marijuana use is carried out in compliance with the provisions of the MMMA, including the provisions related to the operations of registered primary caregivers.
- c. The MMMA’s definition of “medical use” of marijuana includes the “transfer” of marijuana “to treat or alleviate a registered qualifying patient’s debilitating medical condition or symptoms associated with the debilitating medical condition,” but only if such “transfer” is performed by a registered primary caregiver who is connected with the same qualifying patient through the registration process established by the Department of Licensing and Regulatory Affairs, and who is otherwise operating in strict compliance with the MMMA and the MMMA General Rules.
- d. The MMMA provides that a registered primary caregiver may assist no more than five qualifying patients with their medical use of marijuana.
- e. The MMMA does not, therefore, create a new vocation for entrepreneurs or others who wish to engage in the sale of marijuana to more than five persons in a commercial setting. Instead, the MMMA is directed at improving the health and welfare of qualifying patients.
- f. The health and welfare of qualifying patients is improved by permitting the operations of registered primary caregivers as a home occupation, because this allows qualifying patients who suffer from serious or debilitating medical conditions or

- symptoms to obtain the benefits of the medical use of marijuana in a residential setting, without having to unnecessarily travel into commercial areas.
- g. By permitting the operations of registered primary caregivers as a home occupation, rather than in a commercial setting, this promotes the MMMA's purpose of ensuring that:
 - (i). a registered primary caregiver is not assisting more than five qualifying patients with their medical use of marijuana, and
 - (ii). a registered primary caregiver does not unlawfully expand its operations beyond five qualifying patients, so as to become an illegal commercial operation, in the nature of a marijuana collective, cooperative or dispensary.

Section 152.400.2: Standards:

The following standards and requirements shall apply to the location at which the medical use of marijuana is conducted by a primary caregiver:

- a. The medical use of marijuana shall comply at all times with the MMMA and the MMMA General Rules, as amended.
- b. A registered primary caregiver shall not possess marijuana, or otherwise engage in the medical use of marijuana, in a school bus, on the grounds of any preschool or primary or secondary school.
- c. Not more than two registered primary caregivers, who shall also be full-time residents of the dwelling, shall be permitted to operate at any one property.
- d. The medical use of marijuana shall be conducted entirely within a dwelling or attached garage, except that a registered primary caregiver may keep and cultivate, in an "enclosed, locked facility" (as that phrase is defined by the MMMA), up to 12 marijuana plants for each registered qualifying patient with whom the registered primary caregiver is connected through the registration process established by the Department of Licensing and Regulatory Affairs, and up to 12 additional marijuana plants for personal use, if the primary caregiver is also registered as a qualifying patient under the MMMA.
- e. A sign identifying the home occupation by word, image or otherwise, or indicating that the medical use of marijuana is taking place on the premises, shall not be permitted; nor shall any vehicle having such a sign be parked anywhere on the premises.
- f. Except for lighting, heating, watering, drying or other equipment, or fertilizers, herbicides or other chemicals directly related to the medical use of marijuana, no other materials or equipment not generally associated with normal ownership, use, and maintenance of a dwelling shall be permitted.
- g. Distribution of marijuana or use of items in the administration of marijuana shall not occur at or on the premises of the primary caregiver. A qualifying patient shall not visit, come to, or be present at the residence of the primary caregiver to purchase, smoke, consume, obtain or receive possession of any marijuana.
- h. Except for the primary caregiver, no other person shall deliver marijuana to the qualifying patient.
- i. No one under the age of 18 years shall have access to medical marijuana.
- j. No on-site consumption or smoking of marijuana shall be permitted within the dwelling (or on the property) of a primary caregiver, except for lawful medical marijuana consumption by the primary caregiver if registered as a qualifying patient under the MMMA.
- k. Medical marijuana shall not be grown, processed, handled or possessed at the dwelling of the primary caregiver beyond that which is permitted by law.

