

**CITY OF HUNTINGTON WOODS
ORDINANCE NO. _____**

ORDINANCE TO AMEND THE CODE OF ORDINANCES FOR THE CITY OF HUNTINGTON WOODS, CHAPTER 40, ZONING, ARTICLE 5, SPECIFIC USE PROVISIONS, TO AMEND SECTION 40-5.03, HOME OCCUPATIONS, AND SECTION 40-5.04, MEDICDAL MARIHUANA AND MARIHUANA, TO ADD NEW PROVISIONS FOR MEDICAL MARIHUANA HOME OCCUPATIONS/RECREATIONAL MARIHUANA; AND TO PROVIDE PENALTIES FOR VIOLATIONS THEREOF.

THE CITY OF HUNTINGTON WOODS ORDAINS:

Section 1 of Ordinance. Ordinance Amendment.

Chapter 40, Zoning, Article 5, Specific Use Provisions, Section 40-5.03, Home Occupations, of the Code of Ordinances of the City of Huntington Woods, shall be amended to read as follows:

Section 40-5.03 Home Occupations

- A. Purpose. It is the intent of this section to permit the owner, lessee, or other persons who have legal right to use of the dwelling unit to also have the ability to conduct a home occupation without securing special permission to do so. However, such person shall be subject to all conditions which are applied in this chapter generally, such as off-street parking, and to all other business licenses. It is also the intent of this section to eliminate as home occupations all uses except those that conform to the standards set forth in this chapter. Custom and tradition are intentionally excluded as criteria. In general, a home occupation is an accessory use so located and conducted that the average neighbor, under normal circumstances, would not be aware of its existence other than for a nameplate as permitted elsewhere in this chapter. The standards for home occupations in this chapter are intended to ensure compatibility with other permitted uses and with the secondary or incidental status in relation to the residential use of the main building.
- B. Medical Marihuana Home Occupations/Recreational Marihuana
1. 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.

The Stille-Derossett-Hale Single State Construction Code Act, 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 enforce 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 where a patient or a caregiver has made alterations to a structure to support the cultivation of marihuana.

The City is taking these steps to curtail problems associated with insufficient or improper electrical supplies, problems with ventilation leading to mold, offensive odors, other health hazards and/or other hazards that are associated with the cultivation of marihuana in structures, particularly in residential settings.

The Michigan Zoning Enabling Act, MCL 125.3101, *et seq.* (MZEA), provides the City with statutory authority to regulate land use within the City through its Zoning Ordinance. The Michigan Supreme Court in the recent case of *DeRuiter v Byron Township*, 505 Mich 130 (2020), found that a city'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.

This article is intended to permit those persons in need of marihuana for medicinal purposes allowed under the MMMA 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 MMMA and MZEA, and the geographical restrictions imposed by the Zoning Ordinance in order to protect the public health, safety, and welfare.

This article is also intended to recognize the rights of individuals 21 years of age and older to use, possess, store, consume, process or cultivate marihuana (referred to collectively as the "use of recreational marihuana") in their residence in accordance with the as provided in the Michigan Regulation and Taxation of Marihuana Act (MRTMA), MCL 333.27952, *et seq.*, as amended

This article is further intended to protect and preserve the public health, safety, and welfare of the City, the quality of life and stability of property values, including, but not limited to, the value of residential districts.

2. The acquisition, possession, cultivation, use, delivery or distribution of marihuana to treat or alleviate a debilitating medical condition, and the use of recreational marihuana, is permitted as a home occupation in the R-1A, R-1B, R-1C, R-1D, and R-1E Districts in compliance with the MMMA and the following:
 - a. Medical marihuana for registered qualifying patients or the use of recreational marihuana by an individual 21 years or older. Registered qualifying patients, or visiting qualified patients, and individuals 21 years or older, may use, possess, cultivate, and store medical marihuana as provided in the MMMA, as amended, and recreational marihuana as

provided in the Michigan Regulation and Taxation of Marihuana Act (MRTMA), MCL 333.27952, *et seq.*, as amended, and as further regulated herein.

- (1) A registered qualifying patient (medical marihuana) and individuals 21 years of age or older (recreational marihuana):
 - i. May use, possess, cultivate and store marihuana in their principal residence within the City for personal use only, and shall comply at all times and in all circumstances with the MMMA or, the MRTMA, as applicable, 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.
 - ii. May only cultivate marihuana for him/herself in compliance with the MMMA or the MRTMA, as applicable, on property zoned R-1A, R-1B, R-1C, R-1D, and R-1E, 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 the individual 21 years or older residing in the home.
 - iii. All necessary building, electrical, plumbing, and mechanical permits shall be obtained for any alterations or any portion of the structure in support of or in association with the cultivation of marihuana.
 - iv. The storage of any chemicals, such as herbicides, pesticides, and fertilizers shall be subject to inspection and approval by the City of Huntington Woods Building Department.
 - v. The separation of a plant resin from a marihuana plant by butane extraction or any other method that utilizes a substance with a flash point below 100 degrees Fahrenheit, in any public place, a motor vehicle, inside a residential structure, or the curtilage of a residential structure is prohibited.
 - vi. If a room with windows is utilized as a marihuana cultivation location, any lighting methods that exceed usual residential levels 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.

