



PORTAGE

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**AN EMERGENCY ORDINANCE TO TAKE IMMEDIATE EFFECT TO
AMEND THE CODE OF ORDINANCES
OF THE CITY OF PORTAGE, MICHIGAN
BY ADDING ARTICLE 11, TEMPORARY OPERATION OF
MEDICAL MARIHUANA FACILITIES OF CHAPTER 14
BUSINESSES**

THE CITY OF PORTAGE ORDAINS:

**That Chapter 14 shall be amended to add Article 11,
Temporary Operation of Medical Marihuana Facilities
of Chapter 14 Businesses.**

**ARTICLE 11. TEMPORARY OPERATION OF MEDICAL
MARIHUANA FACILITIES.**

Sec. 14-237. Intent.

A. The purpose of this Article is pursuant to the Medical Marihuana Facilities Licensing Act, MCL 223.27101, et seq., ("Act") to authorize the establishment of a certain type of Medical Marihuana Facility in the City of Portage for temporary operation.

B. Nothing in this Article, 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 the growing, sale, consumption, use, distribution or possession of marihuana in any form or manner that is not in compliance with the Michigan Medical Marihuana Act, MCL 333.26421 et seq., the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq., the Marihuana Tracking Act, MCL 333.27901 et seq., and all other applicable rules promulgated by the State of Michigan.

C. Because federal law is not affected by state law or rules, nothing in this Article, or in any companion regulatory provision adopted in any other provision of this Code, is intended to grant, nor shall any provision of this Article or this code, be construed as granting immunity from criminal prosecution under federal law. The Act does not protect patients, users, care givers 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.

D. The City, as stated in its Resolution of Intent adopted concurrently with this Emergency Ordinance, is in the process of developing, reviewing and thereafter adopting an authorizing ordinance and zoning ordinance allowing for the location(s), type(s), and number of medical marihuana facilities under the Act.

E. That such ordinance will not be adopted before December 15, 2017, which is the date the Act has established for allowing applications for a state operating license.

F. If this Emergency Ordinance is not adopted, any proposed marihuana facility that may currently be in operation within the City of Portage will be required to close its operation before making application to the state for an operating license.

G. To promote the continued operation of medical marihuana facilities that may be currently operating, the Department of Licensing and Regulatory Affairs ("LARA") has issued Emergency Rule 19, issued December 4, 2017 that sets forth certain requirements, which if satisfied, will allow the temporary operation of a proposed marihuana facility until such time it obtains a state operating license.

H. To enable and ensure the continued protection of medical marihuana patients and their access to clean and tested marihuana without disruption, Council deems this an emergency ordinance.

Sec. 14-238. Marihuana Facilities Allowed.

Pursuant to Section 205 (1) of the Act and Emergency Rule 19, and in addition to any other emergency or permanent rule passed by LARA covering the temporary operation of a proposed Medical Marihuana Facility, the City authorizes that only provisioning centers meeting the conditions in this Emergency Ordinance under the Act be permitted to temporarily operate in the City.

Sec. 14-239. Conditions.

A proposed Medical Marihuana Facility is allowed to temporarily operate in the City only under the following conditions:

A. The Medical Marihuana Facility has been in operation within the City on a continuous basis for at least one year previous to the date of adoption of this Emergency Ordinance, being December 12, 2017.

B. The proposed Marihuana Facility tests the medical marihuana sold to its customers by using an independent third party accredited laboratory.

C. The proposed Medical Marihuana Facility has been in continuous operation at the same location in a permanent building for at least the previous year before the date of adoption of this Emergency Ordinance.

D. The proposed Medical Marihuana Facility has been a commercial enterprise recognized as an ongoing business by factors such as signage, website, posted hours of operation, informational written materials and other similar items, and located in the B-3 Business District continuously for the previous year before the adoption of this Emergency Ordinance.

E. The proposed Medical Marihuana Facility has received a temporary operating permit from the City, or if required by LARA, the City Clerk is authorized to sign a LARA form attesting that a proposed Medical Marihuana Facility meets the requirements of this Emergency Ordinance.

F. The parcel on which the proposed Medical Marihuana Facility is located is not contiguous to any residential zoning district.

G. During the past six (6) months, at least one person in the City Administration has performed an official tour and/or inspection supervised and consented to by one or more principals of the Facility.

H. An owner or principal of a proposed Medical Marihuana Facility has signed an Affidavit verifying that the above conditions are satisfied.

Sec. 14-240.

Any proposed Medical Marihuana Facility that does not comply with Emergency Rule 19 shall not operate temporarily under this Emergency Ordinance.

Sec. 14-241.

This Emergency Ordinance shall automatically be repealed on June 15, 2018 and any temporary operation of a proposed Medical Marihuana Facility under this Emergency Ordinance will no longer be permitted.

Sec. 14-242.

A proposed Medical Marihuana Facility temporarily operating under this Emergency Ordinance shall be subject to all conditions and requirements contained under any subsequent Medical Marihuana Facility Ordinance adopted by the City. Further, nothing in this Emergency Ordinance shall be construed as a guarantee for any license, permit, zoning approval or any other benefit conferred upon a Medical Marihuana Facility under a subsequently adopted City Licensing Ordinance.

Sec. 14-243. Savings Clause.

This Emergency Ordinance is intended to allow the temporary operation of proposed Medical Marihuana Facility under the requirements of Emergency Rule 19, dated December 4, 2017 permitting a municipality to adopt an authorizing ordinance pursuant to Section 205 of the MMFLA prior to December 15, 2017. If any section or part of this Emergency Ordinance is found by any state board or agency to deprive a particular proposed Medical Marihuana Facility from obtaining temporary operation under the Emergency Rule, the City may at its option, choose to amend such Emergency Ordinance to correct such deficiency. Such amendment shall be retroactive to the date of adoption of this original Emergency Ordinance so as to comply with the Emergency Rule.

Sec. 14-244. Immediate Effect.

Pursuant to Section 5.3(b) of the Portage City Charter, this Article was introduced and adopted at a special meeting of the City Council by a vote of not less than five (5) members of the Council as an emergency ordinance and, as such, pursuant to Section 5.5(a) of the Portage City Charter shall take immediate effect upon its adoption.