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CITY COUNCIL AGENDA ITEM

Date: August 16, 2021

To: Honorable Mayor and Members of the Troy City Council

From: Lori Grigg Bluhm, City Attorney
Allan T. Motzny, Assistant City Attorney

Subject: Jack B. Wolfe v City of Troy

The City was served on August 5, 2021 with the attached lawsuit, filed by Jack B. Wolfe against the City of Troy. This lawsuit challenges Troy's Medical Marihuana Grow Operation License Ordinance (Chapter 104). Plaintiff Wolfe alleges that he is a medical marihuana care giver denied the opportunity to operate his business at 979 Badder Street in the City of Troy. He asks for damages in excess of $250,000, plus declaratory and injunctive relief.

Plaintiff has never filed a formal license application, or even submitted information to put him on a wait list for a medical marihuana caregiver license. The wait list is an accommodation for interested persons, since the City has processed over 36 licenses for 2021, which is the cap set forth in the ordinance. Plaintiff challenges that this cap is arbitrary and that the City should allow for more caregiver establishments. No medical marihuana caregiver license has been issued to any person for the property at 979 Badder Street in the City of Troy, although Plaintiff reports in his Complaint that Michael Hosner was licensed, and that Plaintiff made significant loans to Mr. Hosner, and then took over the medical marihuana caregiving operation. Because of the unlicensed caregiver operation on the property, Code Enforcement issued a cease and desist order to the property owner in 2021. As of the final inspection this summer, all marihuana plants were removed from the property.

Count I of Plaintiff's Complaint argues that the ordinance is actually a zoning ordinance, rather than a police power ordinance, and as a result the ordinance is invalid, since there was not strict compliance with the Michigan Zoning Enabling Act. In Count II, Plaintiff challenges that the City's ordinance is preempted by the Michigan Medical Marihuana Act, passed by Michigan voters in 2008. Count III is Plaintiff's request for injunctive relief, where he argues that the only adequate relief is for the Court to immediately require the City to issue him a medical marihuana caregiver's license for the property at 979 Badder Street. Lastly, Plaintiff alleges a "negligent administration" claim in Count IV.

This case has been assigned to Oakland County Visiting Circuit Court Judge Edward Sosnick. Our office has already responded to Plaintiff' an ex parte motion to show cause, since the Court set a hearing date on the motion for August 18, 2021. A proposed resolution authorizing our office to continue its representation of the City's interest in this matter is proposed for your consideration.

Please let us know if you have any questions concerning this matter.

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JACK B. WOLFE, an individual,
Plaintiff,

vs.

CITY OF TROY, a Michigan municipal corporation

Defendant.

2021-189230-CZ
Case No. CZ
Hon. JUDGE EDWARD SOSNICK

JURY DEMAND

Jack B. Wolfe
In Pro Per
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There is no pending or resolved civil action between the parties arising out of the same transaction and/or occurrence alleged in this complaint

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF TO VOID UNCONSTITUTIONAL TROY ORDINANCE PERTAINING TO CAREGIVERS AND DAMAGES

Plaintiff, Jack B. Wolfe ("Plaintiff" or "Wolfe"), complains against the City of Troy ("City", "Troy" and/or "Defendant"), as follows:

INTRODUCTORY STATEMENTS

1. This is, among other things, a declaratory judgment action against the City seeking for this Court TO DECLARE AND ADJUDGE that the City has unconstitutionally restricted through zoning (or the improper use of its alleged police powers, see footnote 5, below) the activities of registered patients and caregivers of medical marihuana, which restrictions are expressly and impliedly preempted by conflict and field preemption under the

2008 initiative Michigan Medical Marihuana Act, MCL §§ 333.26421 et. seq. ("MMMA"). A copy of the MMMA is attached as **Exhibit A**.

2. Plaintiff is both a qualifying patient and caregiver under the MMMA and is registered with the State of Michigan, and has been negatively affected by the Troy ordinance, more fully discussed below, which prohibits him from caregiver growing in the City even though his secured locked cultivation facility is located in an approved City zoning district.

3. Given the denial of Troy to allow Plaintiff to caregiver cultivate within the City boundaries due to the application of the unconstitutional ordinance to his Facility, Plaintiff is also seeking during the pendency of this litigation injunctive relief to compel the City to either issue to Plaintiff a City issued caregiver license to continue to allow Plaintiff's operation of his caregiver cultivation facility at 979 Badder, Troy, MI 48083 (the "Premises", "Badder Facility" and/or "Facility") or stay any enforcement of Troy's caregiver zoning ordinance (defined and discussed below) against Plaintiff, or the landlord ("Landlord") of the leased location of Plaintiff's caregiver cultivation, with Plaintiff filing an ex parte verified motion and brief in support of an order for show cause hearing contemporaneously with this Verified Complaint.

4. Plaintiff's ability to use marihuana, which includes the cultivation thereof under the MMMA, for himself and his qualified patients in his secured, locked Badder Facility located within the boundaries of the City is threatened by the City's unconstitutional zoning ordinance, Chapter 104, *Medical Marihuana Grow Operation License Ordinance* (the "Ordinance"), which became effective May 3, 2018, limiting the number of Ordinance issued licensed caregivers in the City to the presumed arbitrary number of thirty-six (36) (however, see discussion at ¶¶ 13-15 of this Verified Complaint, which appears to make a weak and confused attempt to rebut this presumption of arbitrariness) with Plaintiff as the hypothetical and proverbial number thirty-

seven (37) caregiver to seek licensure with the City under the Ordinance but who has been solely denied licensure only because he is #37. Troy City Code, Chapter 104, § 3(B), with a copy of the Ordinance attached as **Exhibit B.**

5. Plaintiff is not the original caregiver for the grow Facility location, which as a successor grower at the Facility is also prohibited by the Ordinance (see ¶ 10 of this Verified Complaint); notwithstanding, Plaintiff and his agents have made repeated overtures to the City to obtain licensure or otherwise be allowed to grow at the Facility as caregivers, which have been rebuffed and denied each time, with the enforcement division of the City zoning giving Plaintiff and his Landlord by letter ("Termination Letter") through July 7, 2021, to discontinue caregiver cultivation at the Facility by removing all plants. Attached as **Exhibit C** is a copy of the Termination Letter with the Landlord's name redacted.

6. The Ordinance is clearly a zoning ordinance (notwithstanding the comments of the City attorney, see footnote 5 below, at the time of its enactment) given that the activities of the 36 City licensed caregiver cultivation facilities were only allowed by the Ordinance if the location of the facility is in a City zoned IB district, Integrated Industrial and Business (**Exhibit B** at § 8(A)) with the City calling the enactment of the Ordinance an act of police powers, which was a ruse, instead of the use of the City's zoning powers in order to avoid compliance with the Michigan Zoning Enabling Act ("MZEA"), which requires , among other things, public hearings and notices before enactment.

7. The Badder Facility is in a zoned IB district and, prior to the enactment of the Ordinance, was granted permits and a certificate of occupancy by the City for the Badder Facility to operate in accordance with the MMMA.

8. After the enactment of the Ordinance, any caregiver grow operation in the City without a City license subjected the caregiver to criminal misdemeanor charges and fines of $500/day with "[e]ach violation, and each day upon which a violation exists or continues, shall constitute a separate offense." **Exhibit B** at § 12. In addition, the City charged each licensed caregiver an annual fee of $1500.00 to retain its right to grow in City boundaries. *Id.* at §§ 3(c) and (d).

9. This Ordinance was not enacted in conformity with MZEA requirements that pre-existing non-conforming uses, such as Plaintiff's location, would be grandfathered into the newly enacted Ordinance and by calling the Ordinance an act of police power, it avoided this grandfathering of Badder's nonconforming use into the Ordinance consequently stripping Plaintiff of all rights he possessed in the permits and certificate of occupancy issued by the City for the Badder Facility.

10. Notwithstanding the foregoing, the Ordinance is and was patently void *ab initio* on its face for having the chutzpah to cap the number of caregivers allowed to grow in the City at 36 (sometimes hereinafter referred to as the "Ceiling") and holding that the City issued growing licenses to the caregivers "run with the caregiver" and "not with the land" or location has caused considerable damage to Plaintiff (i.e., Sections 9(D), (E) of Troy City Code, Chapter 104, **Exhibit B**) and others because these restrictions are conflict and/or field preempted, both expressly and impliedly, by the MMMA.

11. Indeed, the recent ruling *of the Michigan Supreme Court* in *DeRuiter vs Township of Byron,* 505 Mich 130; 949 NW 2d 91 (2020), a copy of which is attached as **Exhibit D,** supports the latter holding that municipalities (such as Troy) may regulate through zoning the

location of caregiver cultivation in a secured, locked facility, **as long as it does not prohibit caregivers.**

12. Plaintiff asserts that the *DeRuiter* Court would strike down the Ceiling, together with Sections 9 and 10 of the Ordinance, as prohibiting caregivers.

13. In a Memorandum, dated, April 3, 2018, prior to the voting on and enactment of the Ordinance, jointly presented by the Acting City Manager and City Attorney to the Troy Mayor and City Council (the "Memorandum"), regarding the need to cap caregiver operations in Troy to 36 apparently determined the latter number based upon the alleged ratio of 1 facility per 370 persons, whatever that means, and because the Ceiling will not impede Troy patients from obtaining their medicine because neighboring communities will "opt in" to the Michigan Medical Marihuana Facilities Licensing Act ("MMFLA"), §§ MCL 333.27101, et. seq., stating: "Since [Troy] caregivers must decide between being involved with a commercial MMFLA grow facility (outside the City) or continuing to serve as a registered caregiver in the City, it is anticipated that there will be some attrition." A copy of the Memorandum is attached as **Exhibit E.**

14. We contend that the latter statement in this era of "wokeness" is a blatant discriminatory or borderline discriminatory admission of intent by the City attorney and, when coupled with the preempted caregiver Ceiling (or, better stated, quota) in the largest City in Oakland County, a suburb of Detroit with less than a 4% African American population, the intent of the Ordinance and its effects are clear.

15. In contradiction to the statements in the Memorandum, the City is the most populous municipality in Oakland County at over 84,000[1] citizens with the population of Oakland County at approximately 1.3 Million[2] and known state registered caregivers in Oakland County at 4,150 (See **Exhibit F**), which calculates to an expected number of caregivers in Troy to be around 268 caregivers (e.g., 84,000/1,3000,000 = 6.5% x 4,150 = 268) **not** 36 but Troy continues to enforce an Ordinance that has arbitrarily and capriciously limited the number of caregiver growing licenses within City boundaries by almost 90% to 36, based upon the faulty discriminatory reasoning that Troy patients/citizens can go to neighboring communities, which have opted in to the MMFLA (e.g., Troy has, while not necessary by the MMFLA, formally opted out of the MMFLA), to purchase their medicine or have their medicine delivered to them, excluding a certain demographic from working and living in the City in order to be close to their work; however, buying their product is fine.

16. In this lawsuit (the "Lawsuit"), Plaintiff seeks a declaratory judgment that the City Ordinance is void *ab initio* as it was enacted in violation of the MZEA by the lack of notice, public hearing(s) and by not grandfathering in Plaintiff's location which, as noted, is in an IB zoned district, and cannot limit the number of caregivers to the Ceiling or criminally fine and/or charge an annual license fee to the Troy based caregiver for growing in Troy without a City issued license even when the facility is in an IB zoned district and has Section 4 immunity under the MMMA, **Exhibit A**, MCL 333.26424(b), expressly and/or impliedly by conflict and/or field preempting the Ordinance "Ceiling" when the MMMA further preempted the Ordinance because "[t]he medical use of marihuana is allowed under state law to the extent it is carried out in accordance with the provisions of this act." *Id.* at MCL § 333.26427(a).

[1] 84,054 (2021), www.worldpopulationreview.com
[2] 1,259,360 (2021), *Id.*

17. In this Lawsuit, Plaintiff seeks injunctive relief to compel Defendant to issue to Plaintiff his license and/or stay enforcing the unconstitutional, void and/or preempted Ordinance against him by shutting down his grow operation, which he was immune from such enforcement by the City based upon MCL § 333.26424(b), MCL § 333.26427(a) and Section 7(e) of the MMMA stating: "All other acts and parts of acts inconsistent with this act [MMMA] do not apply to the medical use of marihuana as provided for by this act." **Exhibit A**, MCL § 333.26427(e).

18. Finally, Plaintiff seeks damages in this Lawsuit against the City in excess of $250,000.00 for its negligent administration and enactment of the Ordinance, which failed to comply with the MZEA and clearly violated the preemption provisions of the MMMA, creating an environment of adhesion and extortion by caregivers to financiers and/or caregivers like Plaintiff.

PARTIES, VENUE AND JURISDICTION

19. Plaintiff's business office for over eight (8) years has been located in Oakland County at 7071 Orchard Lake Road, Suite 250, West Bloomfield, MI 48322, with his caregiver grow is also located in Oakland County at the Badder Facility where he has been involved with the caregiver growing operations at this Facility for almost four (4) years.

20. Defendant is a home rule city and municipal corporation existing under the laws of the State of Michigan 48084, located in Oakland County, Michigan.

21. Venue is proper pursuant to MCL § 600.1615 because Defendant is a governmental unit that exercises governmental authority in Oakland County, Michigan.

22. Venue is proper pursuant to MCL § 600.1621 because the parties are located in and/or conduct business within Oakland County, MI, and the events giving rise to this Lawsuit occurred in Oakland County.

