

City of Grand Rapids

Frequently Asked Questions About Medical Marihuana

March 6, 2010

BACKGROUND

On November 4, 2008, Michigan voters approved by initiative the Medical Marihuana Act, which took effect on December 4, 2008, to enable certain specified persons to legally obtain, possess, cultivate/grow, use, and distribute marihuana. The Michigan Department of Community Health adopted rules to implement the Act on April 4, 2009. The Act does not specify how patients and caregivers may acquire marihuana for medical purposes or address how medical marihuana would be dispensed by caregivers. The Act also conflicts with federal law. There are numerous questions surrounding medical marihuana. It is expected that as time passes, court decisions or new state law may resolve a number of issues. The responses below are based on current thinking on the topic and may be subject to change.

Electronic Links:

[Michigan Medical Marihuana Act](#)
[Administrative Rules, effective April 4, 2009](#)

FREQUENTLY ASKED QUESTIONS

Please find below a series of questions and answers regarding medical marihuana in the City of Grand Rapids. Some answers were, in part, derived from the FAQ issued by the Michigan Department of Community Health.

Q: Why is the City of Grand Rapids allowing medical marihuana in my community?

A: 63% of voters statewide and in Grand Rapids voted to legalize the use of marihuana by qualifying patients who have a debilitating medical condition, as described on an attending physician's statement. The City of Grand Rapids feels compelled to recognize the desire of the electorate to allow marihuana on a limited basis to persons who may benefit from the medicinal use of marihuana.

Q: Why is the City passing an ordinance regarding medical marihuana?

A: The Michigan Medical Marihuana Act is silent on the dispensation of medical marihuana. Prior to any recommendation, City staff and consultants considered various proposed distribution methods, the lack of direction in the Act, the challenges experienced by other communities, the desire to provide reasonable access to medical marihuana, the potential impacts on the general character of the community, and shrinking public safety resources. At this point in time, it was determined that the best approach would be to allow registered caregivers to operate as a home occupation – essentially allowing only the small, personal service the Act contemplates.

Q: Does the City Grand Rapids allow dispensaries?

A: No, dispensaries are not allowed. The Michigan Medical Marihuana Act essentially describes an intimate relationship between a registered caregiver and a qualifying patient. Commercial activities are not permitted as a caregiver is prohibited from "selling" the marihuana to a patient. There is no mention or rules for dispensaries in the Act, therefore, it is the position of the City of Grand Rapids that dispensaries are not an option for consideration. This position is in alignment with that of the Michigan Department of Community Health, which has stated: *"The "Michigan Medical Marihuana Act" does not specifically address marijuana dispensaries. Similar laws in other states, however, do address them and allow dispensaries. In states where the law addresses marijuana dispensaries, the law establishes*

a system to regulate those facilities. Since the law in Michigan does not address dispensaries or offer any regulating system for them, the Michigan Department of Community Health interprets the law as saying that it is illegal to operate a marijuana dispensary.” ~ James McCurtis, Jr., Public Information Officer, Michigan Department of Community Health.

Q: Are growing cooperatives allowed in the City of Grand Rapids?

A: No, such cooperatives are not allowed. The Michigan Medical Marihuana Act, like dispensaries, does not address cooperatives. In addition, there is no agricultural zoning within the City which would allow large-scale agricultural activities to occur.

Q: Could medical marihuana be distributed through pharmacies and doctor’s offices?

A: No. This approach was contemplated by the City of Grand Rapids. However, a number of concerns arose regarding “shades of gray” and how such an approach could be managed if a doctor or pharmacist could not be in contact with the drug. The federal government classifies marihuana as a Schedule 1 drug, which means that licensed medical practitioners and pharmacists cannot prescribe or distribute it. A physician may provide written certification of a "debilitating medical condition" and can only recommend the use of medical marihuana.

Q: Can I open a doctor’s office to provide written certifications in Grand Rapids?

A: Yes, a doctor may open an office to see patients who may be eligible as a qualifying patient as defined in the Michigan Medical Marihuana Act. Typical medical office use would be expected, not to include dispensing. Medical offices are permitted in specified zone districts, therefore, zoning review is suggested to ensure compliance with local regulations.

Q: Why is the City of Grand Rapids failing to see the potential for revenue that medical marihuana offers in the form of more tax dollars?

