

OSHTEMO CHARTER TOWNSHIP ORDINANCE NO. 517

Adopted: March 8, 2011

Effective: Upon Publication After Adoption

Published: March 16, 2011

OSHTEMO CHARTER TOWNSHIP ORDINANCE

An Ordinance to impose a Temporary Moratorium on the use of property and structures for dispensing and cultivating medical marihuana, and to repeal any Ordinance or parts of Ordinances or resolutions in conflict with this Ordinance.

THE CHARTER TOWNSHIP OF OSHTEMO
KALAMAZOO COUNTY, MICHIGAN
ORDAINS:

SECTION I. TITLE.

This Ordinance shall be known and may be cited as the Oshtemo Charter Township Medical Marihuana Moratorium Ordinance.

SECTION II. FINDINGS.

- (a) On November 4, 2008, Michigan voters approved a statewide legislative initiative to create the Michigan Medical Marihuana Act (MMMA) which has been codified at MCL 333.26421, et. seq., and allows the possession, use and cultivation of marihuana for the treatment of certain illnesses or conditions under certain circumstances and pursuant to certain regulations and restrictions ("medical marihuana").
- (b) The MMMA also does not contain any provision as to where and under what conditions a medical marihuana related land use can be located or if such a use can be prohibited or regulated in any particular way.
- (c) The Oshtemo Charter Township Zoning Ordinance does not provide for properties or structures to be used as facilities for dispensing marihuana or cultivating marihuana plants for medical or any other purposes, and this use was not envisioned when the Zoning Ordinance was adopted.
- (d) The Township Master Plan and the Township's general prohibition on uses not expressly permitted by the Township Zoning Ordinance must be considered in addressing whether to allow facilities for dispensing marihuana and/or cultivating marihuana plants and if allowed, where to locate such uses in the Township.
- (e) The MMMA permits registered qualifying patients and primary caregivers to possess specific amounts of marihuana and to cultivate a specific number of plants, but the MMMA does not specifically address the zoning of these activities.
- (f) The MMMA does not address that federal law at 21 USC, Section 841 makes it a crime to manufacture, cultivate or distribute the marihuana.

- (g) The Township desires to ascertain the best and safest path to compliance with the MMMA in order to protect the public health, safety and welfare.
- (h) It may be necessary to amend Township Ordinances to address these issues and further research, investigation and study by the Township is needed before specific recommendations can be made.
- (i) The Township deems it prudent and desirable to clarify any uncertainty in the Township Zoning Ordinance and other Township Ordinances regarding medical marihuana land uses and ascertain the most appropriate and safest path for the Township to address the MMMA in order to protect the public health, safety and welfare.
- (j) The Township also deems it prudent and desirable to temporarily defer any consideration or action taken by any township official and/or agent regarding rezoning, special land use, site plan, change of use, certificate of occupancy and other proposals, submissions and applications pertaining to medical marihuana land uses.

SECTION III. PROHIBITION OF USE OF PROPERTY AND STRUCTURES FOR MEDICAL MARIHUANA.

- (a) Based on the findings set forth above and for the protection of the public health, safety and welfare, the Township hereby prohibits the establishment or expansion of the use of all property and structures in the Township for the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer or transportation of marihuana or paraphernalia relating to the administration of marihuana or the cultivation of marihuana plants for medical and any other purpose and that any Township permits, licenses and approvals including, but not limited to, building permits, land use permits and certificates of occupancy for such uses be deferred for a period of 180 days from the effective date of this Ordinance.
- (b) This moratorium and prohibitions imposed hereunder shall not be applicable to the following:
 - (i) A dwelling unit (as defined by the Zoning Ordinance) where a qualifying patient resides and is cultivating up to the maximum number of marihuana plants as permitted by the MMMA for personal use or possesses up to the maximum amount of marihuana permitted by the MMMA for personal use.
 - (ii) A building or structure (as defined by the Zoning Ordinance) other than a dwelling unit where no more than one (1) qualifying patient is cultivating up to the maximum number of marihuana plants as permitted by the MMMA for personal use or possesses up to the maximum amount of marihuana permitted by the MMMA for personal use.
 - (iii) A dwelling unit or other building or structure currently being used for no more than one (1) primary caregiver who is cultivating up to the maximum number of marihuana plants as permitted by the MMMA for assisting qualified patients(s) or possesses up to the maximum amount of marihuana permitted by the MMMA for assisting a qualifying patient(s) as regulated by the MMMA, provided the primary caregiver is operating in conformance with the MMMA as of

the effective date of this Ordinance, and the caregiver can provide evidence that the cultivation was lawfully in operation prior to the effective date of this Ordinance.