- vii. If the registered patient, or individual 21 years or older is not the owner of the premises, then written and notarized consent must be obtained from the property owner to ensure the owner's knowledge of the use of the premises as permitted under this section, and the registered patient and individual 21 years or older shall maintain written proof that the use of the property under this section is approved by the property owner. The premises in this subparagraph shall be the principal residence of the registered patient or individual 21 years or older.
- viii. No person other than the registered patient, or individual 21 years or older residing in the home, shall be engaged or involved in the growing, processing or handling of marihuana.
- ix. Use of the registered patient's residence for medical marihuana or the use of an individual 21 years or older's residence for recreational marihuana shall be clearly incidental or subordinate to its use for residential purposes. Any modifications to the dwelling unit 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 process or for distribution of medical or recreational marihuana.
- x. No equipment or process shall be used in growing, processing, or handling medical or recreational marihuana which creates noise, vibration, glare, light, fumes, odor, or electrical interference detectable to the normal senses at or beyond the property line of the registered patient's or individual over the age of 21's residential property. In case of electrical interference, no equipment or process shall be used that creates visual or audible interference with any radio, television, or similar receiver off the premises or causes fluctuation of line voltage off the premises.
- xi. The registered qualifying patient, individuals over the age of 21, and the owners, agents, and employees of the property which marihuana for personal or medical use is present are responsible jointly and severally for compliance with this section.

- b. A registered primary caregiver, operating in compliance with the MMMA and applicable rules, may be permitted as a home occupation, only in accordance with the following standards and requirements:
- (1) Cultivation or other medical use of marihuana as a medical marihuana home occupation is limited to single-family, detached dwellings located in the R-1A, R-1B, R-1C, R-1D, and R-1E districts.
 - (2) A registered primary caregiver operating a medical marihuana home occupation must not be located within 1,000 feet of any school, childcare facility, community center, youth center, playground, public or private library, housing facility owned by a public housing authority, and place of worship as measured from the outer most boundaries of the lot or parcel on which the medical marihuana home occupation and restricted facility is located.
 - (3) The home occupation shall not be located within 500 feet of another registered caregiver.
 - (4) Not more than one primary caregiver within a single dwelling unit shall be permitted to serve qualifying patients.
 - (5) 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% of the total square footage of the residence, including the basement, shall be used for the purposes of the home occupation. The home occupation shall be carried out completely within the confines of such dwelling. No accessory building, attached or detached, shall be used in the home occupation.
 - (6) Except for lighting, heating, watering, drying, or other equipment, or fertilizers, herbicides, or other chemicals directly related to the medical use of marihuana, no other materials or equipment not generally associated with normal ownership, use, and maintenance of the dwelling shall be permitted.
 - (7) A qualifying patient shall not smoke or consume marihuana at the dwelling of the primary caregiver marihuana.
 - (8) If marihuana 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.
 - (9) If the primary caregiver is not the owner of record of the dwelling in which a registered primary caregiver of medical marijuana is functioning as a home occupation, the primary caregiver must gain written and notarized consent from the owner to use the dwelling for

the medical marihuana home occupation. At any time, the City may request proof that the primary caregiver has consent from the property owner of record to use the dwelling for a medical marihuana home occupation. The premises in this subparagraph shall be the principal residence of the primary caregiver.

- (10) To ensure compliance with all applicable requirements and laws, the portion of the structure, such as a cultivation room, where energy use and heating requirements exceed typical residential limits and chemical storage occurs, it is subject to inspection and approval by the building official, fire marshal, or other authorized City officials.
- (11) The property, dwelling, and all enclosed lot facilities shall be available for inspection upon request by the building official, fire marshal, or other authorized officials.
- (12) The registered primary caregiver is responsible for utilizing an enclosed, locked facility 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, or 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 is permitted only by registered primary caregivers and registered qualifying patients.
- (13) The registered primary caregiver may grow up to the maximum of 72 plants, but no more than 12 plants for each individual registered qualifying patient as set forth in the MMMA.
- (14) The registered primary caregiver is responsible for providing the security necessary to ensure the growing marihuana and usable product are accessible for use only by the registered primary 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.
- (15) A certificate of occupancy is required and must be obtained from the City before the primary caregiver establishes the home occupation or provides any services to a registered qualifying patient. marihuana.
- (16) The consumption, transfer, or use of marihuana in public, or place open to the public, is prohibited.

3. It is unlawful to establish or operate a for-profit or non-profit marihuana dispensary, collective, or cooperative within the City, even if such use is intended for the medical use of marihuana.
4. Medical marihuana provisioning centers, safety compliance facilities, dispensaries, cooperatives, marihuana establishments, and any other operation or facility similar in nature are specific prohibited within the City.