23. Jurisdiction is conferred upon this Court pursuant to MCR 2.605(A) because there is an actual controversy within this Court's jurisdiction necessitating a declaration of legal rights between the parties and this Court's authority to grant injunctive relief as provided by MCR 3.310.

24. Jurisdiction is conferred upon this Court pursuant to MCL § 600.605 as equitable relief is requested by Plaintiff who is seeking injunctive relief to stop the City from taking away Plaintiff's business by thwarting, taking or in essence condemning Plaintiff's unique leasehold interest in the Premises, which is a property right.

25. Jurisdiction is conferred upon this Court as Plaintiff seeks recovery of damages in excess of $25,000.00 for Defendant's negligence in the enactment then administration of the Ordinance as evidenced by its continued enforcement of the Ordinance Ceiling, which is clearly on its face contrary to the MMMA and current, settled case law.

GENERAL FACTUAL ALLEGATIONS

A. THE BACKGROUND

26. Wolfe is the manager of Parker Place Holdings, LLC ("PPH"), a Michigan limited liability company, and is in the business of structuring private commercial real estate and business loans.

27. Wolfe's friend approached him on or about November 1, 2017, in connection with his financing of a certain caregiver grower at the Badder Facility, Michael W. Hosner ("Hosner"), who needed money to operate this Facility and that he could not fund him anymore

money as he had already paid out to or on behalf of Hosner over $35,000.00 (e.g., Hosner had claimed that two (2) crops had been stolen by the "help" and, as a result, could not pay back all or any portion of his friend's investment).

28. Hosner also approached Wolfe regarding his need for a private money business loan regarding his caregiver business operation ("Business") located at the Badder Facility.

29. Wolfe's investor, GG Capital Investments, LLC ("GGCI"), a Michigan limited liability company, funded Hosner the short term monies needed to pay rent and obtain some other items necessary to conduct the Business at the Premises (hereinafter referred to as "Business Assets").

30. A Balloon Promissory Note, dated, November 17, 2017, for $10,000.00 ("First Note"), evidenced Hosner' s first loan with GGCI, later assigned to PPH, which was secured by a junior mortgage lien on real property owned by Hosner's girlfriend ("Borrower"), located in Warren, MI 48088 (the "Warren Property"), albeit, this mortgage was never recorded.

31. On December 7, 2017, GGCI extended a second business loan to Hosner, also assigned to PPH, in the principal sum of $25,000.00 ("Second Note"), which paid off and replaced the First Note, and the Second Note was secured by a mortgage to the Warren Property, recorded on May 10, 2018 at Liber 25358, Page 470 in the Macomb County Records ("Mortgage").

32. The Second Note required monthly interest only payments of $375.00 and a principal pay down of $5,000.00 by February 15, 2018 with Hosner making only the first monthly payment of $375.00 and 50% of the principal pay down in the amount of $2,500.00 on or about February 7, 2018.

33. In May-June, 2018, rather than pursue foreclosure of the Mortgage due to the default under the Second Note, PPH agreed to fund Hosner's Badder grow so that he could generate the revenue to pay off the Second Loan, repay the newly infused funds and pay back his friend's monies, based upon the representations of Hosner as to his ability to pay off these debts if his grow was properly funded and that he was a purely organic farmer who would produce clean tested product.

34. Given the latter representations, Wolfe's wife, who suffers from debilitating migraine headaches, became a medical patient of Hosner.

35. What PPH was not prepared for, and was misrepresented by Hosner, was the outstanding debt he owed even after the funding of the Second Loan as of June, 2018, to his Landlord (over $6,000.00), DTE (over $5,000.00), $1,500.00 to join an alleged class action lawsuit by caregivers against the City and the Troy permit/license fee of $1,500.00 and late fee of $1,000.00 for a total owed of $2,500.00 to the City for a caregiver license for Badder Facility issued to Hosner under the Ordinance .

36. Wolfe had never seen a caregiver growing operation prior to the Badder Facility nor understood the cloning, vegging, flowering, curing and recoupment schedule or cycle of the plants (e.g., over 4 months of expenses), the need to spray and control for mites and powdery mildew plus, in addition, the grow at Badder would be plagued by microbial given that there was an open sewer on the Premises, with all these costs much greater than projected, promised and represented by Hosner.

37. By November 1, 2018, GGCI and/or PPH had paid to or on behalf of Hosner to keep the grow operating at the Premises an amount over $35,000.00 (e.g., shadowing what his friend had paid out).

38. On November 13, 2018, at 8:30 p.m., Hosner sent a text to Wolfe claiming that he had briefly left the Premises and, upon his return, discovered that 100% of the harvested product was stolen by non-forced entry to the Badder Facility with Hosner insisting that Wolfe or someone Wolfe knew had stolen the product and/or that this person of interest's son had stolen the product.

39. Hosner's "story" was eerily like the prior fate of Wolfe's friend.

40. Wolfe had a lie detector test taken by the person of interest who passed but, while Hosner promised to also take the test, he never submitted to the testing only attacking the accuracy of the test administered.

41. Given the Ordinance and Hosner's refusal to work with another caregiver to assure good and timely harvests, Wolfe had little to no choice but to try and work with this very difficult person and caregiver.

42. However, Wolfe and PPH took the following steps to hopefully better control the situation:

A. PPH notified Hosner in writing on or about November 30, 2018, that the Second Note was in default and was accelerated and that PPH was entitled to foreclose the Mortgage on the Warren Property unless the total indebtedness owed under the Second Note was paid in full; and

B. As of December 1, 2018, PPH directly leased the space from the Badder Landlord for the Badder Facility with PPH paying the Landlord the Badder rent ("Badder Rent") with Hosner subleasing the space on the same terms.

43. Hosner failed to cure or remedy the Second Note defaults and PPH sued Hosner in Oakland County Circuit Court ("OCCC"), Case No. 2019-171849-CB (the "Judgment Case") for the losses associated with all the foregoing and obtained a judgment ("Judgment") against Hosner on March 13, 2019, in the amount of $81,309.25.

44 PPH deferred Hosner's obligation to reimburse for the Badder Rent for the use of the Badder Facility until Hosner was able to generate a profit from the operations of his Business ("Deferred Badder Rent").

45. Hosner never generated any profit or sufficient revenue from his Business operations to pay back the Deferred Badder Rent or any go-forward rent for that matter.

46. On or about September 30, 2019, the Badder Facility was allegedly robbed once again with the thieves cutting down 36 flowering plants, which had not yet been harvested, and carrying away the product from the Badder Facility.

47. This latter incident eventually triggered Wolfe's wife terminating her patient status with Hosner and was the impetus for Wolfe to no longer remain passive and to become more actively involved with the marihuana growing at the Badder Facility immediately installing, for instance, at the Premises, a new security system of cameras and alarms.

48. On or about December 19, 2019, PPH and Hosner entered into an agreement under which PPH would forbear collecting on the Judgment and Deferred Badder Rent, among other monies owed ("Forbearance Agreement"), and with a signed copy of the Forbearance Agreement attached at **Exhibit G**.

49. The Forbearance Agreement provided, among other things, that Hosner would timely submit to the City of Troy for its approval his renewal application (the "Renewal Application") for the calendar year 2021 for the Badder Facility for a medical caregiver grow under the MMMA ("Troy License Renewal") pursuant to the Troy Ordinance because PPH and Wolfe needed assurance that they would have sufficient cultivation time to recoup their losses.

50. Hosner materially breached the Forbearance Agreement by, among other things, failing to pay for and obtain the 2021 Troy License Renewal leaving PPH with no choice left

given Hosner's failure to harvest a clean crop but to file for the seizure of all the Business Assets at the Badder Facility in the Judgment Case taking control of the Business and Premises.

51. PPH then filed an eviction action against Hosner from the Badder Facility in the 52-4 District Court, Case No. 20-C01361-LT ("Eviction Case") with the possession of the Badder Facility awarded to PPH by Stipulation and Order, dated, November 9, 2020.

52. The issue of damages for the Deferred Badder Rent and go-forward rent was removed to OCCC for an amount in excess of $60,000.00 (the "Unpaid Rent Claim"), Case No. 21-185834-CB ("Eviction Damage Case") and is currently pending having stagnated due to the pandemic.

53. Wolfe became a caregiver for the Premises solely to take over operations at the Badder Facility with a copy of Wolfe's patient card attached as **Exhibit H** and Wolfe will make available for *in camera* review by this Court and opposing counsel his five (5) patients assigned to him as a caregiver at any hearing on this matter to maintain the confidentiality and privacy of his patients.

54. Hosner failed to obtain the 2021 Troy License Renewal for the Badder Facility as was required under the Forbearance Agreement and, upon information and belief, is operating a caregiver facility in Troy at another location while the City attorney demands that Wolfe cease operating at the Badder Facility threatening the Landlord with sanctions. See, **Exhibit C**.

55. The total monies owed by Hosner under the Mortgage, Judgment and Unpaid Rent is in excess of $125,000.00 with the failure of Hosner to obtain the 2021 Troy License Renewal for the Badder Facility potentially causing additional damages of over $125,000.00 to Wolfe for a projected total damage claim against Hosner and the City in excess of $250,000.00 ("Plaintiff's Damages").

B. THE ORDINANCE

56. A "grow operation" under the Ordinance means "[a]ny location where the cultivation of marihuana by a patient or caregiver, as defined in the [MMMA], takes place in the City of Troy." Troy City Code, Chapter 104, § 2 at **Exhibit B**.

57. The Ordinance prohibits registered qualifying patients and primary caregivers from cultivating medical marihuana at any location in the City unless the location has been licensed by the City. *Id.* at § 3(A), and the Badder Facility was licensed by the City.

58. However, the number of caregiver grow licenses allowed under the MMMA by the City was limited to **a maximum of thirty-six (36) Medical Marihuana City licenses per year.** *Id.* at § 3(B) (emphasis added).

59. The Ordinance further provided that "[a]ll existing caregiver operations that as of January 1, 2018, were issued a City certificate of occupancy as part of the building permit process, with modifications specific to the growth, cultivation or storage of medical marihuana will be considered a "current facility". *Id.*

60. Accordingly, existing or current facilities such as the Badder Facility were eligible to apply for a license, which is what Hosner did. *Id.*

61. However, upon information and belief, the Badder Facility was a compliant caregiver grow location pursuant to the MMMA pre-Ordinance with an issued certificate of occupancy by the City building department prior to January 1, 2018, but under the Ordinance, "[did] not have a vested right or nonconforming use right, and [was] required to comply with this Ordinance." *Id.* at § 3(E).

62. Under the Ordinance, "[a] license under this Ordinance is only for the location identified in the [caregiver] application for the license and cannot be transferred to another location." *Id.* at § 9(D).

63. Under the Ordinance, "[a] license under this Ordinance is only for the applicant identified in the [caregiver] application for the license and cannot be transferred to another person." *Id.* at § 9(E).

64. Consequently, the Ordinance caused the untenable situation of stripping Plaintiff of all his beneficial rights, which were, subsequently, direct leasehold rights as set forth above, in the permits and certificate of occupancy issued to the Badder Facility prior to the Ordinance.

65. The Ordinance also pigeonholed Plaintiff having to endure the grossly incompetent cultivation of Hosner because "any revocation, suspension, business interruption or rescission renders an applicant ineligible for a Medical Marihuana Grow Operation License." *Id.* at § 3(B).

66. In other words, and as more fully set forth above, Plaintiff invested money with the Badder Facility caregiver, Hosner, and then was stuck with him because Hosner, not the Badder location where all the money was invested, had all the alleged power under the Ordinance thereby leaving Plaintiff in an extortion like adhesion contractual relationship with Hosner, which led to this Lawsuit and prior litigation with damages claimed under the Lawsuit solely created by the Ordinance, which Troy and its legal counsel continue to insist must be enforced even though it is blatantly in conflict and preempted by the MMMA.

67. The Ordinance provides that the caregiver applicant provides, "[a] description of how the applicant satisfies the requirement that the marihuana for each patient is kept in a fully enclosed locked facility...." *Id.* at § 4(A)(6).

68. The Ordinance provides that "[t]he caregiver shall cultivate each individual registered patient's plants in a separate locked facility that is enclosed on all sides…." *Id.* at § 7.

69. The Ordinance prohibits caregiver growing other than in "locations that are zoned IB, Integrated Industrial and Business District under the City of Troy Zoning Ordinance." *Id.* at § 8(A).[3]

70. Aside from the necessary, forced removal of Hosner from the Facility, the Premises is fully compliant with all aspects of the Ordinance and Wolfe is a caregiver entitled to cultivate 72 plants for his patients with his operations at the Facility in complete conformity with the MMMA.

C. THE MMMA

71. The MMMA specifically allows a certain class of individuals, i.e., qualifying patients and primary caregivers, to engage in the medical use of marihuana in accordance with state law. **Exhibit A**, MCL § 333.26424

72. The "medical use of marihuana" is defined under the MMMA as the "acquisition, possession, cultivation, manufacture, extraction, use, internal possession, delivery, transfer, or transportation of marihuana…." **Exhibit A,** MCL § 333.26423(h).

73. The MMMA allows a qualifying patient to cultivate up to 12 marihuana plants in an enclosed, locked facility. **Exhibit A,** MCL § 333.26424(a).