- (c) The Township Board directs the Planning Department, Township Counsel and Planning Commission to continue its research, investigation and study and make specific recommendations regarding the potential regulation of marihuana for medical use which may include, but not be limited to, the dispensing of medical marihuana and cultivation of marihuana plants, as well as regulation concerning any of the uses described in Section III, (b)(i), (ii) and (iii) above.
- (d) Nothing herein shall restrict a licensed physician from prescribing medical marihuana to be used for medical purposes compliant with state law.
- (e) If any section, clause or provision of this Medical Marihuana Moratorium Ordinance shall be declared to be unconstitutional, void, illegal or ineffective by any court of competent jurisdiction, such section, clause or provision declared to be unconstitutional, void, illegal or ineffective shall thereby cease to be a part of this Medical Marihuana Moratorium Ordinance but the remainder of this Ordinance shall stand and be in full force and effect.
- (f) For the purpose of this Medical Marihuana Moratorium Ordinance, the following definitions shall apply:
 - (i) "Medical marihuana" shall mean marihuana that is used for a medical use.
 - (ii) All words and phrases in this Medical Marihuana Moratorium Ordinance shall have the meaning ascribed to them by the MMMA codified at MCL 333.26421, et. seq.

SECTION IV. EXPIRATION.

The moratorium imposed by this Ordinance shall expire the earlier of 180 days from its effective date or upon adoption by the Township of an Ordinance amendment(s) regarding the issues concerning the regulation of medical marihuana and marihuana plants.

SECTION V. PENALTY.

- (a) Any person, firm, association, partnership, corporation or entity that violates any of the provisions of this Ordinance shall be deemed responsible for a municipal civil infraction which shall be punishable by a civil fine of \$250.00.
- (b) Additionally, the violator shall pay costs which may include all expenses direct and indirect to which the Township has been put in connection with the municipal civil infraction.
- (c) Notwithstanding any other remedy, the Township shall have the right to proceed in any court of competent jurisdiction for the purpose of obtaining an injunction, restraining order or other appropriate remedy to compel compliance with this Ordinance.

- (d) Each day that a violation of this Ordinance continues to exist shall constitute a separate violation of this Ordinance.

SECTION VI. EFFECTIVE DATE; REPEAL ANY CONFLICTING PROVISIONS

This Ordinance shall take effect upon publication after adoption. All Ordinances or parts of Ordinances inconsistent with the provisions of this Ordinance are hereby repealed.

DEBORAH L. EVERETT, CLERK
OSHTEMO CHARTER TOWNSHIP

CHARTER TOWNSHIP OF OSHTEMO
KALAMAZOO COUNTY, MICHIGAN

NOTICE OF ORDINANCE ADOPTION

TO: THE RESIDENTS AND PROPERTY OWNERS OF THE CHARTER TOWNSHIP OF OSHTEMO, KALAMAZOO COUNTY, MICHIGAN, AND ANY OTHER INTERESTED PERSONS:

PLEASE TAKE NOTICE that on the 8th day of March, 2011, at a regular meeting of the Township Board of the Charter Township of Oshtemo, Kalamazoo County, Michigan, the Township Board of said Township adopted the Medical Marihuana Moratorium Ordinance No. 517, which provides, in summary, as follows:

SECTION I. TITLE.

This Ordinance shall be known and may be cited as the Oshtemo Charter Township Medical Marihuana Moratorium Ordinance.

SECTION II. FINDINGS.