A: The Medical Marihuana Act is not intended to provide economic development or entrepreneurial opportunities. It was intended to enable a registered caregiver to provide personal services to up to a handful of registered qualifying patients or to allow registered qualifying patients to cultivate up to a dozen plants for their own use. Moreover, there could be no tangible economic benefit to the City of Grand Rapids from the dispensing of medical marihuana. State law prohibits a local community from taxing any one particular item. The Michigan Medical Marihuana Act prohibits the “sale” of marihuana, but allows payment for a “service,” so no sales tax can be collected. Furthermore, the state’s current taxing structure does make this type of service taxable.

Q: Does a registered caregiver need permission to operate in the City of Grand Rapids?

A: Yes, a registered caregiver must be licensed by the City Clerk in order to service any qualifying patients. The license application will be routed to various city departments to insure compliance with zoning requirements, proper life safety and security measures, and building code requirements. If a caregiver will be growing marihuana in his/her home, a site inspection may be required to ensure that the occupants of the home are protected from fire, structural damage, black mold, or other potential hazards and to ensure any marihuana operations are secured as provided in the Act.

Q: Is a qualifying patient required to register with the City of Grand Rapids?

A: No, qualifying patients do not need to register with the City of Grand Rapids. There are no restrictions placed upon qualifying patients under than those rules imposed by the Michigan Medical Marihuana Program of the Department of Community Health and the Act.

Q: Will a public notice be sent out if I apply for a home occupation license?

A: No, the City of Grand Rapids does not send out public notices for home occupations.

Q: Will caregiver locations in Grand Rapids be provided to the public?

A: No, this information will not be provided to the public. City Attorney Catherine Mish has publicly committed that, absent a court order, registered caregivers' addresses would not be released. This practice is similar to the Michigan Department of Community Health, which maintains a confidential list of "approved caregivers" to whom the department has issued registry identification cards. Individual names and other identifying information is confidential and not subject to disclosure, except to authorized employees of various city departments as necessary to perform official duties.

Q: As a legal home occupation, will I be exempt from Federal prosecution?

A: The Michigan Medical Marihuana Act neither protects marihuana plants or other possessions from seizure nor individuals from prosecution if the federal government chooses to take action against patients or caregivers under the Federal Controlled Substances Act.

Q: If I live within 1,000 feet of a school, known as a "drug free zone," can I operate as a registered caregiver?

A: The City of Grand Rapids Zoning Ordinance does not allow registered caregivers as a home occupation within 1,000 feet of a school as it would be in violation of State and Federal drug free zone laws.

Q: Will the Grand Rapids Police Department subject a caregiver to regular searches?

A: No. The Police Department has no desire to regularly search an individual's home. One benefit of knowing caregiver locations is to prevent unnecessary search and seizure operations from occurring. If a caregiver is operating within the parameters of the law then there will be no need to execute a search warrant or other mechanisms that would be disruptive or intrusive. At the present time, the Grand Rapids Police Department has no way of knowing a caregiver's location, which places both the caregiver and officers at risk of being in harm's way.

Q: Where can I obtain medical marihuana or a registered caregiver in Grand Rapids?

A: The City of Grand Rapids and the State of Michigan's Michigan Medical Marihuana Program (MMMP) does not locate caregivers for patients, provide referrals, identify locations for seeds or starter plants, provide advice on growing medical marihuana, or provide locations for the legal purchase of medical marihuana. There are a number of medical marihuana websites that provide information for qualifying patients regarding these services.

Q: As a qualifying patient, where can I consume medical marihuana?

A: If you are registered with the state patient registry and carrying your registry identification card, you may consume medical marihuana on your property or elsewhere. However, the law does not permit any person to do any of the following:

- (1) Undertake any task under the influence of marihuana, when doing so would constitute negligence or professional malpractice.
- (2) Possess marihuana, or otherwise engage in the medical use of marihuana: a) in a school bus; b) on the grounds of any preschool or primary or secondary school; or c) in any correctional facility.
- (3) Smoke marihuana: a) on any form of public transportation; or b) in any public place.
- (4) Operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marihuana.