74. A primary caregiver may assist up to five (5) patients plus himself as a patient and, therefore, can cultivate in total up to 72 plants with each qualifying patient allowed up to 12 plants (e.g., 6 x 12 = 72). **Exhibit A,** MCL § 333.26424(b).

[3] As noted above, the Badder Facility is in a zoned IB district

75. Under the MMMA, the only statutorily defined locations where the possession and medical use of marihuana by patients and caregivers is prohibited are: (A) in school bus; (B) on the grounds of any preschool or primary or secondary school; and (C) in any correctional facility. **Exhibit A,** MCL § 333.26427(b)(2).

76. "The medical use of marihuana is allowed under state law to the extent it is carried out in accordance with the provisions of this act." **Exhibit A,** MCL § 333.26427(a).

77. The MMMA states, in pertinent part, that a qualifying patient "is not subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action . . . for the medical use of marihuana in accordance with this act[.]"**Exhibit A,** MCL 333.26424(a).

78. The MMMA also provides the same immunity to a primary caregiver in "assisting a qualifying patient . . . with the medical use of marihuana in accordance with this act." **Exhibit A,** MCL 333.26424(b)(otherwise known as Section 4 immunity).

79. Section 7(e) of the MMMA reads: "All other acts and parts of acts inconsistent with this act [MMMA] do not apply to the medical use of marihuana as provided for by this act." **Exhibit A,** MCL § 333.26427(e).

D. THE DERUITER CASE

80. The *DeRuiter* opinion ruled that a primary caregiver's "enclosed locked facility" can be **reasonably** zoned under the Section 4 immunity provision of the MMMA without the zoning ordinance being conflict preempted by the MMMA because:

> "Under this rule, an ordinance is not conflict preempted as long as its added additional requirements do not contradict the requirements set forth in the statute." *DeRuite*r, **Exhibit D**, 505 Mich at 147.[4]

[4] The apparent presumption of the *DeRuiter* court was that the legislature "forgot" to identify the "*where*" of the secured locked facility as opposed to the legislature choosing that the "*where*" be wide open and not subject to

81. Specifically, the Michigan Supreme Court ruled in *DeRuiter* that since the "location" of the "enclosed locked facility" was not defined in the MMMA that a municipality could use its zoning powers to require a certain location over another location in the context of its zoning powers (e.g., residential vs. retail, etc.) as long as it does not prohibit caregiver growing.

82. The *DeRuiter* opinion is very narrow as it did not rule on issues not raised including whether MMMA Section 4 immunity from penalty in any manner conflict preempts ordinance enforcement and whether field preemption through MMMA Section 7(e) applies to local zoning ordinances:

> "We only address whether the MMMA is in direct conflict with the township's zoning ordinance. We do not address field preemption because the trial court did not base its preemption ruling on that doctrine. See *DeRuiter*, 325 Mich App at 287 (declining to address field preemption because 'the trial court never based its ruling on field preemption of zoning'). Likewise, we do not consider express preemption because DeRuiter has not argued that the MMMA expressly preempts the zoning ordinance at issue." *DeRuiter,* **Exhibit D**, 505 Mich at 140.

COUNT I
DECLARATORY RELIEF UNDER THE MZEA

83. Plaintiff incorporates paragraphs 1-82, as if more fully stated herein.

84. This Court is empowered to enter declaratory judgment under MCR 2.605.

85. The Ordinance was **enacted** without complying with the MZEA, MCL § 125.3101 *et. seq*., which regulates how local governments may utilize zoning to differentiate uses of land within their incorporated territory, as follows (which is not an intended to be an exhaustive list):

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municipal zoning powers, which could result in a hodgepodge of subjective zoning restrictions, clearly all in the name of the municipalities right to zone to further the public health, safety and welfare; provided, however, the legislature did not "forget" to include in the MMMA several preemption clauses!

A. There was no public Planning Commission meeting to recommend the Ordinance to the Troy City Council. MCL §§ 125.3401 and 125.3306;

B. Planning commission meetings must be preceded by published newspaper notice at least 15 days prior to the meeting, MCL § 125.3304, which did not occur; and

C. For any amendment or new ordinance, the legislative body must conduct a public hearing and publish notice of the hearing in a newspaper not less than 15 days before the hearing and must provide notice to owners of property that are the subject of the ordinance, MCL § 125.3103 and MCL § 125.3401(2), which did not occur.

86. The procedures of the MZEA must be strictly adhered to and, because the City failed to comply with MCL §§ 125.3103, 125.3304, 125.3305, 125.3306, 125.3308, 125.3401, 125.3401(2), 125.3401(6)(7) of the MEZA, this Court should declare and adjudge that these violations render the Ordinance void *ab initio*.

87. Alternatively, MZEA provides that, "If the use of a ...building...or of the land is lawful at the time of enactment of a zoning ordinance or an amendment to a zoning ordinance, then that use may be continued although the use does not conform to the zoning ordinance or amendment." MCL § 125.3208(1).

88. Prior to the Ordinance, the City, upon information and belief, issued building permits and certificates of occupancy to the Badder Facility for a primary caregiver to engage in the cultivation of medical marihuana at the Premises as a lawful land use.

89. The Ordinance states that the existing caregiver operation at the Badder Facility did not have a vested right or nonconforming use right under the City's exercise of its police powers not zoning powers in the enactment of the Ordinance and Plaintiff must comply with and be governed by the Ordinance, which does not allow any successor caregiver to grow at the Badder Facility, a restriction that did not exist prior to the Ordinance.

90. This Court should declare and adjudge that if the Ordinance is not void *ab initio* for the violations listed at Paragraph 86 above that Plaintiff must be allowed to continue caregiver growing at the Badder Facility as that use existed at the time of the enactment of the Ordinance and the City does not have the authority to simply eliminate a nonconforming use by calling its zoning powers, police powers.

COUNT II
DECLARATORY RELIEF UNDER THE MMMA

91. Plaintiff incorporates paragraphs 1-90, as if more fully stated herein.

92. This Court is empowered to enter declaratory judgment under MCR 2.605.

93. For all intent and purpose, Plaintiff is caregiver #37 in that the City denied a grow license to him in a location that is zoned IB and has been a caregiver grow location for over 5-years. See, **Exhibit C**.

94. However, Defendant's power to adopt the Ordinance is subject to Michigan's constitution and the law. Const. 1963, art. 7, § 22.

95. Defendant was precluded from enforcing the Ordinance with its 36-caregiver Ceiling as it directly conflicts with the state MMMA statutory scheme, which preempts the Ordinance's Ceiling because:

A. *DeRuiter* did not address field preemption. **Exhibit D**, 505 Mich at 150, fn 17 and the MMMA statutorily "field" preempted the Ordinance;

B. *DeRuiter* did not decide:

> "...[W]hether Byron Township's ordinance conflicts with other aspects of the MMMA [we do not decide]. Nor do we decide if the ordinance, which also precludes cultivating medical marijuana outside or in a structure detached from a residence, see Byron Township Zoning Ordinance, §3.2.G.1 and §3.2.H.2.d, has the practical consequence of prohibiting DeRuiter from cultivating the number of marijuana plants she

is expressly permitted by the MMMA, see MCL 333.26426(d); MCL 333.26424(a); MCL 333.26424(b)(2)." *Id.* at fn 14;

C. *DeRuiter* did not decide express preemption (e.g., the MMMA expressly as well as impliedly preempted the Ordinance) with the *DeRuiter* Court stating:

> "Likewise, we do not consider express preemption because DeRuiter has not argued that the MMMA expressly preempts the zoning ordinance at issue." *Id.* at 140; and

D. The *DeRuiter* decision is a narrow ruling addressing the only issue before the Court, which was whether the Byron Township ordinance of "location" was in direct conflict with the MMMA statutory scheme, holding as follows:

> "Were we to accept DeRuiter's argument, the only allowable restriction on where medical marijuana could be cultivated would be an "enclosed, locked facility" as that term is defined by the MMMA. MCL 333.26423(d). **Because the MMMA does not otherwise limit cultivation**, the argument goes, any other limitation or restriction on cultivation imposed by a local unit of government would...conflict with the state law. We disagree. The "enclosed, locked facility" requirement in the MMMA concerns what type of structure marijuana plants must be kept and grown in for a patient or caregiver to be entitled to the protections offered by MCL 333.26424(a) and (b); the requirement does not speak to *where* marijuana may be grown. In other words, because an enclosed, locked facility could be found in various locations on various types of property, regardless of zoning, this requirement is not in conflict with a local regulation that limits where medical marijuana must be cultivated." *Id.* at 143-144 (bolded emphasis added).

96. The Ordinance Ceiling directly conflicts with the MMMA unlike the Byron Township zoning ordinance in *DeRuiter,* which simply was recognized by the *DeRuiter* Court as providing "location" to the MMMA "secured locked facility" requirement, which was bereft of or silent as to any location requirement and since a "secured locked facility" can happen in numerous zoning classifications, the proverbial door was opened to allow a municipality to regulate through zoning the location, which did not *per se* limit caregiver cultivation in a municipality (see ¶ 95 (D) above; but, also, see fn. 4 above).

97. If the issue before this Court was the validity of the City Ordinance requiring that the location of any caregiver secured locked facility must be in a zoned IB district in Troy, *DeRuiter* would be on point with the City Ordinance and vice versa; however, the Ordinance invalidity arises from the specific setting of a fixed number of caregivers allowed in Troy (i.e., the Ceiling or 36), which is contrary to the *DeRuiter* ruling and, indeed, is in conflict with the Court's specific finding in *DeRuiter* that the MMMA does not limit cultivation.[5]

98. The City Ordinance, specifically limiting caregivers to a certain number is both conflict and field preempted by the MMMA.

99. In fact, *DeRuiter* will be overturned in Plaintiff's opinion by the High Court reviewing this case or another similar case that will argue the MMMA expressly preempts any zoning and/or police power enacted ordinance which limits caregiver growing within municipal boundaries in any possible way as contrary to the clear and unambiguous people's intent which the statutory scheme of the MMMA tried to emulate.

100. For instance, many times when seeking injunctive relief involving real property, the relief will be granted because property is "unique" such that irreparable harm will be deemed to occur even though there is (and always will be) an adequate remedy at law. The same logic can be applied with any zoning regulation that limits caregiver growing as it is conceivable that there may arise (and will always be in the realm of possible) circumstances where a caregiver

[5] The City attorney, Lori Grigg Bluhm, Esq., was quoted in a Metro Times article from June 6, 2018, arguing that the Ordinance limits are about protecting "the health, safety, and welfare of the city" and "was within its authority to implement the..." Ordinance without complying with MZEA because "the [O]rdinance is an exercise of police powers...." m.metrotimes.com, *"Troy's new marijuana rules limit access to medicine. Now, an Iraq War vet is suing"*, June 6, 2018 at 5:40 pm. Bluhm goes on to recognize that the Troy Ordinance is rare in scope stating in support of its rarity: "We are probably one of the first to impose a limit, but just because there's a right to grow marijuana doesn't mean you can disregard all of the other laws of the state, she says, referencing fire and other building safety codes that need to be met by caregivers in order to obtain a certificate of occupancy."

such in Byron Township cannot find a residential property in which to grow (i.e., #37) and, as recognized by the Court in *DeRuiter*, this may revise the Court's ruling (see ¶ 95 (B))

101. Based upon the foregoing, this Court should declare that the Ceiling directly conflicts with the MMMA and adjudge the Ordinance as void *ab initio* instructing the City to immediately issue to Plaintiff a caregiver license.

COUNT III
INJUNCTIVE RELIEF/EX PARTE SHOW CAUSE HEARING

102. Plaintiff incorporates paragraphs 1-101, as if more fully stated herein.

103. Plaintiff seeks ex parte a hearing at which Defendant must show cause ("Show Cause Hearing") why limiting caregiver growers in the City to 36 caregivers as set forth in the Ordinance does not violate the MMMA rendering the Ordinance void *ab initio*.

104. Plaintiff further seeks that Defendant be compelled at the Show Cause Hearing to issue to Plaintiff a City cultivation license and, notwithstanding the Court's ruling on the latter, Defendant shall be stayed at the Show Cause Hearing from any further enforcement action at the Badder Facility during the pendency of this Lawsuit.

105. The Badder Facility under Michigan law is unique and entitled to the extraordinary requested injunctive relief to compel issuance of the City license and/or stay any enforcement action by Defendant against Plaintiff during the pendency of this Lawsuit.

106. Plaintiff shall prevail on the merits as the Ceiling directly conflicts with the MMMA and as such that if the Defendant is allowed to take enforcement action, the harm will be irreparable as not only is the Badder Facility unique but the medicine being cultivated there is also unique and will be undermined by any physical disruption cause by such enforcement.

107. Accordingly, there is no adequate remedy at law to compensate for that unlawful enforcement and Plaintiff will suffer irreparable harm if the injunctive relief requested is not ordered in this action.

108. Plaintiff will prevail at trial on the merits of this case as the Ordinance is expressly preempted by the MMMA and the *DeRuiter* holding that the MMMA does not limit cultivation is in direct conflict with the caregiver Ceiling of the Ordinance.

109. The harm to Plaintiff and his patients outweighs any harm to Defendant by this Court staying any enforcement action against Plaintiff and the Badder Facility as one more caregiver growing in Troy or #37 will cause NO harm to the City but irreparable harm will be caused to Plaintiff and his patients.

