AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF THE CITY OF PORTAGE, MICHIGAN BY AMENDING SECTION 42-262, 42-280, and 42-281 OF ARTICLE 4, DIVISION 4, AND SECTION 42-129 ARTICLE 4, DIVISION 3, OF CHAPTER 42, LAND DEVELOPMENT REGULATIONS

THE CITY OF PORTAGE ORDAINS:

That Chapter 42 shall be amended to add Section 42-262(B)(16) to Article 4, Division 4, Zoning Districts and District Regulations, as follows:

CHAPTER 42. LAND DEVELOPMENT REGULATIONS.

ARTICLE 4. ZONING.

Subdivision 6. Business Districts.

Section 42-262. B-3 general business district.

A. *No change*.

B. Principal permitted uses.

1 through 15 *no change*.

16. Medical marihuana provisioning center as defined by the Medical Marihuana Facilities Licensing Act, MCL 333.27101 *et seq.*

a. The provisioning center shall not be located:

i. Adjacent to or abutting a residential zoning district; and

ii. Within 1000 feet from the real property comprising a public or private elementary, vocational or secondary school or a public or private college, junior college or university, a library, a substance abuse treatment facility, a park or a playground, public or private youth center, public swimming pool, video arcade facility, recreational facility, religious institution or housing facility owned by a public housing authority; and

iii. Within 1000 feet of any other medical marihuana facility permitted under Article 11, Chapter 14 of this Code. This provision will not apply to medical marihuana facilities issued a permit under article 12, chapter 14 of this code during the initial permit application period pursuant to section 14-250 of this code. The waiver of this provision will apply so long as the property is continuously used as a provisioning center. “Continuous use” for the purposes of this provision means that the use of the property as a provisioning center has not ceased to occur for a period of 90 days or more. This separation provision will apply to medical marihuana facilities issued a permit under Article 12, Chapter 14 of this Code during all permit application periods after the initial permit application period.

iv. Measurements for purposes of subsection (B)(16)(a)(i), (ii) *and (*iii*)* above shall be made from the property boundary of the zoning lot occupied by the provisioning center to the nearest point of the property occupied by any of the uses listed above, using an uninterrupted straight line without regard to intervening structures or objects. "Zoning lot" is defined in Section 42-112 of this code. A map showing the uses and facilities listed in subsection (B)(16)(a) above, as well as the protected areas, is available for review in the department of community development at the Portage City Hall and on the city's website under the department of community development.

b. Buildings or structures for the distribution, and sale of medical marihuana and medical marihuana infused products shall comply all State of Michigan Construction Codes (building, electrical, plumbing and mechanical) in regard to occupancy classification, building design, construction and fire suppression. Medical marihuana facilities shall not be located within greenhouses and similar buildings.

c. No drive-through facilities are permitted for provisioning center facilities.

d. No alcohol or tobacco products may be sold, used, or consumed on the premises of a provisioning center. No marihuana or marihuana-infused products may be used or consumed on the premises of a provisioning center.

e. The activities and operations of the provisioning center shall be indoors within a building and out of public view.

f. The provisioning center shall be located in a single tenant building, or partitioned from any other activity or business, have a separate entrance, and have a separate HVAC system for the portion of the building occupied by the medical marihuana facility.

g. The business and operations of all marihuana facilities shall comply at all times with applicable state law and regulations, and this code.

C. *No change.*

D. *No change*.

That Chapter 42 shall be amended to add Section 42-280(B)(21), and Section 42-280(B)(22) to Article 4, Division 4, Zoning Districts and District Regulations, as follows:

CHAPTER 42. LAND DEVELOPMENT REGULATIONS.

ARTICLE 4. ZONING.

Subdivision 7. Industrial Districts.

Section 42-280. I-1 light industrial district.

A. *No change*.

B. Principal permitted uses.

1 through 20 *No change*.