- l. All necessary building, electrical, plumbing and mechanical permits shall be obtained for any portion of a building or structure in which equipment and devices that support the cultivation, growing or harvesting of marijuana are located or used.
- m. If marijuana is grown or located in a room with windows, all interior lighting shall be shielded to prevent ambient light from creating a distraction for adjacent properties.
- n. Related merchandise or products shall not be sold or distributed from the dwelling or property of the primary caregiver, apart from the permitted quantity of medical marijuana.
- o. To ensure compliance with all applicable requirements and laws, the portion of a building or other structure, such as a cultivation room, where energy use and heating requirements exceed typical residential limits and chemical storage occurs, are subject to inspection and approval by the zoning administrator or other authorized official.
- p. In addition all other applicable requirements, codes and laws, any portion of a building or other structure, such as a cultivation room, or facility including a "Enclosed, locked facility" as defined by the MMMA, used for the growth or storage of marijuana, are subject to inspection and approval by the zoning administrator, code officials, or other authorized official including the Fire Chief acting on behalf of the City. Under this provision, a structure means any structure or facility constructed, placed or erected for growth of marijuana.
- q. The applicant caregiver shall provide on a form, approved by the City, the following information:
 - i. Site Plan: Prior to construction of any structure or enclosed facility for the purpose of growing marijuana, the property owner, agent or designee shall provide the zoning official a site plan which will include the location of the structure, the size of the structure, and the type of materials to be used in construction.
 - ii. Plan for odor control.
 - iii. Plumbing, mechanical, and energy plans: The property owner, agent or designee shall provide the zoning official, a plumbing, mechanical, and energy plan details of any building, facility or structure used for the growth of marijuana. The site plan shall also include the type, amount and location of stored chemicals.
 - iv. Electrical Plans and specifications: An applicant shall submit a detailed set of electrical plans and specifications with the application for an electrical permit for any wiring or alteration to an electrical system if the system requires installation of electrical equipment that has an ampacity of more than 200 amperes for the service. The electrical drawings shall include all of the following details:
 - (a) Lighting layout.
 - (b) Circuiting.
 - (c) Switching.
 - (d) Conductor and raceway sizes.
 - (e) Wattage schedule.
 - (f) Service location and riser diagram.
 - (g) Load calculations and available fault current calculations.

- (h) A proposed method of construction that is drawn with symbols of a standard form.
 - (i) The plans shall include the selection of suitable disconnect and overcurrent devices to provide proper coordination and interrupting capacity for a wiring system is the responsibility of the designer. The City when approving electrical plans, does not assume responsibility for the design or for any deviations from any electrical drawings. The permit holder shall ensure that the plans and specifications approved by the enforcing agency, or a certified copy of the plans and specifications, where required, are available on the site for the use of the enforcing agency.
- v. Excluded from requirements in the plans are fences, sidewalks, and paving on streets, driveways, parking areas and patios.
- r. Setbacks-: Any portion of a building or other structure, such as a cultivation room, or facility including a "Enclosed, locked facility" as defined by the MMMA, shall meet the setback requirements from adjacent property lines as defined and stated for each district allowing the home occupation under this zoning ordinance. No structure shall attach to any other structure on a neighboring property or cause a nuisance onto a neighboring property.
- s. No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors or electrical interference detectable to the normal senses which interferes with neighboring parcels use and quiet enjoyment of land. 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 line voltage off the premises or interferes with neighboring parcels use and quiet enjoyment of land.
- t. There shall be no open burning of marijuana. Other debris burn may require a burn permit.

Section 152.400.3: The operations of a registered primary caregiver, as a home occupation, shall be permitted only with the prior issuance of a City permit:

- a. A complete and accurate application shall be submitted on a form provided by the City and an application fee in an amount determined by resolution of the City Council shall be paid.
- b. The permit application shall include the name and address of the applicant; the address of the property; proof, such as a driver's license, voter registration card or similar record showing that the dwelling is the applicant's full-time residence; a current state registration card issued to the primary caregiver; a full description of the nature and types of equipment which will be used in marijuana cultivation and processing; and a description of the location at which the use will take place. The zoning administrator may require additional information necessary to demonstrate compliance with all requirements. The zoning administrator shall review the application to determine compliance with this Ordinance, the MMMA and the MMMA General Rules. A permit shall be granted if the application demonstrates compliance with this Ordinance, the MMMA and the MMMA General Rules.