110. The public interest shall be served by this Court staying enforcement at the Badder Facility, which might unnecessarily undermine the medicine cultivated onsite, especially since the Ordinance appears on its face to be unconstitutional.

111. MCR 3.310 governs granting ex parte the Show Cause Hearing and, based upon MCR 3.310 and the foregoing verified allegations supported by the attached Exhibits, Plaintiff's request that Defendant show cause as to why Defendant should not be compelled to issue to Plaintiff a caregiver City license and/or stay any enforcement of the Ordinance as to Plaintiff until after this case is concluded should be granted, as more fully set forth in Plaintiff's Ex Parte Verified Motion for Show Cause Hearing and Brief in Support thereof, being filed concurrent with this Verified Complaint with a proposed Order Granting Show Cause Hearing attached to this Verified Complaint as **Exhibit I**.

COUNT IV
NEGLIGENT ADMINISTRATION OF ZONING CODE

112. Plaintiff incorporates paragraphs 1-111 as if more fully stated herein.

113. Defendant had a duty to properly enact and enforce valid zoning ordinances which were not clearly preempted by state law.

114. Defendant has breached that duty by improperly enacting and thereafter enforcing the Ordinance which on its face with its limitation of only allowing 36 caregivers and the issued license running with the caregiver not the location disallowing a successor caregiver to operate in the location, which has had a chilling effect on caregiver cultivation in the City, directly conflicted with the MZEA and MMMA and was void *ab initio*.

115. Plaintiff was within the class of individuals owed this foregoing duty by Defendant which Defendant breached.

116. Plaintiff has suffered damages due to Defendant's breach of duty.

117. The proximate cause of Plaintiff's damages was the direct result of Defendant's breach of duty.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

A. Enter an Order Granting Show Cause Hearing for August 11, 2021 ("SCH"), pursuant to Plaintiff's Ex Parte Verified Motion with Brief in Support thereof filed, contemporaneously herewith, to:

1. Declare and adjudge that the Ordinance was improperly presented, voted on and enacted as a use of the City's police power to protect the health safety and welfare of the City when no emergency existed and was presented in this manner to avoid compliance with the MZEA;

2. Declare and adjudge that the Ordinance was a clear act of the City's zoning powers and did not comply with MZEA, as follows:

(a). The lack of notice(s) and the lack of any hearing(s) pertaining to the Ordinance prior to its enactment violated MZEA rendering the Ordinance void *ab initio;* and/or

(b). Alternatively, if the notice and hearing violations of MEZA did not render the Ordinance void, declare and adjudge that Plaintiff must be allowed to continue caregiver growing at the Badder Facility as that use existed at the time of the enactment of the Ordinance and the City did not have the authority to "take" this nonconforming use by the language of the Ordinance and, pursuant to the MZEA, the use must be grandfathered into the Ordinance as a nonconforming use;

B. Notwithstanding the impact of violating MZEA by the enactment of the Ordinance, enter at the SCH declaratory judgment in favor of Plaintiff that the enforcement of the Ordinance directly conflicts with and is otherwise field preempted by the MMMA and is void *ab initio*;

C. Alternatively, at the SCH, strike down the Ceiling of the Ordinance as expressly preempted by MMMA and, pursuant to *DeRuiter,* order Defendant to issue a caregiver license to Plaintiff;

D. At the SCH, notwithstanding entering judgment as requested above, grant preliminary injunctive relief staying enforcement of the Ordinance as to Plaintiff during the pendency of this Lawsuit;

E. At trial of this matter, awarding damages to Plaintiff in excess of $250,000.00 against Defendant for its negligent administration of the zoning code as evidenced by the Ordinance;

F. At trial of this matter, awarding Plaintiffs their attorney fees and costs; and

G. Granting and/or awarding such other relief that this Court deems equitable and just.

JURY DEMAND

Plaintiff hereby demands a trial by jury in the above-captioned action for all claims so tried.

/S/ JACK B. WOLFE
Jack B. Wolfe
In Pro Per
7071 Orchard Lake Road, Suite 250
West Bloomfield, MI 48322
(248) 228-6307 (c)
(248) 862-2018 (w)
(248) 928-5009 (f)
wolfejack19@gmail.com

Dated: July 21, 2021

VERIFICATION

The undersigned, under penalty of perjury and contempt of court, hereby affirms that the foregoing allegations are true and accurate to the best of his information, knowledge and belief.

/S/ JACK B. WOLFE
Jack B. Wolfe

Dated: July 21, 2021

Respectfully submitted,

/S/ JACK B. WOLFE
Jack B. Wolfe
In Pro Per
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Dated: July 21, 2021

EXHIBIT A

MICHIGAN MEDICAL MARIHUANA ACT (EXCERPT)
Initiated Law 1 of 2008

333.26421 Short title.

1. Short Title.

Sec. 1. This act shall be known and may be cited as the Michigan Medical Marihuana Act.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

MICHIGAN MEDICAL MARIHUANA ACT (EXCERPT)
Initiated Law 1 of 2008

333.26422 Findings, declaration.

2. Findings.

Sec. 2. The people of the State of Michigan find and declare that:

(a) Modern medical research, including as found by the National Academy of Sciences' Institute of Medicine in a March 1999 report, has discovered beneficial uses for marihuana in treating or alleviating the pain, nausea, and other symptoms associated with a variety of debilitating medical conditions.

(b) Data from the Federal Bureau of Investigation Uniform Crime Reports and the Compendium of Federal Justice Statistics show that approximately 99 out of every 100 marihuana arrests in the United States are made under state law, rather than under federal law. Consequently, changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use marihuana.

(c) Although federal law currently prohibits any use of marihuana except under very limited circumstances, states are not required to enforce federal law or prosecute people for engaging in activities prohibited by federal law. The laws of Alaska, California, Colorado, Hawaii, Maine, Montana, Nevada, New Mexico, Oregon, Vermont, Rhode Island, and Washington do not penalize the medical use and cultivation of marihuana. Michigan joins in this effort for the health and welfare of its citizens.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

Section 333.26423

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MICHIGAN MEDICAL MARIHUANA ACT (EXCERPT)
Initiated Law 1 of 2008

333.26423 Definitions.

3. Definitions.

Sec. 3. As used in this act:

(a) "Bona fide physician-patient relationship" means a treatment or counseling relationship between a physician and patient in which all of the following are present:

(1) The physician has reviewed the patient's relevant medical records and completed a full assessment of the patient's medical history and current medical condition, including a relevant, in-person, medical evaluation of the patient.

(2) The physician has created and maintained records of the patient's condition in accord with medically accepted standards.

(3) The physician has a reasonable expectation that he or she will provide follow-up care to the patient to monitor the efficacy of the use of medical marihuana as a treatment of the patient's debilitating medical condition.

(4) If the patient has given permission, the physician has notified the patient's primary care physician of the patient's debilitating medical condition and certification for the medical use of marihuana to treat that condition.

(b) "Debilitating medical condition" means 1 or more of the following:

(1) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, agitation of Alzheimer's disease, nail patella, or the treatment of these conditions.

(2) A chronic or debilitating disease or medical condition or its treatment that produces 1 or more of the following: cachexia or wasting syndrome; severe and chronic pain; severe nausea; seizures, including but not limited to those characteristic of epilepsy; or severe and persistent muscle spasms, including but not limited to those characteristic of multiple sclerosis.

(3) Any other medical condition or its treatment approved by the department, as provided for in section 6(k).

(c) "Department" means the department of licensing and regulatory affairs.

(d) "Enclosed, locked facility" means a closet, room, or other comparable, stationary, and fully enclosed area equipped with secured locks or other functioning security devices that permit access only by a registered primary caregiver or registered qualifying patient. Marihuana plants grown outdoors are considered to be in an enclosed, locked facility if they are not visible to the unaided eye from an adjacent property when viewed by an individual at ground level or from a permanent structure and are grown within a stationary structure that is enclosed on all sides, except for the base, by chain-link fencing, wooden slats, or a similar material that prevents access by the general public and that is anchored, attached, or affixed to the ground; located on land that is owned, leased, or rented by either the registered qualifying patient or a person designated through the departmental registration process as the primary caregiver for the registered qualifying patient or patients for whom the marihuana plants are grown; and equipped with functioning locks or other security devices that restrict access to only the registered qualifying patient or the registered primary caregiver who owns, leases, or rents the property on which the structure is located. Enclosed, locked facility includes a motor vehicle if both of the following conditions are met:

(1) The vehicle is being used temporarily to transport living marihuana plants from 1 location to another with the intent to permanently retain those plants at the second location.

(2) An individual is not inside the vehicle unless he or she is either the registered qualifying patient to whom the living marihuana plants belong or the individual designated through the departmental registration process as the primary caregiver for the registered qualifying patient.

(e) "Marihuana" means that term as defined in section 7106 of the public health code, 1978 PA 368, MCL 333.7106.

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substance, or similar product containing any usable marihuana that is intended for human consumption in a manner other than smoke inhalation. Marihuana-infused product shall not be considered a food for purposes of the food law, 2000 PA 92, MCL 289.1101 to 289.8111.

(g) "Marihuana plant" means any plant of the species Cannabis sativa L.

(h) "Medical use of marihuana" means the acquisition, possession, cultivation, manufacture, extraction, use, internal possession, delivery, transfer, or transportation of marihuana, marihuana-infused products, 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.

(i) "Physician" means an individual licensed as a physician under part 170 of the public health code, 1978 PA 368, MCL 333.17001 to 333.17084, or an osteopathic physician under part 175 of the public health code, 1978 PA 368, MCL 333.17501 to 333.17556.

(j) "Plant" means any living organism that produces its own food through photosynthesis and has observable root formation or is in growth material.

(k) "Primary caregiver" or "caregiver" means a person who is at least 21 years old and who has agreed to assist with a patient's medical use of marihuana and who has not been convicted of any felony within the past 10 years and has never been convicted of a felony involving illegal drugs or a felony that is an assaultive crime as defined in section 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL 770.9a.

(l) "Qualifying patient" or "patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.

(m) "Registry identification card" means a document issued by the department that identifies a person as a registered qualifying patient or registered primary caregiver.

(n) "Usable marihuana" means the dried leaves, flowers, plant resin, or extract of the marihuana plant, but does not include the seeds, stalks, and roots of the plant.

(o) "Usable marihuana equivalent" means the amount of usable marihuana in a marihuana-infused product that is calculated as provided in section 4(c).

(p) "Visiting qualifying patient" means a patient who is not a resident of this state or who has been a resident of this state for less than 30 days.

(q) "Written certification" means a document signed by a physician, stating all of the following:

(1) The patient's debilitating medical condition.

(2) The physician has completed a full assessment of the patient's medical history and current medical condition, including a relevant, in-person, medical evaluation.

(3) In the physician's professional opinion, the patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008 ;-- Am. 2012, Act 512, Eff. Apr. 1, 2013 ;-- Am. 2016, Act 283, Eff. Dec. 20, 2016

Compiler's Notes: MCL 333.26430 of Initiated Law 1 of 2008 provides:10. Severability.Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.Enacting section 2 of Act 283 of 2016 provides:"Enacting section 2. This amendatory act clarifies ambiguities in the law in accordance with the original intent of the people, as expressed in section 2(b) of the Michigan medical marihuana act, 2008 IL 1, MCL 333.26422: "(b) Data from the Federal Bureau of Investigation Uniform Crime Reports and the Compendium of Federal Justice Statistics show that approximately 99 out of every 100 marihuana arrests in the United States are made under state law, rather than under federal law. Consequently, changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use marihuana.". [Emphasis added.] This amendatory act is curative and applies retroactively as to the following: clarifying the quantities and forms of marihuana for which a person is protected from arrest, precluding an interpretation of "weight" as aggregate weight, and excluding an added inactive substrate component of a preparation in determining the amount of marihuana, medical marihuana, or usable marihuana that constitutes an offense. Retroactive application of this amendatory act does not create a cause of action against a law enforcement officer or any other state or local governmental officer, employee, department, or agency that enforced this act under a good-faith interpretation of its provisions at the time of enforcement."For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

MICHIGAN MEDICAL MARIHUANA ACT (EXCERPT)
Initiated Law 1 of 2008

333.26424 Qualifying patient or primary caregiver; arrest, prosecution, or penalty prohibited; conditions; privilege from arrests; presumption; compensation; physician subject to arrest, prosecution, or penalty prohibited; marihuana paraphernalia; person in presence or vicinity of medical use of marihuana; registry identification card issued outside of department; sale of marihuana as felony; penalty; marihuana-infused product.

4. Protections for the Medical Use of Marihuana.

Sec. 4. (a) A qualifying patient who has been issued and possesses a registry identification card is not subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the medical use of marihuana in accordance with this act, provided that the qualifying patient possesses an amount of marihuana that does not exceed a combined total of 2.5 ounces of usable marihuana and usable marihuana equivalents, and, if the qualifying patient has not specified that a primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked facility. Any incidental amount of seeds, stalks, and unusable roots shall also be allowed under state law and shall not be included in this amount. The privilege from arrest under this subsection applies only if the qualifying patient presents both his or her registry identification card and a valid driver license or government-issued identification card that bears a photographic image of the qualifying patient.