21. Medical Marihuana class A, B, and C growers, and processors as those facilities are defined by the Medical Marihuana Facilities Licensing Act, MCL 333.27101 *et seq.*

a. The facility shall not be located:

i. Adjacent to or abutting a residential zoning district; and

ii. Within 1000 feet from the real property comprising a public or private elementary, vocational or secondary school or a public or private college, junior college or university, a library, a substance abuse treatment facility, park or a playground, public or private youth center, public swimming pool, video arcade facility or recreation facility or religious institution or housing facility owned by a public housing authority; and

iii. Within 1500 feet of any other medical marihuana facility permitted under Article 11, Chapter 14 of this Code. This provision will not apply to medical marihuana facilities issued a permit under article 12, chapter 14 of this code during the initial permit application period pursuant to section 14-250 of this code. The waiver of this provision will apply so long as the property is continuously used for the type of medical marihuana facility initially established on the property. “Continuous use” for the purposes of this provision means that the use of the property for the type of medical marihuana facility initially established on the property has not stopped or ceased to occur for a period of 90 days or more. This provision will apply to medical marihuana facilities issued a permit under Article 12, Chapter 14 of this Code during all permit application periods after the initial permit application period.

iv. Measurements for purposes of subsection (B)(21)(a)(i), (ii) and (iii) above shall be made from the property boundary of the zoning lot occupied by the medical marihuana facility to the nearest point of the property occupied by any of the uses listed above, using an uninterrupted straight line without regard to intervening structures or objects. "Zoning lot" is defined section 42-112 of this code. A map showing the uses and facilities listed in subsection (B)(21)(a) above, as well as the protected areas, is available for review in the department of community development at the Portage City Hall and on the city's website under the department of community development.

b. Buildings or structures for the growing, production or processing of medical marihuana shall comply all State of Michigan Construction Codes (building, electrical, plumbing and mechanical) in regard to occupancy classification,

building design, construction and fire suppression. Medical marihuana facilities shall not be located within greenhouses and similar buildings.

c. No drive-through facilities are permitted for medical marihuana facilities.

d. No alcohol or tobacco products may be sold, used, or consumed on the premises of a medical marihuana facility. No marihuana or marihuana-infused products may be used or consumed on the premises of a medical marihuana facility.

e. Marihuana grow and processing facilities shall conduct the activities of the marihuana facility, including, without limitation, the cultivating, growing, processing, manufacturing, or storage of marihuana and marihuana-infused products, and all materials used in connection with the cultivating, growing and processing of marihuana, indoors and out of public view.

f. The grow and processing facilities shall be located in a single tenant building, or partitioned from any other activity or business, have a separate entrance, and have a separate HVAC system for the portion of the building occupied by the medical marihuana facility.

g. The business and operations of all marihuana facilities shall comply at all times with applicable state law and regulations, and this code.

22. Medical Marihuana secure transporter and safety compliance facilities as those facilities are defined by the Medical Marihuana Facilities Licensing Act, MCL 333.27101 *et seq.*

a. The facility site shall not be located:

i. Adjacent to or abutting a residential zoning district; and

ii. Within 1000 feet from the real property comprising a public or private elementary, vocational or secondary school or a public or private college, junior college or university, a library, a substance abuse treatment facility, park or a playground, public or private youth center, public swimming pool, video arcade facility or recreation facility or religious institution or housing facility owned by a public housing authority; and

iii. Measurements for purposes of subsection (B)(9)(a)(i) and (ii) above shall be made from the property boundary of the zoning lot occupied by the medical marihuana facility to the nearest point of the property occupied by any of the uses listed above, using a straight line without regard to intervening structures or objects. "Zoning lot" is defined section 42-112 of this code. A map showing the uses and facilities listed in subsection (B)(9)(a) above, as well as the protected areas, is available for review in the department of community development at the Portage City Hall and on the city's website under the department of community development.

b. Buildings or structures in connection with the transport and storage of medical marihuana and medical marihuana infused products or for safety compliance facilities shall comply with all State of Michigan Construction Codes (building, electrical, plumbing and mechanical) in regard to occupancy classification, building design, construction and fire suppression. Medical marihuana facilities shall not be located within greenhouses and similar buildings.

c. No drive-through facilities are permitted for medical marihuana facilities.

d. No alcohol or tobacco products may be sold, used, or consumed on the premises of a medical marihuana facility. No marihuana or marihuana-infused products may be used or consumed on the premises of a medical marihuana facility.

e. The secure transporter facility or safety compliance facility shall be located in a single tenant building, or partitioned from any other activity or business, have a separate entrance, and have a separate HVAC system for the portion of the building occupied by the medical marihuana facility.

f. The business and operations of all medical marihuana secure transporter facilities or safety compliance facilities shall comply at all times with applicable state law and regulations, and this code.