AN ORDINANCE TO AMEND ARTICLE 9, SECTION 5.9.13 AND ARTICLE 16, SECTION 5.16.02.M. OF TITLE V, CHAPTER 61 OF THE CODE OF THE CITY OF GRAND RAPIDS, THE ZONING ORDINANCE

ORDINANCE NO. 2010 - _____

THE PEOPLE OF THE CITY OF GRAND RAPIDS DO ORDAIN:

Section 1. That Section 5.9.13 "Home Occupations" of Article 9, Title V, Chapter 61 of the Code of the City of Grand Rapids be amended in its entirety to read as follows:

Section 5.9.13. Home Occupations.

The regulations of this Section are intended to ensure that home occupations remain subordinate to the residential use, the residential viability of the dwelling is maintained, and shall not be a detriment to the character and livability of the surrounding neighborhood.

- A. Conformance with Zone District Requirements. The dwelling shall conform to all its Zone District requirements.
- B. Business Signs. No business sign shall be displayed on the premises.
- C. Walk-In Trade. Walk-in retail trade shall be prohibited.
- D. Customers, Clients, Students or Patients. No more than 2 customers, clients, students or patients shall be on the premises in which a home occupation is located at any one time.
- E. Business License. All home occupations shall obtain a business license from the City Clerk, if the occupant is not the owner of the premises then consent must be obtained from the property owner to ensure the owner's knowledge of the use.
- F. Space Limitations. Not more than one-fourth ($\frac{1}{4}$) of the living area of the dwelling unit and less than one-half ($\frac{1}{2}$) of the living area of the main floor shall be devoted to the home occupation. No part of an accessory structure, either attached or detached shall be used. In no instance shall one or more home occupations in any single dwelling unit permanently occupy more than three hundred (300) square feet of the dwelling unit.
- G. Exterior Alterations. Home occupations shall not require exterior alterations or involve construction features not customary in dwellings, or require the use of mechanical or electrical equipment which shall create a nuisance to the adjacent neighborhood.
- H. Interior Alterations. Any permanent structural alterations to the interior of the dwelling unit for purposes of conducting the home occupation which would render it unsuitable for residential use shall be prohibited.
- I. New Entrance Prohibited. No new external entrance to the space devoted to the occupation shall be created.
- J. Outdoor Storage. There shall be no outdoor storage of items supportive of the home occupation.
- K. Parking. The activity shall not require any additional parking.
- L. Hours of operation. Visits by customers, clients, students or patients to a premises in which a home occupation is located shall be limited to the hours of 7am to 8pm.
- M. Residency. The operator of the home occupation shall make the dwelling unit within which the home occupation is conducted his/her legal and primary place of residence, where all activities such as sleeping, eating, entertaining and other functions and activities normally associated with home life are conducted.

- N. Hazards or Nuisances. No home occupation shall be permitted which would increase traffic, fire and safety hazards, noise, dirt, odor, dust, gas, glare, fumes, vibration or other nuisance elements.
- O. Other Codes. All Building, Housing, Fire and other local or State codes and ordinances shall be adhered to for home occupations.
- P. Prohibited Occupations. Prohibited home occupations include, but are not limited to, the following:

1. Animal processing.
2. Any repair of motorized vehicles, including the painting or repair of automobiles, trucks, trailers, boats, and lawn equipment.
3. Animal hospitals or kennels.
4. Barber shops or beauty parlors.
5. Restaurants or catering/food preparation businesses; including general food handling, processing, or packaging.
6. Medical or dental offices.
7. Construction businesses or landscaping businesses that provide the storage of goods, equipment and materials to be utilized in the operation of the business or use.
8. Furniture finishing and refinishing.
9. Warehousing.
10. Welding or machine shops.

- Q. Fine Art/Craft/Music Instruction. Instruction in a fine art, craft or music is a permitted home occupation.