(b) A primary caregiver who has been issued and possesses a registry identification card is not subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for assisting a qualifying patient to whom he or she is connected through the department's registration process with the medical use of marihuana in accordance with this act. The privilege from arrest under this subsection applies only if the primary caregiver presents both his or her registry identification card and a valid driver license or government-issued identification card that bears a photographic image of the primary caregiver. This subsection applies only if the primary caregiver possesses marihuana in forms and amounts that do not exceed any of the following:

(1) For each qualifying patient to whom he or she is connected through the department's registration process, a combined total of 2.5 ounces of usable marihuana and usable marihuana equivalents.

(2) For each registered qualifying patient who has specified that the primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked facility.

(3) Any incidental amount of seeds, stalks, and unusable roots.

(c) For purposes of determining usable marihuana equivalency, the following shall be considered equivalent to 1 ounce of usable marihuana:

(1) 16 ounces of marihuana-infused product if in a solid form.

(2) 7 grams of marihuana-infused product if in a gaseous form.

(3) 36 fluid ounces of marihuana-infused product if in a liquid form.

(d) A person shall not be denied custody or visitation of a minor for acting in accordance with this act, unless the person's behavior is such that it creates an unreasonable danger to the minor that can be clearly articulated and substantiated.

(e) There is a presumption that a qualifying patient or primary caregiver is engaged in the medical use of marihuana in accordance with this act if the qualifying patient or primary caregiver complies with both of the following:

(1) Is in possession of a registry identification card.

(2) Is in possession of an amount of marihuana that does not exceed the amount allowed under this act. The presumption may be rebutted by evidence that conduct related to marihuana was not for the purpose of alleviating the qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition, in accordance with this act.

(f) A registered primary caregiver may receive compensation for costs associated with assisting a registered qualifying patient in the medical use of marihuana. Any such compensation does not constitute the sale of controlled substances.

(g) A physician shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by the Michigan board of medicine, the Michigan board of osteopathic medicine and surgery, or any other business or occupational or professional licensing board or bureau, solely for providing written certifications, in the course of a bona fide

physician-patient relationship and after the physician has completed a full assessment of the qualifying patient's medical history, or for otherwise stating that, in the physician's professional opinion, a patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms associated with the serious or debilitating medical condition, provided that nothing shall prevent a professional licensing board from sanctioning a physician for failing to properly evaluate a patient's medical condition or otherwise violating the standard of care for evaluating medical conditions.

(h) A person shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for providing a registered qualifying patient or a registered primary caregiver with marihuana paraphernalia for purposes of a qualifying patient's medical use of marihuana.

(i) Any marihuana, marihuana paraphernalia, or licit property that is possessed, owned, or used in connection with the medical use of marihuana, as allowed under this act, or acts incidental to such use, shall not be seized or forfeited.

(j) A person shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, solely for being in the presence or vicinity of the medical use of marihuana in accordance with this act, or for assisting a registered qualifying patient with using or administering marihuana.

(k) A registry identification card, 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, shall have the same force and effect as a registry identification card issued by the department.

(*l*) Any registered qualifying patient or registered primary caregiver who sells marihuana to someone who is not allowed the medical use of marihuana under this act shall have his or her registry identification card revoked and is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than $2,000.00, or both, in addition to any other penalties for the distribution of marihuana.

(m) A person shall not be subject to arrest, prosecution, or penalty in any manner or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for manufacturing a marihuana-infused product if the person is any of the following:

(1) A registered qualifying patient, manufacturing for his or her own personal use.

(2) A registered primary caregiver, manufacturing for the use of a patient to whom he or she is connected through the department's registration process.

(n) A qualifying patient shall not transfer a marihuana-infused product or marihuana to any individual.

(o) A primary caregiver shall not transfer a marihuana-infused product to any individual who is not a qualifying patient to whom he or she is connected through the department's registration process.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008;—Am. 2012, Act 512, Eff. Apr. 1, 2013;—Am. 2016, Act 283, Eff. Dec. 20, 2016.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

Enacting section 2 of Act 283 of 2016 provides:

"Enacting section 2. This amendatory act clarifies ambiguities in the law in accordance with the original intent of the people, as expressed in section 2(b) of the Michigan medical marihuana act, 2008 IL 1, MCL 333.26422:

"(b) Data from the Federal Bureau of Investigation Uniform Crime Reports and the Compendium of Federal Justice Statistics show that approximately 99 out of every 100 marihuana arrests in the United States are made under state law, rather than under federal law. *Consequently, changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use marihuana.*". [Emphasis added.]

This amendatory act is curative and applies retroactively as to the following: clarifying the quantities and forms of marihuana for which a person is protected from arrest, precluding an interpretation of "weight" as aggregate weight, and excluding an added inactive substrate component of a preparation in determining the amount of marihuana, medical marihuana, or usable marihuana that constitutes an offense. Retroactive application of this amendatory act does not create a cause of action against a law enforcement officer or any other state or local governmental officer, employee, department, or agency that enforced this act under a good-faith interpretation of its provisions at the time of enforcement."

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

MICHIGAN MEDICAL MARIHUANA ACT (EXCERPT)
Initiated Law 1 of 2008

333.26424a Registered qualifying patient or registered primary caregiver; arrest, prosecution, or penalty, or denial of right or privilege prohibited; conditions.

Sec. 4a. (1) This section does not apply unless the medical marihuana facilities licensing act is enacted.

(2) A registered qualifying patient or registered primary caregiver shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for any of the following:

(a) Transferring or purchasing marihuana in an amount authorized by this act from a provisioning center licensed under the medical marihuana facilities licensing act.

(b) Transferring or selling marihuana seeds or seedlings to a grower licensed under the medical marihuana facilities licensing act.

(c) Transferring marihuana for testing to and from a safety compliance facility licensed under the medical marihuana facilities licensing act.

History: Add. 2016, Act 283, Eff. Dec. 20, 2016.

Compiler's note: Enacting section 2 of Act 283 of 2016 provides:

"Enacting section 2. This amendatory act clarifies ambiguities in the law in accordance with the original intent of the people, as expressed in section 2(b) of the Michigan medical marihuana act, 2008 IL 1, MCL 333.26422:

"(b) Data from the Federal Bureau of Investigation Uniform Crime Reports and the Compendium of Federal Justice Statistics show that approximately 99 out of every 100 marihuana arrests in the United States are made under state law, rather than under federal law. *Consequently, changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use marihuana.*". [Emphasis added.]

This amendatory act is curative and applies retroactively as to the following: clarifying the quantities and forms of marihuana for which a person is protected from arrest, precluding an interpretation of "weight" as aggregate weight, and excluding an added inactive substrate component of a preparation in determining the amount of marihuana, medical marihuana, or usable marihuana that constitutes an offense. Retroactive application of this amendatory act does not create a cause of action against a law enforcement officer or any other state or local governmental officer, employee, department, or agency that enforced this act under a good-faith interpretation of its provisions at the time of enforcement."

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

MICHIGAN MEDICAL MARIHUANA ACT (EXCERPT)
Initiated Law 1 of 2008

333.26424b Transporting or possessing marihuana-infused product; violation; fine.

Sec. 4b. (1) Except as provided in subsections (2) to (4), a qualifying patient or primary caregiver shall not transport or possess a marihuana-infused product in or upon a motor vehicle.

(2) This section does not prohibit a qualifying patient from transporting or possessing a marihuana-infused product in or upon a motor vehicle if the marihuana-infused product is in a sealed and labeled package that is carried in the trunk of the vehicle or, if the vehicle does not have a trunk, is carried so as not to be readily accessible from the interior of the vehicle. The label must state the weight of the marihuana-infused product in ounces, name of the manufacturer, date of manufacture, name of the person from whom the marihuana-infused product was received, and date of receipt.

(3) This section does not prohibit a primary caregiver from transporting or possessing a marihuana-infused product in or upon a motor vehicle if the marihuana-infused product is accompanied by an accurate marihuana transportation manifest and enclosed in a case carried in the trunk of the vehicle or, if the vehicle does not have a trunk, is enclosed in a case and carried so as not to be readily accessible from the interior of the vehicle. The manifest form must state the weight of each marihuana-infused product in ounces, name and address of the manufacturer, date of manufacture, destination name and address, date and time of departure, estimated date and time of arrival, and, if applicable, name and address of the person from whom the product was received and date of receipt.

(4) This section does not prohibit a primary caregiver from transporting or possessing a marihuana-infused product in or upon a motor vehicle for the use of his or her child, spouse, or parent who is a qualifying patient if the marihuana-infused product is in a sealed and labeled package that is carried in the trunk of the vehicle or, if the vehicle does not have a trunk, is carried so as not to be readily accessible from the interior of the vehicle. The label must state the weight of the marihuana-infused product in ounces, name of the manufacturer, date of manufacture, name of the qualifying patient, and, if applicable, name of the person from whom the marihuana-infused product was received and date of receipt.

(5) For purposes of determining compliance with quantity limitations under section 4, there is a rebuttable presumption that the weight of a marihuana-infused product listed on its package label or on a marihuana transportation manifest is accurate.

(6) A qualifying patient or primary caregiver who violates this section is responsible for a civil fine of not more than $250.00.

History: Add. 2016, Act 283, Eff. Dec. 20, 2016.

Compiler's note: Enacting section 2 of Act 283 of 2016 provides:

"Enacting section 2. This amendatory act clarifies ambiguities in the law in accordance with the original intent of the people, as expressed in section 2(b) of the Michigan medical marihuana act, 2008 IL 1, MCL 333.26422:

"(b) Data from the Federal Bureau of Investigation Uniform Crime Reports and the Compendium of Federal Justice Statistics show that approximately 99 out of every 100 marihuana arrests in the United States are made under state law, rather than under federal law. *Consequently, changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use marihuana.*". [Emphasis added.]

This amendatory act is curative and applies retroactively as to the following: clarifying the quantities and forms of marihuana for which a person is protected from arrest, precluding an interpretation of "weight" as aggregate weight, and excluding an added inactive substrate component of a preparation in determining the amount of marihuana, medical marihuana, or usable marihuana that constitutes an offense. Retroactive application of this amendatory act does not create a cause of action against a law enforcement officer or any other state or local governmental officer, employee, department, or agency that enforced this act under a good-faith interpretation of its provisions at the time of enforcement."

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

MICHIGAN MEDICAL MARIHUANA ACT (EXCERPT)
Initiated Law 1 of 2008

333.26425 Rules.

5. Department to Promulgate Rules.

Sec. 5. (a) Not later than 120 days after the effective date of this act, the department shall promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, that govern the manner in which the department shall consider the addition of medical conditions or treatments to the list of debilitating medical conditions set forth in section 3(a) of this act. In promulgating rules, the department shall allow for petition by the public to include additional medical conditions and treatments. In considering such petitions, the department shall include public notice of, and an opportunity to comment in a public hearing upon, such petitions. The department shall, after hearing, approve or deny such petitions within 180 days of the submission of the petition. The approval or denial of such a petition shall be considered a final department action, subject to judicial review pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Jurisdiction and venue for judicial review are vested in the circuit court for the county of Ingham.

(b) Not later than 120 days after the effective date of this act, the department shall promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, that govern the manner in which it shall consider applications for and renewals of registry identification cards for qualifying patients and primary caregivers. The department's rules shall establish application and renewal fees that generate revenues sufficient to offset all expenses of implementing and administering this act. The department may establish a sliding scale of application and renewal fees based upon a qualifying patient's family income. The department may accept gifts, grants, and other donations from private sources in order to reduce the application and renewal fees.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

MICHIGAN MEDICAL MARIHUANA ACT (EXCERPT)
Initiated Law 1 of 2008

333.26426 Administration and enforcement of rules by marijuana regulatory agency; transfer of funds.

6. Administering the Marijuana Regulatory Agency's Rules.

Sec. 6. (a) The marijuana regulatory agency shall issue registry identification cards to qualifying patients who submit all of the following, in accordance with the marijuana regulatory agency's rules:

(1) A written certification.

(2) Application or renewal fee.

(3) Name, address, and date of birth of the qualifying patient, except that if the applicant is homeless, no address is required.

(4) Name, address, and telephone number of the qualifying patient's physician.

(5) Name, address, and date of birth of the qualifying patient's primary caregiver, if any.

(6) Proof of Michigan residency. For the purposes of this subdivision, a person is considered to have proved legal residency in this state if any of the following apply:

(*i*) The person provides a copy of a valid, lawfully obtained Michigan driver license issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or an official state personal identification card issued under 1972 PA 222, MCL 28.291 to 28.300.

(*ii*) The person provides a copy of a valid Michigan voter registration.

(7) If the qualifying patient designates a primary caregiver, a designation as to whether the qualifying patient or primary caregiver will be allowed under state law to possess marihuana plants for the qualifying patient's medical use.

(b) The marijuana regulatory agency shall not issue a registry identification card to a qualifying patient who is under the age of 18 unless all of the following conditions are met:

(1) The qualifying patient's physician has explained the potential risks and benefits of the medical use of marihuana to the qualifying patient and to his or her parent or legal guardian.

(2) The qualifying patient's parent or legal guardian submits a written certification from 2 physicians.

(3) The qualifying patient's parent or legal guardian consents in writing to do all of the following:

(A) Allow the qualifying patient's medical use of marihuana.

(B) Serve as the qualifying patient's primary caregiver.

(C) Control the acquisition of the marihuana, the dosage, and the frequency of the medical use of marihuana by the qualifying patient.