- (a) On November 4, 2008, Michigan voters approved a statewide legislative initiative to create the Michigan Medical Marihuana Act (MMMA).
- (b) The MMMA also does not contain any provision as to where and under what conditions a medical marihuana related land use can be located.
- (c) The Township Zoning Ordinance does not provide for properties or structures to be used as facilities for dispensing marihuana or cultivating marihuana.
- (d) The Township Master Plan and Township Zoning Ordinance must be considered in addressing where to locate such uses in the Township.
- (e) The MMMA permits patients and caregivers to possess or cultivate a specific number of plants, but the MMMA does not specifically address the zoning of these activities.
- (f) The MMMA does not address that federal law at 21 USC, Section 841 which makes it a crime to manufacture, cultivate or distribute marihuana.
- (g) The Township desires to ascertain the best and safest path to compliance with the MMMA.
- (h) It may be necessary to amend Township Ordinances to address these issues and further research is needed.

- (i) The Township deems it prudent and desirable to clarify any uncertainty in the Township Zoning Ordinance to protect the public health, safety and welfare.
- (j) The Township also deems it prudent and desirable to temporarily defer any consideration or action taken by any township official and/or agent regarding rezoning, special land use, site plan, change of use, certificate of occupancy and other proposals, submissions and applications pertaining to medical marihuana land uses.

SECTION III. PROHIBITION OF USE OF PROPERTY AND STRUCTURES FOR MEDICAL MARIHUANA.

- (a) Based on the findings set forth above, the Township hereby prohibits the establishment or expansion of the use of all property and structures in the Township for the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer or transportation of marihuana or paraphernalia relating to the administration of marihuana or the cultivation of marihuana plants for medical and any other purpose and that any Township permits, licenses and approvals including, but not limited to, building permits, land use permits and certificates of occupancy for such uses be deferred for a period of 180 days from the effective date of this Ordinance.
- (b) This moratorium and prohibitions imposed hereunder shall not be applicable to the following:
 - (i) A dwelling unit where a qualifying patient resides and is cultivating marihuana for personal use.
 - (ii) A building or structure where no more than one (1) qualifying patient is cultivating marihuana plants.
 - (iii) A dwelling unit or other building or structure currently being used for no more than one (1) primary caregiver who is cultivating up to the maximum number of marihuana plants as permitted by the MMMA, provided the primary caregiver is operating in conformance with the MMMA and can provide evidence that the cultivation was lawfully in operation as of the date of this Ordinance.
- (c) The Township Board directs the Planning Department, Township Counsel and Planning Commission to continue its research and make specific recommendations regarding the potential regulation of marihuana for medical use.
- (d) Nothing herein shall restrict a licensed physician from prescribing medical marihuana.

- (e) If any section, clause or provision of this Ordinance shall be declared to be unconstitutional or void, the remainder of this Ordinance shall stand and be in full force and effect.

SECTION IV. EXPIRATION.

The moratorium imposed by this Ordinance shall expire the earlier of 180 days or upon adoption by the Township of an Ordinance amendment(s) regarding the use of property or structures for cultivation, delivery or transfer of medical marihuana.

SECTION V. PENALTY.

- (a) Any person who violates any of the provisions of this Ordinance shall be deemed responsible for a municipal civil infraction - civil fine of \$250.00.
- (b) Additionally, the violator shall pay costs in connection with the municipal civil infraction.
- (c) Notwithstanding any other remedy, the Township shall have the right to obtain an injunction or restraining.
- (d) Each day that a violation of this Ordinance continues to exist shall constitute a separate violation of this Ordinance.

SECTION VI. EFFECTIVE DATE; REPEAL ANY CONFLICTING PROVISIONS

This Ordinance shall take effect upon publication after adoption. All Ordinances or parts of Ordinances inconsistent with the provisions of this Ordinance are hereby repealed.

PLEASE TAKE FURTHER NOTICE that the full text of the Ordinance has been posted for public inspection at the Township Hall located at 7275 West Main Street, Kalamazoo, Michigan, 49009, and on the Township's Web Page of www.oshtemo.org

PLEASE TAKE FURTHER NOTICE that said Ordinance will take effect March 16, 2011. A copy of this Ordinance may be purchased or inspected at the office of the Township Clerk at any time during regular business hours of regular business days at the following address.

DEBORAH L. EVERETT, Clerk
Oshtemo Charter Township Hall
7275 West Main Street
Kalamazoo, MI 49009
Telephone: (269) 375-4260