- R. Medical Marihuana. A registered primary caregiver, in compliance with the General Rules of the Michigan Department of Community Health, the Michigan Medical Marihuana Act, P.A. 2008, Initiated Law, MCL 333.26423(d) and the requirements of this Chapter, shall be allowed as a home occupation. Nothing in this Chapter, or in any companion regulatory provision adopted in any other provision of this Code, is intended to grant, nor shall they be construed as granting, immunity from criminal prosecution for growing, sale, consumption, use, distribution, or possession of marihuana not in strict compliance with that Act and the General Rules. Also, since Federal law is not affected by that Act or the General Rules, nothing in this Chapter, or in any companion regulatory provision adopted in any other provision of this Code, is intended to grant, nor shall they be construed as granting, immunity from criminal prosecution under Federal law. The Michigan Medical Marihuana Act does not protect users, caregivers or the owners of properties on which the 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 one-thousand (1,000)-foot radius from any school, including child care or day care facility, to insure community compliance with Federal "Drug-Free School Zone" requirements;
3. Not more than one (1) primary caregiver shall be permitted to service qualifying patients on a parcel;
4. Not more than five (5) 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 Building Official and the Grand Rapids 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 and/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 11pm to 7am 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, and the storage of any chemicals such as herbicides, pesticides, and fertilizers shall be subject to inspection and approval by the Grand Rapids Fire Department to insure compliance with the Michigan Fire Protection Code; and

Section 2. That "Definitions – M" of Article 16 of Title V, Chapter 61 of the Code of the City of Grand Rapids be amended to include the following:

"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 PAS 368, MCL 333.7106, as is referred to in section 3(d) of The Michigan Medical Marihuana Act, P.A. 2008, Initiated Law, MCL 333.26423(d). Any other term pertaining to marihuana used in this Chapter 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."

"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, P.A. 2008, Initiated Law, MCL 333.26423(d)."

"Section 3. That the effective date of this Ordinance shall be the same as the effective date of the Ordinance currently being drafted establishing a business license for home occupations provided for in Section 5.9.13.B of this Ordinance; such effective date anticipated to be July 1, 2010."

AN ORDINANCE TO ADD A NEW CHAPTER 116 ENTITLED "HOME OCCUPATION" TO TITLE VII – LICENSING AND REGULATION – OF THE CODE OF THE CITY OF GRAND RAPIDS.

ORDINANCE NO. 2010 - _____

THE PEOPLE OF THE CITY OF GRAND RAPIDS DO ORDAIN:

Section 1. That a new Chapter 116 be added to Title VII - Licensing and Regulation - of the City Code of the City of Grand Rapids to read as follows:

CHAPTER 116

HOME OCCUPATION

Sec. 7.640. - Purpose.

The services offered through a home occupation is a matter closely affecting the public interest. The public interest requires that home occupations be operated properly and in a safe, fair, honest, and competent manner by qualified persons, and is clearly incidental to or secondary to the residential use of the dwelling. Home Occupations are divided into two classes as follows:

Sec. 7.641. - Definitions.

Home Occupation - Class A. Considered an accessory use, and is personal to the applicant, is not transferable to any other person, and does not apply to any other business of the applicant. It is also intended to allow businesses that rely solely on electronic or off-premise transactions. Types in this category include, but are not necessarily limited to:

- a. Business where all work and communication is conducted over the internet, telephone, and/or electronic mail.
- b. Business where a service is provided to a client or customer, with no client or customer visitation to the business location. In these instances, the business location is used solely for bookkeeping and electronic or telephone communication with clients and customers.
- c. Business where the owner produces a product at the business location and offers it for sale or service over the internet or transports the products(s) to off-premise merchants, trade shows, flea markets, and the like for sale or service.
- d. Business where a service, which includes but is not limited to, clerical, financial, cosmetic, kitchen ware, jewelry, fine art, crafts, music instructor, tutoring of an individual, and clothing in nature is provided to a customer, and no more than 2 customers, clients, or students shall be on the premises at any one time.

Home Occupation - Class B. A conditional use intended to allow businesses that generate limited quantities of customer visitation and/or merchandise and service deliveries. These businesses may be required to comply with other codes, i.e. Building, Housing, Fire, and other local or State codes and ordinances for home occupations. The business is personal to the applicant, and is not transferable to any other person, and does not apply to any other business of the applicant. Types in this category include, but are not necessarily limited to:

- a. Business where the design, preparation, production, storage, or distribution of goods and/or services takes place at the business location.
- b. Business where not more than one-fourth (1/4) of the living area of the dwelling unit and less than one-half (1/2) of the living area of the main floor shall be devoted to the home occupation.
- c. Business where chemicals, chemical compounds, fertilizer, combustible materials, corrosive, butane, nitrous oxide or flammable products are used.
- d. Business where a service, which includes but is not limited to, hydroponic growing operation, bed and breakfast establishments, taxidermy, medical marihuana caregiver, and agricultural activities in nature is provided to a customer.
- e. No more than 2 customers, clients, students, or patients shall be on the premises at any one time. This provision shall not apply to bed and breakfast establishments, which shall comply with Chapter 161, Section 5.9.07 of this Code.