(c) The marijuana regulatory agency shall verify the information contained in an application or renewal submitted pursuant to this section, and shall approve or deny an application or renewal within 15 business days after receiving it. The marijuana regulatory agency may deny an application or renewal only if the applicant did not provide the information required pursuant to this section, or if the marijuana regulatory agency determines that the information provided was falsified. Rejection of an application or renewal is considered a final marijuana regulatory agency action, subject to judicial review. Jurisdiction and venue for judicial review are vested in the circuit court for the county of Ingham.

(d) The marijuana regulatory agency shall issue a registry identification card to the primary caregiver, if any, who is named in a qualifying patient's approved application. However, each qualifying patient can have not more than 1 primary caregiver, and a primary caregiver may assist not more than 5 qualifying patients with their medical use of marihuana.

(e) The marijuana regulatory agency shall issue registry identification cards within 5 business days after approving an application or renewal. A registry identification card expires 2 years after the date it is issued. Registry identification cards must contain all of the following:

(1) Name, address, and date of birth of the qualifying patient.

(2) Name, address, and date of birth of the primary caregiver, if any, of the qualifying patient.

(3) The date of issuance and expiration date of the registry identification card.

(4) A random identification number.

(5) A photograph, if the marijuana regulatory agency requires one by rule.

(6) A clear designation showing whether the primary caregiver or the qualifying patient will be allowed under state law to possess the marihuana plants for the qualifying patient's medical use, which shall be determined based solely on the qualifying patient's preference.

(f) If a registered qualifying patient's certifying physician notifies the marijuana regulatory agency in writing that the patient has ceased to suffer from a debilitating medical condition, the card becomes null and void upon notification by the marijuana regulatory agency to the patient.

(g) Possession of, or application for, a registry identification card shall not constitute probable cause or reasonable suspicion, nor shall it be used to support the search of the person or property of the person possessing or applying for the registry identification card, or otherwise subject the person or property of the person to inspection by any local, county, or state governmental agency.

(h) The following confidentiality rules apply:

(1) Subject to subdivisions (3) and (4), applications and supporting information submitted by qualifying patients, including information regarding their primary caregivers and physicians, are confidential.

(2) The marijuana regulatory agency shall maintain a confidential list of the persons to whom the marijuana regulatory agency has issued registry identification cards. Except as provided in subdivisions (3) and (4), individual names and other identifying information on the list are confidential and are exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(3) The marijuana regulatory agency shall verify to law enforcement personnel and to the necessary database created in the marihuana tracking act as established by the medical marihuana facilities licensing act whether a registry identification card is valid, without disclosing more information than is reasonably necessary to verify the authenticity of the registry identification card.

(4) A person, including an employee, contractor, or official of the marijuana regulatory agency or another state agency or local unit of government, who discloses confidential information in violation of this act is guilty of a misdemeanor punishable by imprisonment for not more than 6 months or a fine of not more than $1,000.00, or both. Notwithstanding this provision, marijuana regulatory agency employees may notify law enforcement about falsified or fraudulent information submitted to the marijuana regulatory agency.

(i) The marijuana regulatory agency shall submit to the legislature an annual report that does not disclose any identifying information about qualifying patients, primary caregivers, or physicians, but does contain, at a minimum, all of the following information:

(1) The number of applications filed for registry identification cards.

(2) The number of qualifying patients and primary caregivers approved in each county.

(3) The nature of the debilitating medical conditions of the qualifying patients.

(4) The number of registry identification cards revoked.

(5) The number of physicians providing written certifications for qualifying patients.

(j) The marijuana regulatory agency may enter into a contract with a private contractor to assist the marijuana regulatory agency in performing its duties under this section. The contract may provide for assistance in processing and issuing registry identification cards, but the marijuana regulatory agency shall retain the authority to make the final determination as to issuing the registry identification card. Any contract must include a provision requiring the contractor to preserve the confidentiality of information in conformity with subsection (h).

(k) Not later than 6 months after April 1, 2013, the marijuana regulatory agency shall appoint a panel to review petitions to approve medical conditions or treatments for addition to the list of debilitating medical conditions under the rules. The panel shall meet at least twice each year and shall review and make a recommendation to the marijuana regulatory agency concerning any petitions that have been submitted that are completed and include any documentation required by rule. All of the following apply to the panel:

(1) A majority of the panel members must be licensed physicians, and the panel shall provide recommendations to the marijuana regulatory agency regarding whether the petitions should be approved or denied.

(2) All meetings of the panel are subject to the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(*l*) The marihuana registry fund is created within the state treasury. All fees collected under this act shall be deposited into the fund. The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. Money in the fund at the close of the fiscal year must remain in the fund and must not lapse to the general fund. The marijuana regulatory agency shall be the administrator of the fund for auditing purposes. The marijuana regulatory agency shall expend money from the fund, upon appropriation, for the operation and oversight of the Michigan medical marihuana program. For the fiscal year ending September 30, 2016, $8,500,000.00 is appropriated from the marihuana registry fund to the department for its initial costs of implementing the medical marihuana facilities licensing act and the marihuana tracking act. For the fiscal year ending September 30, 2021, $24,000,000.00 of the money in the marihuana registry fund is transferred to and must be deposited into the Michigan set aside fund created under section 1i of 1965 PA 213, MCL 780.621i.

(m) As used in this section, "marijuana regulatory agency" means the marijuana regulatory agency created under Executive Reorganization Order No. 2019-2, MCL 333.27001.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008;—Am. 2012, Act 514, Eff. Apr. 1, 2013;—Am. 2016, Act 283, Eff. Dec. 20, 2016;—Am. 2020, Act 400, Imd. Eff. Jan. 4, 2021.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

Enacting section 2 of Act 283 of 2016 provides:

"Enacting section 2. This amendatory act clarifies ambiguities in the law in accordance with the original intent of the people, as expressed in section 2(b) of the Michigan medical marihuana act, 2008 IL 1, MCL 333.26422:

"(b) Data from the Federal Bureau of Investigation Uniform Crime Reports and the Compendium of Federal Justice Statistics show that approximately 99 out of every 100 marihuana arrests in the United States are made under state law, rather than under federal law. *Consequently, changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use marihuana.*". [Emphasis added.]

This amendatory act is curative and applies retroactively as to the following: clarifying the quantities and forms of marihuana for which a person is protected from arrest, precluding an interpretation of "weight" as aggregate weight, and excluding an added inactive substrate component of a preparation in determining the amount of marihuana, medical marihuana, or usable marihuana that constitutes an offense. Retroactive application of this amendatory act does not create a cause of action against a law enforcement officer or any other state or local governmental officer, employee, department, or agency that enforced this act under a good-faith interpretation of its provisions at the time of enforcement."

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

MICHIGAN MEDICAL MARIHUANA ACT (EXCERPT)
Initiated Law 1 of 2008

333.26427 Scope of act; limitations.

7. Scope of Act.

Sec. 7. (a) The medical use of marihuana is allowed under state law to the extent that it is carried out in accordance with the provisions of this act.

(b) This act 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 at any of the following locations:

(A) In a school bus.

(B) On the grounds of any preschool or primary or secondary school.

(C) In any correctional facility.

(3) Smoke marihuana at any of the following locations:

(A) On any form of public transportation.

(B) In any public place.

(4) Operate, navigate, or be in actual physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat while under the influence of marihuana.

(5) Use marihuana if that person does not have a serious or debilitating medical condition.

(6) Separate plant resin from a marihuana plant by butane extraction in any public place or motor vehicle, or inside or within the curtilage of any residential structure.

(7) Separate plant resin from a marihuana plant by butane extraction in a manner that demonstrates a failure to exercise reasonable care or reckless disregard for the safety of others.

(c) Nothing in this act shall be construed to require any of the following:

(1) A government medical assistance program or commercial or non-profit health insurer to reimburse a person for costs associated with the medical use of marihuana.

(2) An employer to accommodate the ingestion of marihuana in any workplace or any employee working while under the influence of marihuana.

(3) A private property owner to lease residential property to any person who smokes or cultivates marihuana on the premises, if the prohibition against smoking or cultivating marihuana is in the written lease.

(d) Fraudulent representation to a law enforcement official of any fact or circumstance relating to the medical use of marihuana to avoid arrest or prosecution is punishable by a fine of $500.00, which is in addition to any other penalties that may apply for making a false statement or for the use of marihuana other than use undertaken pursuant to this act.

(e) All other acts and parts of acts inconsistent with this act do not apply to the medical use of marihuana as provided for by this act.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008;—Am. 2016, Act 283, Eff. Dec. 20, 2016;—Am. 2016, Act 546, Eff. Apr. 10, 2017.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

Enacting section 2 of Act 283 of 2016 provides:

"Enacting section 2. This amendatory act clarifies ambiguities in the law in accordance with the original intent of the people, as expressed in section 2(b) of the Michigan medical marihuana act, 2008 IL 1, MCL 333.26422:

"(b) Data from the Federal Bureau of Investigation Uniform Crime Reports and the Compendium of Federal Justice Statistics show that approximately 99 out of every 100 marihuana arrests in the United States are made under state law, rather than under federal law. *Consequently, changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use marihuana.*". [Emphasis added.]

This amendatory act is curative and applies retroactively as to the following: clarifying the quantities and forms of marihuana for which a person is protected from arrest, precluding an interpretation of "weight" as aggregate weight, and excluding an added inactive substrate component of a preparation in determining the amount of marihuana, medical marihuana, or usable marihuana that constitutes an offense. Retroactive application of this amendatory act does not create a cause of action against a law enforcement officer or any other state or local governmental officer, employee, department, or agency that enforced this act under a good-faith interpretation of its provisions at the time of enforcement."

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

MICHIGAN MEDICAL MARIHUANA ACT (EXCERPT)
Initiated Law 1 of 2008

333.26428 Defenses.

8. Affirmative Defense and Dismissal for Medical Marihuana.

Sec. 8. (a) Except as provided in section 7(b), a patient and a patient's primary caregiver, if any, may assert the medical purpose for using marihuana as a defense to any prosecution involving marihuana, and this defense shall be presumed valid where the evidence shows that:

(1) A physician has stated that, in the physician's professional opinion, after having completed a full assessment of the patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition;

(2) The patient and the patient's primary caregiver, if any, were collectively in possession of a quantity of marihuana that was not more than was reasonably necessary to ensure the uninterrupted availability of marihuana for the purpose of treating or alleviating the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition; and

(3) The patient and the patient's primary caregiver, if any, were engaged in the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marihuana or paraphernalia relating to the use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition.

(b) A person may assert the medical purpose for using marihuana in a motion to dismiss, and the charges shall be dismissed following an evidentiary hearing where the person shows the elements listed in subsection (a).

(c) If a patient or a patient's primary caregiver demonstrates the patient's medical purpose for using marihuana pursuant to this section, the patient and the patient's primary caregiver shall not be subject to the following for the patient's medical use of marihuana:

(1) disciplinary action by a business or occupational or professional licensing board or bureau; or

(2) forfeiture of any interest in or right to property.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008;—Am. 2012, Act 512, Eff. Apr. 1, 2013.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

MICHIGAN MEDICAL MARIHUANA ACT (EXCERPT)
Initiated Law 1 of 2008

333.26429 Failure of department to adopt rules or issue valid registry identification card.

9. Enforcement of this Act.

Sec. 9. (a) If the department fails to adopt rules to implement this act within 120 days of the effective date of this act, a qualifying patient may commence an action in the circuit court for the county of Ingham to compel the department to perform the actions mandated pursuant to the provisions of this act.

(b) If the department fails to issue a valid registry identification card in response to a valid application or renewal submitted pursuant to this act within 20 days of its submission, the registry identification card shall be deemed granted, and a copy of the registry identification application or renewal shall be deemed a valid registry identification card.

(c) If at any time after the 140 days following the effective date of this act the department is not accepting applications, including if it has not created rules allowing qualifying patients to submit applications, a notarized statement by a qualifying patient containing the information required in an application, pursuant to section 6(a)(3)-(6) together with a written certification, shall be deemed a valid registry identification card.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

MICHIGAN MEDICAL MARIHUANA ACT (EXCERPT)
Initiated Law 1 of 2008

333.26430 Severabilty.

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: For the transfer of powers and duties of the department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the bureau of marijuana regulation, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

EXHIBIT B

1. Purpose and Intent.

- It is the intent of this Ordinance to give effect to the intent of the Michigan Medical Marihuana Act (Initiated Law 1 of 2008, MCL 333.26421, *et* seq.), as approved by the electors of the State of Michigan.
- It is further the intent of this Ordinance to protect the public health, safety, and general welfare of persons and property, and to license certain locations as specified in this Ordinance.
- It is further the intent of this Ordinance to protect the health, safety, and welfare of law enforcement officers and other persons in the community, and also to address and minimize reasonably anticipated effects upon children, other members of the public, and upon significant areas of the community, that would be reasonably likely to occur in the absence of the provisions of this Ordinance.
- This Ordinance is designed to recognize the fundamental intent of the Michigan Medical Marihuana Act to allow the creation and maintenance of a private and confidential patient-caregiver relationship to facilitate the statutory authorization for the limited cultivation of marihuana for medical use, and to regulate in a manner that does not conflict with the Michigan Medical Marihuana Act, but addresses issues that would otherwise expose the community and its residents to significant adverse conditions and secondary effects including but not limited to the following:
  - o adverse and long-term influence on children;
  - o substantial serious criminal activity;
  - o danger to law enforcement and other members of the public;
  - o discouragement and impairment of effective law enforcement with regard to unlawful activity involving the cultivation, distribution, and use of marijuana;
  - o the creation of a purportedly lawful commercial enterprise involving the cultivation, distribution and use of marihuana that is not reasonably susceptible of being distinguished from serious criminal enterprise; and,
  - o the uninspected installation of unlawful plumbing, mechanical, and electrical facilities that create dangerous health, safety, and fire conditions.
- With the State's recent allowance of medical marihuana facilities pursuant to the Medical Marihuana Facilities Licensing Act (MMFLA), MCL 333.27101 et. seq., it is expected that neighboring communities will have medical marihuana facilities, providing greater access to medical marihuana and marihuana products fo11 registered patients.
- Additionally, the MMFLA requires safety and purity testing for marihuana and marihuana products before sale or distribution, and this same testing is not required for caregiver grow operations. Based on this, there are health, safety and welfare concerns that further justify a limit to the number of caregiver operations in the City.
- Furthermore, the MMFLA requires registered caregivers to choose between continuing a caregiver grow operation or being involved in a medical marihuana facility grow operation under the MMFLA. As a result, it is expected that there will be a reduction in caregiver grow operations in the City.