C. *No change.*

D. *No change*.

That Chapter 42 shall be amended to add Section 42-281(B)(7), and Section 42-281(B)(8) to Article 4, Division 4, Zoning Districts and District Regulations, as follows:

CHAPTER 42. LAND DEVELOPMENT REGULATIONS.

ARTICLE 4. ZONING.

Subdivision 7. Industrial Districts.

Section 42-281. I-2 heavy industrial district.

A. *No change*.

B. Principal permitted uses.

1 through 6 *No change*.

7. Medical Marihuana class A, B, and C growers, and processors as those facilities are defined by the Medical Marihuana Facilities Licensing Act, MCL 333.27101 *et seq.*

a. The facility shall not be located:

i. Adjacent to or abutting a residential zoning district; and

ii. Within 1000 feet from the real property comprising a public or private elementary, vocational or secondary school or a public or private college, junior college or university, a library, a substance abuse treatment facility, park or a playground, public or private youth center, public swimming pool, video arcade facility or recreation facility or religious institution or housing facility owned by a public housing authority; and

iii. Within 1500 feet of any other medical marihuana facility permitted under Article 11, Chapter 14 of this Code. This provision will not apply to medical marihuana facilities issued a permit under article 12, chapter 14 of this code during the initial permit application period pursuant to section 14-250 of this code. The waiver of this provision will apply so long as the property is continuously used for the type of medical marihuana facility initially established on the property. “Continuous use” for the purposes of this provision means that the use of the property for the type of medical marihuana facility initially established on the property has not stopped or ceased to occur for a period of 90 days or more. This provision will apply to medical marihuana facilities issued a permit under Article 12, Chapter 14 of this Code during all permit application periods after the initial permit application period.

iv. Measurements for purposes of subsection (B)(21)(a)(i), (ii) and (iii) above shall be made from the property boundary of the zoning lot occupied by the medical marihuana facility to the nearest point of the property occupied by any of the uses listed above, using a straight line without regard to intervening structures or objects. "Zoning lot" is defined section 42-112 of this code. A map showing the uses and facilities listed in subsection (B)(21)(a) above, as well as the protected areas, is available for review in the department of community development at the Portage City Hall and on the city's website under the department of community development.

b. Buildings or structures for the growing, production or processing of medical marihuana shall comply all State of Michigan Construction Codes (building, electrical, plumbing and mechanical) in regard to occupancy classification, building design, construction and fire suppression. Medical marihuana facilities shall not be located within greenhouses and similar buildings.

c. No drive-through facilities are permitted for medical marihuana facilities.

d. No alcohol or tobacco products may be sold, used, or consumed on the premises of a medical marihuana facility. No marihuana or marihuana-

infused products may be used or consumed on the premises of a medical marihuana facility.

e. Marihuana grow and processing facilities shall conduct the activities of the marihuana facility, including, without limitation, the cultivating, growing, processing, manufacturing, or storage of marihuana and marihuana-infused products, and all materials used in connection with the cultivating, growing and processing of marihuana, indoors and out of public view.

f. The grow and processing facilities shall be located in a single tenant building, or partitioned from any other activity or business, have a separate entrance, and have a separate HVAC system for the portion of the building occupied by the medical marihuana facility.

g. The business and operations of all marihuana facilities shall comply at all times with applicable state law and regulations, and this code.

8. Medical Marihuana secure transporter and safety compliance facilities as those facilities are defined by the Medical Marihuana Facilities Licensing Act, MCL 333.27101 *et seq.*

a. The facility site shall not be located:

i. Adjacent to or abutting a residential zoning district; and

ii. Within 1000 feet from the real property comprising a public or private elementary, vocational or secondary school or a public or private college, junior college or university, a library, a substance abuse treatment facility, park or a playground, public or private youth center, public swimming pool, video arcade facility or recreation facility or religious institution or housing facility owned by a public housing authority; and

iii. Measurements for purposes of subsection (B)(9)(a)(i) and (ii) above shall be made from the property boundary of the zoning lot occupied by the medical marihuana facility to the nearest point of the property occupied by any of the uses listed above, using a straight line without regard to intervening structures or objects. "Zoning lot" is defined section 42-112 of this code. A map showing the uses and facilities listed in subsection (B)(9)(a) above, as well as the protected areas, is available for review in the department of community development at the Portage City Hall and on the city's website under the department of community development.