Sec. 7.642. – Home Occupation Fire Safety Requirements.

Home occupations as defined by this chapter are required to install and maintain single-station or multiple-station smoke alarms in the place of residence, as specified in Chapter 169 of this Code. Home occupations are further required to install and maintain at least one fire extinguisher that is properly selected, installed, and maintained in a conspicuous and unobstructed location(s) in the residence.

Sec. 7.643. – Home Occupation License Required.

No person shall operate any Home Occupation – Class B business unless a license therefore has been obtained as provided for in this Chapter.

Sec. 7.644. – Application for Home Occupation License.

Any person desiring a license to operate a Home Occupation – Class B business in the City of Grand Rapids shall pay an application fee as provided for in Chapter 92 of this Code and, after paying the application fee, shall file an application for a Home Occupation – Class B License with the City Clerk. The application shall be in a form provided or prescribed by the City Clerk and shall require such information to be provided under oath or affirmation as the City Clerk deems necessary to a fair determination of the applicant's ability to provide home occupation service to the public

in a safe, fair, honest and competent manner and to comply with the provisions of this Code and other applicable Federal, State and local laws, or ordinances, rules and regulations. The applicant may also be required to furnish such other information under oath as the Clerk may deem necessary.

Sec. 7.645. – License Fee.

No Home Occupation – Class B license shall be issued unless the fee provided for in Chapter 92 of this Code shall have been paid.

Sec. 7.646. - Issuance of License.

If, after investigation, the City Clerk shall be reasonably satisfied that the applicant has complied with the requirements of this Code and all other applicable laws, statutes, rules and regulations, and if the proper fee shall have been paid, the City Clerk shall issue a license for a Home Occupation –Class B License.

Sec. 7.647. - Transfer Prohibited.

No Home Occupation – Class B License may be sold, assigned, mortgaged or otherwise transferred.

Sec. 7.648. - Grounds for Denial, Suspension or Revocation of a Home Occupation License.

Any violation of this Chapter, of Chapter 61 of this Code, or of the laws of this State or any other State relating to the operation of a home occupation business may be considered sufficient grounds for the denial of a license or the suspension or revocation of a license issued pursuant to the provisions of this Chapter. These grounds for denial, suspension or revocation of a license provided for in this Chapter shall be in addition to other grounds for denial, suspension or revocation of licenses or permits provided for in Chapter 91 and elsewhere in this Code.

Sec. 7.649. - Compliance with Other Laws.

All persons holding a license issued pursuant to the provisions of this Chapter shall comply with all applicable Federal, State and local laws, ordinances, rules and regulations. Failure to comply may be considered sufficient grounds for the denial of a license or the suspension or revocation of a license issued pursuant to the provisions of this Chapter.

Sec. 7.650. - Conflicts with Other Laws or Regulations.

If any provision of this Chapter differs from a provision of any other applicable law, ordinance, rule or regulation, both the provision of this Chapter and the differing provision shall apply if possible. If the two (2) provisions are in conflict, then the provision establishing the higher or stricter standard shall apply.

Sec. 7.651. – No Immunity or Indemnification from Federal Law.

A registered primary caregiver, in compliance with the General Rules of the Michigan Department of Community Health, the Michigan Medical Marihuana Act, P.A. 2008, Initiated Law, MCL 333.26423(d) and the requirements of this Chapter, shall be allowed as a home occupation. Nothing in this Chapter, or in any companion regulatory provision adopted in any other provision of this Code, is intended to grant, nor shall they be construed as granting, immunity from criminal prosecution for growing, sale, consumption, use, distribution, or possession of marihuana not in strict compliance with that Act and the General Rules. Also, since Federal law is not affected by that Act or the General Rules, nothing in this Chapter, or in any companion regulatory provision adopted in any other provision of this Code, is intended to grant, nor shall they be construed as granting, immunity from criminal prosecution under Federal law. The Michigan Medical Marihuana Act does not protect users, caregivers or the owners of properties on which the medical use of marihuana is occurring from Federal prosecution, or from having their property seized by Federal authorities under the Federal Controlled Substances Act.

Sec. 7.652-7.670. - Reserved.