- This Ordinance does not permit or allow licensed Medical Marihuana Facilities, as defined by the MMFLA, in the City.
- Nothing in this Ordinance shall be construed as allowing persons to engage in conduct that endangers others or causes a public nuisance, or to allow use, cultivation, growth, possession or control of marihuana contrary to the provisions of the Act and this Ordinance.
- Furthermore, nothing in this Ordinance shall be construed *to* undermine or provide immunity from Federal Law as it may be enforced by the Federal or State Government relative to the cultivation, distribution, or use of marijuana.
- The authorization of activity and/or approval of a license under this Ordinance shall not have the effect of superseding or nullifying Federal Law applicable to the cultivation, distribution, and use of marijuana.

2. Definitions:

For purposes of this Chapter, the following terms shall have the following meanings:

Act: The Michigan Medical Marihuana Act, MCL 333.26421 *et seq.*

Caregiver or Primary Caregiver: A caregiver or primary caregiver as defined in the Act, with a current and valid registration.

Chief Law Enforcement Officer: The Chief of Police of the City of Troy or his or her designee.

Grow Operation: Any location where the cultivation of marihuana by a patient or caregiver, as defined in the Act, takes place in the City of Troy.

Licensee. The individual listed as an applicant on the application for a Medical Marihuana Grow Operation license, or a person in whose name a license to operate a Medical Marihuana Grow Operation has been issued, as set forth in the Act.

Licensing Officer. The Clerk of the City of Troy or his or her designee.

Patient. A patient as defined in the Act, with a current and valid registration.

Plant. Any living organism that produces its own food through photosynthesis and has observable root formation or is in growth material.

Principal Residence. The place where a person resides for more than one half of the calendar year

3. License Required; Application Fee; Investigation Fee; License Fee;

A. The cultivation of marihuana by a caregiver or a patient shall be permitted as allowed under the Act, provided that no grow operation shall be allowed within

the City of Troy at a location unless such location has been licensed under this Ordinance.

B. Based on past history and articulated health, safety and welfare concerns, and the increased availability of marihuana for patients through the MMFLA, the City intends to issue a maximum of 36 Medical Marihuana Grow Operation Licenses each calendar year. All existing caregiver operations that as of January 1, 2018 were issued a City certificate of occupancy as part of the building permit process, with modifications specific to the growth, cultivation or storage of medical marihuana will be considered a "current facility," and any current facility is eligible to apply for a Medical Marihuana Grow Operation License, even if the issuance of such a license temporarily results in more than 36 Medical Marihuana Grow Operation Licenses in the City for the calendar year. However, in order to remain eligible, any current facility must apply for a license within 30 days of the effective date of this Ordinance, and satisfy the criteria to be eligible for a license. Additionally, any revocation, suspension, business interruption or rescission renders an applicant ineligible for a Medical Marihuana Grow Operation License.

C. Applicants for a Medical Marihuana Grow Operation License shall pay an application fee as set by Chapter 60 of the Ordinances of the City of Troy. Applicants requesting a renewal of an annual license shall submit a complete renewal application at least 30 days prior to the expiration of the current license, and shall also submit the fees as set forth in Chapter 60 of the Ordinances of the City of Troy.

D. In the event an application or a renewal application for a Medical Marihuana Grow Operation license is withdrawn or denied, the application fee shall be forfeited. Fees are not transferrable.

E. All existing caregiver operations that as of January 1, 2018 were issued a City certificate of occupancy as part of the building permit process, with modifications specific to the growth, cultivation or storage of medical marihuana, do not have a vested right or nonconforming use right, and are required to comply with this Ordinance.

F. No Medical Marihuana Grow Operation License is required if a maximum of one patient per residential unit grows, cultivates or stores marihuana for their own personal consumption at the patient's principal residence, as long as the growth, cultivation or storage is in compliance with the Act, and there is no prohibition in any lease or rental agreement or other binding legal document.

G. If a Medical Marihuana Grow Operation is in a home, all requirements for a Home Occupation, as set forth in Chapter 39, Section 7.10 of the City of Troy Ordinances must be met.

4. <u>License Application:</u>

A. Every applicant for an initial or an annual renewal of a Medical Marihuana Grow Operation License shall file an application with the City Clerk's Office on the form provided by the City of Troy and pay the nonrefundable application fee(s) set forth in Chapter 60. The information obtained as a result of the license application process shall be used only for administrative purposes, and the information shall not be disclosed pursuant to any Freedom of Information Act

request under MCL 15.231. The applicant shall provide all of the following information, the truthfulness of which shall be sworn to under oath:

1. The name of the caregiver or patient(s), the total number of patients assisted by a caregiver applicant, and a copy of the current and valid State of Michigan Registry Identification Card(s), issued pursuant to the Act.

2. The marihuana grow operation history of the applicant; including but not limited to disclosure of any revocation or suspension of any business license in the State of Michigan or any other State in the United States, the reason for such revocation or suspension, and the type or nature of the business license, and applicant's business activity or occupation subsequent to such suspension or revocation.

3. The address of the premises for the proposed growth, cultivation or storage of marihuana, and evidence of property ownership.

4. If the premises is not owned by the applicant, the landlord/owner of the premises must sign the application or provide a written statement acknowledging that she or he is aware of and consents to the proposed growth, cultivation or storage of marihuana plants on the premises.

5. The name and address of the place where all unused portions of the marihuana plants cultivated in connection with the medical use of marihuana will be disposed, and the manner of disposition.

6. A description of how the applicant satisfies the requirement that the marihuana for each patient is kept in a fully enclosed locked facility including the location in the building, including but not limiting to precise measurements of the floor dimensions and the height (in feet), and the security devices employed.

7. Detailed specifications of all lights, equipment, building, electrical, mechanical and plumbing permit requirements and modifications and operations for the proposed cultivation or storage of marijuana, including but not limited to the proposed methods for odor and light control.

8. A phone number or other means for the City to contact the applicant or his or her designee on a seven day, twenty four hour basis in the event that there is an urgent situation that requires immediate response or action.

B. Applicants for a license under this Ordinance shall have a continuing duty to promptly supplement the above referenced application information required by this section to the City Clerk when there is any change. The failure to comply with this continuing duty within fifteen (15) days from the date of any such change shall be grounds for the suspension, revocation or denial of a Medical Marihuana Grow Operation License.

5. **Investigation:**

On receipt of a properly completed application and the payment of the application fee, the City Clerk shall simultaneously submit the relevant documentation to the Chief of Police, or his or her designee, the Fire Chief, or his or her designee, the Zoning Administrator, or his or her designee, the City Treasurer or his or her designee, and the Building Official or his or her designee.

The Chief of Police or his or her designee is responsible for investigating the background of each individual applicant, and shall provide the background report to the City Clerk or his or her designee within 21 business days

The Zoning Administrator or his or her designee shall review the documentation to determine if the proposed location of the Grow Operation complies with the locational requirements of this Ordinance and the Zoning Ordinance, and shall provide the zoning report to the City Clerk or his or her designee within 21 business days.

The Fire Chief or his or her designee shall issue a report determining whether or not the proposed Grow Operation complies with the applicable fire codes, and this report shall be submitted to the City Clerk or his or her designee within 21 business days.

The City Treasurer or his or her designee is responsible for checking to verify that the applicant and the property does not have any overdue payment of City taxes, fines, fees, or penalties owing to the City.

The Building Official or his or her designee shall issue a report determining whether or not the proposed Grow Operation complies with applicable building codes. The Building Official shall issue his or her report within 21 business days.

6. **Approval/Denial of License:**

A. The application of any applicant shall be approved or denied by the City Clerk 30 business days of the date the complete application is officially filed with the City Clerk. The City Clerk shall deny a license for one or more of the following:

1. The applicant is under the age of twenty-one (21) years of age;

2. The applicant has made a false statement upon the application or has given false information in connection with an application;

3. The applicant has had a business license revoked or suspended anywhere within the State of Michigan or any other state in the United States within one (1) year prior to the application;

4. The applicant has operated a medical marihuana grow operation which was determined to be a public nuisance in the State of Michigan or any state,

county, city or any other governmental subdivision in the United States within one (1) year prior to the application;

5. The applicant is overdue in the payment of City taxes, fees, fines or penalties assessed against him or her.

6. The applicant has been convicted of any felony or drug related misdemeanor conviction.

B. In the event the City Clerk denies a license, he/she shall notify the applicant of the denial in writing by first class mail to the address on the application and shall specify the reason(s) for the denial. In the event of a denial, the applicant shall have the right to appeal to the City Manager as set forth in this ordinance. Any written appeal request must be submitted to the City Manager within fourteen (14) days of the date on the denial notice sent by the City Clerk. The City Manager shall promptly review all appeal materials.

1. The City Manager may request information from representatives of the Police Department, the City Clerk, the Zoning Administrator, the Building Official, the Fire Chief, City Treasurer, Code Enforcement, the applicant or other interested parties, or any other individual who may have information relevant to the denial of the license. The City Manager may accept written documentation or hear statements and consider other evidence offered which is relevant to the denial by the City Clerk.

   a. If after this review, the City Manager determines that the applicant remains ineligible for a license under this ordinance, he/she shall notify the applicant in writing at the address on the application within fourteen days after receipt of the appeal or any requested materials, whichever is later, and shall state the reason(s) for the decision.

   b. If after this review, the City Manager determines that that a Medical Marihuana Grow Operation license should be issued to the applicant, the City Manager shall notify the City Clerk of this decision, and the City Clerk shall process the application within fourteen days of notification.

   c. The City Manager's decision is the City's final decision. Failure of an applicant to timely meet the filing deadlines as set out in this Ordinance constitutes a waiver of any right the applicant may otherwise have to contest the denial of the application.

7. <u>Number of Plants/Secure Facility:</u>

A caregiver who obtains a license for a Medical Marihuana Grow Operation under this Ordinance shall not cultivate more than twelve plants at any one time per registered patient, and in no event grow more than 72 plants at any one time. The caregiver shall cultivate each individual registered patient's plants in a separate locked facility that is

enclosed on all sides with a floor, walls, and a ceiling or roof, and accessible only to the registered caregiver and registered patient.

8. **Location of Grow Operations:**

A. Medical Marihuana Grow Operations requiring a license under this ordinance may only be permitted in locations that are zoned IB, Integrated Industrial and Business District under the City of Troy Zoning Ordinance.

B. No Medical Marihuana Grow Operation shall be located within 1000 feet of a public or private elementary school, vocational, or secondary school or a public or private college, junior college or university or a library or a public outdoor playground, as defined in 21 USCA Section 860 (e)(1). Measurements for purposes of this section shall be made from property boundary to property boundary.

9. **Additional Requirements for Medical Marihuana Grow Operations.**

A. All necessary building, electrical, plumbing and other permits shall be obtained for all improvements used to facilitate the cultivation of marihuana plants.

B. Signage identifying the location of a Medical Marihuana Grow Operation is prohibited.

C. The consumption of medical marihuana or alcoholic beverages on the licensed premises is prohibited.

D. A license issued under this Ordinance is only for the location identified in the pplication for the license and cannot be transferred to another location.

E. A license issued under this Ordinance is only for the applicant identified in the application for the license, and cannot be transferred to another person.

F. Licensees must maintain air cleaning systems or scrubbers or exhaust ventilation systems to mitigate any odor associated with the Medical Marihuana Grow Operation, and contain any noxious gases or fumes or odors on the property.

The licensee must comply with all City of Troy ordinances and state statutes.

10. **Inspection of Premises:**

A. The Chief of Police, Fire Chief, police officers, Fire Department personnel, code enforcement officers, or other authorized inspectors from the City of Troy shall have the right from time to time to inspect each Medical Marihuana Grow Operation for the purposes of determining that the operation is in full compliance

with the provisions of this Ordinance, all other City of Troy ordinances, and State Law.

B. It shall be deemed a violation of this ordinance for any Licensee to refuse or fail to allow such inspection or to hinder such officer or inspector in any manner.

C. In an emergency, if there is not an imminent threat to persons or property, the authorized City official will use the emergency contact information provided on the application to notify the applicant that immediate access is needed. If the applicant or his or her designee does not respond, or is not able to provide the authorized City officials with access to the property within fifteen minutes, then the authorized City official may take whatever reasonable means are necessary to access the property, and the City will not be responsible for any resulting damage to the applicant's property.