C. Home Occupations Other Than Medical Marihuana/Recreational Occupations. Home occupations are permitted accessory uses in all R1, one-family residential districts; RT, one- and two-family district; and the TD, transitional district only so long as such home occupations do not change the character of the residential district in which they are located or adversely affect the uses permitted in the residential district and meets the following conditions:

- (1) Such occupations shall be conducted entirely within the dwelling unit.
- (2) No more than 25 percent of the gross area of said residence shall be used for the home occupation purpose.
- (3) The use of accessory buildings for a home occupation is prohibited.
- (4) No use shall:
 - (a) Require internal or external alterations;
 - (b) Involve construction features; or
 - (c) Involve the use of electrical or mechanical equipment that would change the fire rating of the structure based on the International or other applicable Fire Code in which the structure is located.
- (5) No more than one (1) employee shall be permitted other than members of the immediate family resident in the dwelling unit.
- (6) There shall be no outside storage of any kind related to the home occupation.
- (7) The use may increase vehicular traffic flow and parking by no more than two additional vehicles at a time.
- (8) No use shall create noise, dust, vibration, odor, smoke, mold, glare, electrical interference, fire hazard, or any other hazard or nuisance to any greater or more frequent extent than that usually experienced in an average residential occupancy in the district in question under normal circumstances wherein no home occupation exists.
- (9) There shall be no sale of goods on the premises other than those incidental to the services performed and expressly permitted by this section.

- (10) The home occupation shall not involve the use of commercial vehicles, other than one vehicle not to exceed three-quarter-ton load carrying capacity, owned by the resident of the dwelling, which shall be parked in accordance with section 36-675i.
- (11) Deliveries to or from the premises by commercial suppliers shall not be made more than once each week, shall not restrict traffic circulation, and shall be made between the hours of 8:00 a.m. and 7:00 p.m. only.
- (12) Nameplate allowed. Only one nameplate shall be allowed. It shall not exceed one-half of one square foot in area, shall be non-illuminated and attached flat to the main structure or visible through a window. The limitation of one nameplate is intended to apply to all lots, including corner lots.
- (13) Uses that are prohibited. The following uses by the nature of the investment or operation generally require the use of electrical or mechanical equipment; generate excessive pedestrian or vehicular traffic, noise, odor, smoke, dust, vibration, mold, solid waste, etc.; have a pronounced tendency once started to rapidly increase beyond the limits permitted for home occupations as outlined in subsection 5.03.B. above; cause a potential fire hazard or other danger; have a tendency to involve or attract criminal activity; have an adverse effect upon adjacent and nearby residents; and/or impair the use and value of a residentially zoned area for residential purposes. Therefore, the uses specified in this subsection shall not be permitted as home occupations:

Auto repair, minor or major; barbershop; beauty parlor; carpentry work; dental or medical office; dealer of firearms; food processing; massage therapy; social worker, counselor, psychologist or psychiatrist; painting of vehicles, trailers or boats; photo developing; private school with organized classes; electronics repair; and upholstering.

- (14) Uses that may qualify as a home occupation with approval as a Special Use. The following are examples of uses which may qualify as home occupations with approval by the Planning Commission as a Special Use:

Bakers; confectionery; dance instruction; photo studio; food preparation; offices of a landscaper; locksmith or other tradesmen, and other uses similar to those listed herein.

No Special Use for a home occupation shall be granted by the Planning Commission unless it finds that:

- (a) The proposed home occupation meets all the conditions and requirements set forth in subsection 40-5.03.B of this section;
- (b) The proposed home occupation meets any other conditions and requirements applicable to a particular home occupation;

- (c) The proposed home occupation is not likely to be dangerous or detrimental to residents of the neighborhood or contrary to public health, safety, morals or general welfare;
- (d) The proposed home occupation and its location will be desirable to the public convenience or welfare and consistent with the spirit and purpose of this section;
- (e) The proposed home occupation will preserve the residential character of the affected neighborhood;
- (f) The proposed home occupation will not result in on-street parking requirements, traffic congestion or hazardous traffic conditions; and
- (g) The proposed home occupation is consistent with and complies with the intent and purposes of this chapter, the Huntington Woods Master Plan and other statutorily authorized and properly adopted city planning documents, other applicable ordinances, and state and federal statutes.

D. Any home occupation carried on in violation of the provisions of this chapter is hereby declared to be nuisance per se and is subject to the penalties set forth in Section 40-3.08.

Section 2 of Ordinance. Ordinance Amendment.

Chapter 40, Zoning, Article 5, Specific Use Provisions, Section 40-5.04, Medical Marihuana and Marihuana, of the Code of Ordinances of the City of Huntington Woods, shall be amended to read as follows:

Section 40-5.04 Medical Marihuana and Marihuana

- A. Uses of land or buildings or structures for commercial uses or purposes that are prohibited by or contrary to federal, state or local regulations and ordinances are expressly prohibited in any zoning district within the City. Medical marihuana provision centers, safety compliance facilities, dispensaries, cooperatives, and any other operation or facility similar in nature, are specifically prohibited.
- B. The City of Huntington Woods hereby prohibits all marihuana establishments pursuant to the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, MCL 333.27951 et seq., as may be amended, within the boundaries of the City.

Section 3 of Ordinance. Repealer.

All ordinances, parts of ordinances, or sections of the City Code in conflict with this Ordinance are repealed only to the extent necessary to give this Ordinance full force and effect.