b. Buildings or structures in connection with the transport and storage of medical marihuana and medical marihuana infused products or for safety compliance facilities shall comply with all State of Michigan Construction Codes (building, electrical, plumbing and mechanical) in regard to occupancy classification, building design, construction and fire suppression. Medical marihuana facilities shall not be located within greenhouses and similar buildings.

c. No drive-through facilities are permitted for medical marihuana facilities.

d. No alcohol or tobacco products may be sold, used, or consumed on the premises of a medical marihuana facility. No marihuana or marihuana-infused products may be used or consumed on the premises of a medical marihuana facility.

e. The secure transporter facility or safety compliance facility shall be located in a single tenant building, or partitioned from any other activity or business, have a separate entrance, and have a separate HVAC system for the portion of the building occupied by the medical marihuana facility.

f. The business and operations of all medical marihuana secure transporter facilities or safety compliance facilities shall comply at all times with applicable state law and regulations, and this code.

C. *No change.*

D. *No change*.

That Chapter 42 shall be amended as follows to amend Section 42-129(C), Article 4, Division 3, General Provisions, as follows:

CHAPTER 42. LAND DEVELOPMENT REGULATIONS.

ARTICLE 4. ZONING.

Division 3. General Provisions.

Section 42-129. Home occupations.

A. *No change*.

B. *No change.*

C. *Medical marihuana home occupation*. A primary caregiver acting in compliance with the General Rules of the Michigan Department of Licensing and Regulatory Affairs ("general rules"), the Michigan Medical Marihuana Act, MCL 333.26421 et seq., (the "Act") and the requirements of this section, may be allowed as a home occupation. The conditions and requirements contained in section 42-129(A) and (B) (passive and active home occupations) shall not be applicable to medical marihuana home occupations under this section and no permit under the Portage Zoning Code is required for a medical marihuana home occupation. The following requirements for a primary caregiver as a home occupation shall apply:

1. A primary caregiver shall comply at all times and in all circumstances with the Act and the general rules of the department as they may be amended from time to time.
2. The home occupation may be conducted in a dwelling unit (as defined by the Zoning Code where no more than one primary caregiver:
    a. Cultivates up to the maximum number of marihuana plants permitted by the Act (12 for each qualifying patient);
    b. Possesses up to the maximum amount of marihuana or marihuana-infused products permitted by the Act;
    c. Assists no more than the maximum number of qualifying patients permitted by the Act (maximum of five) who have been issued and possess a registry identification card and who are connected with the primary caregiver through the department's registration process for the medical use of marihuana. Assistance to a qualifying patient by someone other than his or her designated primary caregiver is prohibited;
    d. Does not separate marihuana resin from marihuana plants by butane extraction on the premises of the medical marihuana home occupation;
    e. Does not store any chemicals such as herbicides, pesticides, and fertilizers inconsistent with the provisions of the Portage Code of Ordinances including but not limited to the International Fire Code as adopted by the code; and
    f. Does not produce or generate, in any way, noise, odor, dust, fumes, smoke, glare or comparable nuisances which would cause negative effects on surrounding property.
3. The following shall apply to a primary caregiver conducting a home occupation under this section:
    a. Considering the federal "Drug Free School Zone" requirements, the medical marihuana home occupation shall not be located:
        i. Within 500 feet from the real property comprising a public or private elementary, vocational or secondary school or a public or private college, junior college or university, or a playground, or housing facility owned by a public housing authority; or
        ii. Within 100 feet of a public or private youth center, public swimming pool, or video arcade facility.
    b. Measurements for purposes of subsection (C)(3)(a)(i) and (ii) above shall be made from the property boundary of the zoning lot occupied by the home occupation to the nearest point of the property occupied by any of the uses listed above, using a straight line without regard to intervening structures or objects. "Zoning lot" is defined by article 42, section 42-112, definitions, of the Portage Code of Ordinances, as amended. A map showing the uses and facilities listed in subsection (C)(3)(a) above, as well as the protected areas, is available for review in the department of community development at the Portage City Hall and on the city's website under the department of community development.
    c. The distance provisions of this subsection do not apply to a primary caregiver whose qualifying patient(s) (up to the maximum permitted under the Act) are permanent residents of the primary caregiver's household and whose residence is shared with the primary caregiver.