- c. The use shall be maintained in compliance with the requirements of this Ordinance the MMMA and the MMMA General Rules. Any departure shall be grounds to revoke the permit and take other lawful action. If a permit is revoked, the applicant shall not engage in the activity unless and until a new permit is granted.
- d. 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 City, 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 152.400.4: It is unlawful to establish or operate a for-profit or nonprofit marijuana dispensary, collective or cooperative within the City, even if such use is intended for the medical use of marijuana.

Section 152.400.5: The use of the dwelling or other permitted facility of a qualifying patient to cultivate medical marijuana in accordance with the MMMA, solely for personal use, does not require a permit under this subsection; however, all applicable state laws and City ordinance requirements must be met.

Section 152.400.6: The provisions of this subsection do not apply to the personal use and/or internal possession of marijuana by a qualifying patient in accordance with the MMMA, for which a permit is not required.

Section 152.400.7: Civil Forfeiture:

- a. Any drug paraphernalia used, sold, possessed with intent to use or sell, or manufactured with intent to sell, in violation of this Ordinance shall be seized and forfeited to the City of Brown City, Michigan.
- b. Any marijuana, aka marihuana, sold or possessed with intent to sell in violation of this Ordinance shall be seized and forfeited to the City of Brown City, Michigan.

Section 152.300.8: Violations:

- a. Nuisance per se. Except as otherwise provided by law, a use of land or a dwelling, building, or structure, including a facility used to grow or store marijuana in violation of a zoning ordinance is a nuisance per se.
- b. Violation of this Ordinance shall be enforced as a nuisance pursuant to MCL 125.3407-Certain violations as nuisance per se, enforceable in a court of competent jurisdiction. The court shall order the nuisance abated, and the owner or agent in charge of the dwelling, building, structure, tent, recreational vehicle, or land is liable for maintaining a nuisance per se.

Section 152.300.9: Nonuse Variance:

- a. The zoning board of appeals may grant a non-use variance as an administrative appeal, in the spirit of the zoning ordinance is observed, public safety secured, and

substantial justice done, and the Michigan Zoning Enabling Act 110 of 2006 as amended.

Section 152.300.10 Severability:

- a. If any portion of this Ordinance or the application thereof to any person is adjudged to be invalid by a court of competent jurisdiction, such determination shall not affect the validity of any other portion of this Ordinance, or the application to any other portion of this Ordinance to any such person or other persons.

Section 152.300.11 Effective Date of Ordinance:

- a. This Ordinance shall take effect 30 days after adoption.

INTRODUCTION:

This Ordinance was introduced by Councilmember Christine Lee on October 12, 2020, during a Regular Meeting of the City Council. The Public Hearing thereon was held by the Brown City Planning Commission on October 1, 2020.

MOTION AND VOTE:

Moved By Councilmember Eugene Navock, Seconded By Councilmember Christine Lee, to adopt Ordinance Section 152.400 - Providing For Cultivation Or Other Medical Use Of Marijuana As A Medical Marijuana Home Occupation In Single-Family Dwellings, Their Location, Definitions, Conditions And Standards, And Civil Forfeiture, To Provide For Violations And Penalties, Severability, And Effective Date.

Roll Call vote on this Ordinance 152.400 with six (6) members being present, was as follows:

CM Biel-yes, CM Jacobson-yes, CM Lee-yes, CM McIvor-yes, CM Navock-yes, CM Robison-yes.

Yeas: _____ 6 _____ Nays: _____ 0 _____
Abstaining: _____ 0 _____ Absent: _____ 0 _____

CERTIFICATION:

I hereby certify that the foregoing constitutes a true and complete copy of Brown City Code Section 152.400 and 152.500 adopted as an Ordinance by the Brown City Council at a Regular Meeting of the City Council held at the City Hall on the 26th day of October, 2020.

I do hereby further certify that the said Brown City Code Section 152.300 was published as required by the Brown City Charter in *The Sanilac County News*, a newspaper published and circulated in the City of Brown City, County of Sanilac, Michigan, on the 4th day of November, 2020.

Witness my official signature this _____ day of November, 2020.

Juanita M. Smith
City Clerk