4. If the primary caregiver is not an owner of the premises, nothing contained in this section shall limit an owner of the premises from prohibiting the home occupation on the premises occupied by the primary caregiver nor limit an owner's right to pursue any private right of action allowed by law.

5. All medical marihuana plants and medical marihuana-infused products shall be contained in an enclosed, locked facility inaccessible on all sides and equipped with locks or other security devices that permit access only by the primary caregiver or qualifying patient.

6. The home occupation shall be conducted consistent with the Portage Code of Ordinances including but not limited to securing all building, electrical, plumbing and mechanical permits for any portion of the residential structure in which electrical wiring, lighting, and/or watering devices are located, installed or modified that support the cultivation, growing or harvesting of marihuana, compliance with article 4, chapter 24, noise, article 5, chapter 24, safety, sanitation and health, as well as article 14, chapter 42, Housing/Property Maintenance Code. 7. If a room with windows is utilized as a marihuana growing location, any lighting methods that exceed usual residential use 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, to prevent ambient light spillage that causes or creates a distraction or nuisance to adjacent residential properties.

7. Off street parking provided for the home occupation shall be provided on an improved driveway that fulfills the requirements of article 5, section 24-111, definitions, of the Portage Code of Ordinances, as amended. There shall be no other vehicular parking other than the off street parking facilities normally required for the residential use.

8. There shall be no sign of any nature identifying the home occupation and the use of window displays are not permitted.

9. The location and operation of a marihuana facility pursuant to the provisions of the Michigan Medical Marihuana Facilities Licensing Act, Public Act 281 of 2016, MCL 333.27101 et seq., as a home occupation is prohibited.

10. Nothing in this section, 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 the Act and the general rules and this section. To this end, the sale, distribution, cultivation, manufacture, possession, delivery or transfer of marihuana to treat a qualifying patient shall only be conducted as a home occupation, and shall not be permitted in any other zoning classification of this Zoning Code. Also, since federal law is not affected by the Act or the general rules, nothing in this section, 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. Neither this section nor the Michigan Medical Marihuana Act protects 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.

11. Definitions. As used in this section:

    a. *Marihuana.* This term shall have the meaning given to it in Section 7601 of the Michigan Public Health Code, 1978 PA 368, MCL 333.7106, as is referred to in

Section 3(d) of the Michigan Medical Marihuana Act, PA 2008, Initiated Law, MCL 333.26423(d).

b. *Marihuana-infused product.* A topical formulation, tincture, beverage, edible substance, or similar product containing any usable marihuana that is intended for human consumption in a manner other than smoke inhalation

c. *Primary caregiver.* A person who is at least 21 years old who has agreed to assist with a patient's medical use of marihuana, who has never been convicted of a felony involving illegal drugs and who has been issued and possesses a registry identification card.

d. *Qualifying patient.* A person who has been diagnosed by a physician as having a debilitating medical condition.

e. *Registry identification card.* A document issued by the department that identifies a person as a registered qualifying patient or a registered primary caregiver or a document or its equivalent that is issued under the laws of another state, district, territory, commonwealth, or insular possession of the United States that allows the medical use of marihuana by a visiting qualifying patient, or to allow a person to assist with a visiting qualifying patient's medical use of marihuana.

Dated: _____ _____

Patricia M. Randall, Mayor

FIRST READING:
SECOND READING:
ORDINANCE #:
EFFECTIVE DATE:

CERTIFICATION

I, Adam Herringa, do hereby certify that I am the duly appointed and acting City Clerk of the City of Portage and that the foregoing ordinance was adopted by the City of Portage on the _____ day of _____, 2017.

_____

Adam Herringa, City Clerk

PREPARED BY:
Charles R. Bear (P34106)
Portage City Attorney
1662 East Centre Avenue
Portage, MI 49002
(269) 323-8812

Approved as to Form:
Date: _____
_____
City Attorney

Z\jody\crbdictation\Ordinance Amend Chap 42 – Med Marihuana 121517.dox