11. Suspension or Revocation of License; Notice and Hearing:

A. When any of the provisions of this Ordinance are violated by the licensee, the City Manager or his or her designee may immediately suspend the Medical Marihuana Grow Operation License. If a license is suspended, then the licensee may appeal this determination to the Troy City Council by filing a written request with the Troy City Clerk within ten business days. Upon receipt of a written request, the Troy City Clerk shall schedule a due process hearing at the earliest regular meeting of the Troy City Council, and shall provide notice of the date and time of the hearing to the licensee.

B. The notice of hearing shall indicate that the City of Troy has initiated suspension and/or revocation proceedings, and shall state the reason for the suspension or requested revocation. The notice shall state the location of the hearing and the date and time that the licensee may appear before City Council to give testimony and show cause why the Medical Marihuana Grow Operation License should not be suspended or revoked.

C. At the due process hearing, City staff and/or other concerned individuals will have the opportunity to present evidence and testimony supporting the suspension or requested revocation. The licensee shall be allowed to present evidence and testimony at the hearing as to why the license should not be suspended or revoked. After the hearing, the City Council may revoke the Medical Marihuana Grow Operation license, suspend the license, or reinstate the license. If City Council suspends the Medical Marihuana Grow Operation License, then Council shall clearly specify the length of the suspension, as well as any conditions that must be satisfied or corrective action that must be taken prior to restoration of the license.

D. If the licensee fails to satisfy Council's articulated conditions for restoration of a suspended Medical Marihuana Grow Operation License within the time allocated to the licensee, then Council can revoke the license. The licensee may seek relief of the City Council decision through the Oakland County Circuit Court, but must file any action within 21 days of the final decision.

E. Suspension or revocation of a license is not an exclusive remedy and nothing contained in this Ordinance is intended to limit the City's ability to prosecute the violations of this or any other City of Troy ordinance or State Law that may have been the cause of the suspension and/or revocation.

12. Penalty for Violation.

A person who violates any provision of this Ordinance, or the terms, conditions or provisions of a license, is responsible for a misdemeanor, punishable by up to 90 days in jail and/or fines up to $500. Nothing in this section shall be construed to limit the remedies available to the City in the event of a violation by any person of this Ordinance or a condition of a license. Each violation, and each day upon which a violation exists or continues, shall constitute a separate offense.

13. Savings.

All proceedings pending, and all rights and liabilities existing, acquired or incurred, at the time this Ordinance takes effect are hereby saved. Such proceedings may be consummated under and according to the Ordinance in force at the time such proceedings were commenced. This Ordinance shall not be construed to alter, affect, or abate any pending prosecution, or prevent prosecution hereafter instituted under any ordinance specifically or impliedly repealed or amended by this ordinance adopting this regulation, for offenses committed prior to the effective date of this Ordinance; and new prosecutions may be instituted and all prosecutions pending at the effective date of this Ordinance may be continued, for offenses committed prior to the effective date of this Ordinance, under and in accordance with the provisions of any Ordinance in force at the time of the commission of such offense.

14. Severability Clause.

Should any word, phrase, sentence, paragraph or section of this Ordinance be held invalid or unconstitutional, the remaining provisions of this ordinance shall remain in full force and effect.

(Adopted: 04-23-2018; Enacted: 05-03-2018)

EXHIBIT C

500 West Big Beaver
Troy, MI 48084
troymi.gov

Planning Department
248 524-3364

FINAL NOTICE

04/05/2021

GFA DEVELOPMENT INC
3301 MIRAGE
TROY, MI 48083

Subject: 979 BADDER

Dear GFA DEVELOPMENT INC:

On 4/5/2021, I observed the subject site and noted **the presence of an unlicensed Medical Marihuana Grow Operation. This violates Chapter 104 Section 3a of the Medical Marihuana Grow Operation License Ordinance.**

At this time, there are no licenses currently available for new growers. **The business must vacate the premises and an inspection must be performed to confirm vacancy by 7/7/2021.**

I will view the property on or after that date. If not corrected, the City will be obligated to take legal action to achieve compliance.

Please contact me if you wish to discuss this matter or have any questions. My normal business hours are 8:00 am to 4:30 pm Monday through Friday. Thank you for your attention to this matter.

Sincerely,

Dax Clarke
Housing & Zoning Inspector
248 524-3365
Dax.Clarke@troymi.gov

EXHIBIT D

505 Mich. 130
949 N.W.2d 91

Christie DERUITER,
Plaintiff/Counterdefendant-Appellee,
v.
TOWNSHIP OF BYRON,
Defendant/Counterplaintiff-Appellant.

No. 158311

Supreme Court of Michigan.

Argued on application for leave to appeal October 3, 2019
Decided April 27, 2020

Dodge & Dodge, PC (by David A. Dodge), Grand Rapids, for Christie DeRuiter.

McGraw Morris, PC (by Craig R. Noland and Amanda M. Zdarsky), Troy, and Mika Meyers PLC (by Ross A. Leisman and Ronald M. Redick), Grand Rapids, for Byron Township.

Bauckham, Sparks, Thall, Seeber & Kaufman, PC (by Robert E. Thall, Kalamazoo, and Catherine P. Kaufman, Portage), Amici Curiae for the Michigan Townships Association.

Rosati Schultz Joppich & Amtsbuechler PC (by Thomas R. Schultz), Farmington Hills, Amicus Curiae for the Michigan Municipal League and the Government Law Section of the State Bar of Michigan.

Pollicella & Associates, PLLC (by Denise Pollicella, Farmington Hills, Jaqueline Langwith, and Kyle A. Debruycker) Amici Curiae for Cannabis Attorneys of Michigan.

BEFORE THE ENTIRE BENCH

Bernstein, J.

[505 Mich. 134]

In this case, we address whether defendant-counterplaintiff Byron Township's zoning ordinance, which regulates the location of registered medical marijuana caregiver activities and requires that a "primary caregiver"[1] obtain a permit before cultivating medical marijuana, is preempted by the Michigan Medical Marihuana Act (the MMMA), MCL 333.26421 *et seq.*[2] Specifically, Byron Township's ordinance requires that medical marijuana caregivers cultivate marijuana as a "home occupation" at a full-time residence. Byron Township Zoning Ordinance, § 3.2.H.1. Plaintiff-counterdefendant, Christie DeRuiter, a registered qualifying patient[3] and primary

[949 N.W.2d 94]

caregiver under the MMMA,[4] cultivated medical marijuana on rented commercially zoned property. DeRuiter's landlord was directed by the Byron Township

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supervisor to cease and desist the cultivation of medical marijuana or face legal action. After Byron Township attempted to enforce its zoning ordinance, DeRuiter sought a declaratory judgment regarding the ordinance's legality. Byron Township countersued and also sought a declaratory judgment regarding the ordinance's legality, arguing that the ordinance did not conflict with the MMMA. The trial court held that § 3.2 of Byron Township's zoning ordinance directly conflicted with, and was therefore preempted by, the MMMA. The trial court granted DeRuiter's motion for summary disposition and denied Byron Township's motion for summary disposition. The Court of Appeals affirmed the trial court in a published opinion. *DeRuiter v. Byron Twp.* , 325 Mich. App. 275, 287, 926 N.W.2d 268 (2018).

Because we conclude that the Byron Township Zoning Ordinance does not directly conflict with the MMMA, we reverse the Court of Appeals' judgment and remand this case to the trial court for proceedings consistent with this opinion.

I. FACTS

Christie DeRuiter, a licensed qualifying patient and registered primary caregiver under the MMMA, began growing marijuana on rented commercially zoned property because she did not want to grow marijuana at her residence. DeRuiter grew the marijuana in an "enclosed, locked facility." See MCL 333.26423(d).

After learning of DeRuiter's cultivation of medical marijuana on commercially zoned property, the Byron Township supervisor determined that DeRuiter's growing operation constituted a zoning violation under the Byron Township Zoning Ordinance. The zoning ordinance

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contains a locational restriction[5] that allows for the cultivation of medical marijuana by primary caregivers, but only as "a home occupation." Byron Township Zoning Ordinance, § 3.2.H.1.[6] "Home occupation" is defined by Byron Township as follows:

> An occupation or profession that is customarily incidental and secondary to the use of a dwelling. It is customarily conducted within a dwelling, carried out by its occupants utilizing equipment customarily found in a home and, except for a sign allowed by this Ordinance, is generally not distinguishable from the outside. [Byron Township Zoning Ordinance, § 2.5.]

Under this home-occupation requirement, the ordinance mandates that the "medical use" of marijuana by a primary caregiver be "conducted entirely within a dwelling[7]

[949 N.W.2d 95]

or attached garage, except that a registered primary caregiver may keep and cultivate [medical marijuana], in an enclosed, locked facility...." Byron Township Zoning Ordinance, § 3.2.H.2.d (quotation marks omitted). The ordinance also requires that "[t]he medical use of marijuana shall comply at all times with the MMMA and the MMMA General Rules, as amended." Byron Township Zoning Ordinance, § 3.2.H.2.a.

[505 Mich. 137]

Furthermore, Byron Township requires that primary caregivers obtain a permit to grow medical marijuana. Byron Township Zoning Ordinance, § 3.2.H.3. If a primary caregiver who holds a permit departs from the requirements of either the ordinance or the MMMA, their permit can be revoked. Byron Township Zoning Ordinance, § 3.2.H.3.c. Byron Township's zoning ordinance clarifies that a permit is not required for a qualifying patient's cultivation of marijuana for personal use and that a permit is not required for a qualifying patient's possession or use of marijuana in their dwelling. Byron Township Zoning Ordinance, § 3.2.H.5 and § 3.2.H.6. DeRuiter did not obtain a permit from Byron Township before cultivating medical marijuana as a primary caregiver.

In March 2016, Byron Township sent DeRuiter's landlord a letter, directing the landlord to cease and desist DeRuiter's cultivation of medical marijuana and to remove all marijuana and related equipment or be subject to enforcement action. The letter asserted that violations of the zoning ordinance were a nuisance per se.

In May 2016, DeRuiter filed a complaint, seeking a declaratory judgment that Byron Township's zoning ordinance was preempted by the MMMA and that it was, therefore, unenforceable. She took issue with the ordinance's permit requirement and locational restriction. She also sought injunctive relief to prevent Byron Township from enforcing the ordinance. Byron Township filed a counterclaim, seeking a declaratory judgment and abatement of the alleged nuisance.

The trial court granted DeRuiter's motion for summary disposition, denied Byron Township's motion for summary disposition, and dismissed

Byron Township's counterclaim. The trial court held that the zoning

[505 Mich. 138]

provisions in question directly conflicted with the MMMA and that, as a result, those provisions were preempted and unenforceable. Specifically, the trial court held that Byron Township's zoning ordinance impermissibly subjected primary caregivers to penalties for the medical use of marijuana and for assisting qualifying patients with the medical use of marijuana regardless of a caregiver's compliance with the MMMA. According to the trial court, these penalties clearly conflicted with the MMMA, which prohibits penalizing qualifying patients and primary caregivers who are in compliance with the MMMA. See MCL 333.26424(a) and (b). The trial court also determined that Byron Township could not prohibit what the MMMA explicitly authorized—the medical use of marijuana under MCL 333.26427(a). According to the trial court, Byron Township ran afoul of these principles by requiring that a primary caregiver obtain a permit to cultivate marijuana, placing locational restrictions on that cultivation, and subjecting caregivers to fines and penalties for noncompliance.

Byron Township appealed. The Court of Appeals affirmed the trial court in a published opinion, holding that "the trial court did not err by ruling that a direct conflict exist[s] between defendant's ordinance and the MMMA resulting in the MMMA's preemption of plaintiff's home-occupation ordinance." *DeRuiter* , 325 Mich. App. at 287, 926 N.W.2d 268. Byron Township filed an application for leave to appeal in this

[949 N.W.2d 96]

Court. We ordered oral argument on the application, directing the parties to address "whether the defendant's zoning ordinance pertaining to the location of registered medical marijuana caregivers is preempted by the [MMMA]." *DeRuiter v. Byron Twp.* , 503 Mich. 942, 921 N.W.2d 537 (2019).

[505 Mich. 139]

II. STANDARDS OF REVIEW

"Whether a state statute preempts a local ordinance is a question of statutory interpretation and, therefore, a question of law that we review de novo." *Ter Beek v. City of Wyoming* , 297 Mich. App. 446, 452, 823 N.W.2d 864 (2012) (*Ter Beek I*), aff'd 495 Mich. 1, 846 N.W.2d 531 (2014). "We also review de novo the decision to grant or deny summary disposition and review for clear error factual findings in support of that decision." *Ter Beek v. City of Wyoming* , 495 Mich. 1, 8, 846 N.W.2d 531 (2014) (*Ter Beek II*) (citations omitted).

The MMMA was enacted by voter referendum in 2008. "Statutes enacted by the Legislature are interpreted in accordance with legislative intent; similarly, statutes enacted by initiative petition are interpreted in accordance with the intent of the electors."[8] *People v. Mazur* , 497 Mich. 302, 308, 872 N.W. 2d 201 (2015). "We begin with an examination of the statute's plain language, which provides 'the most reliable evidence' of the electors' intent." *Id.* , citing *Sun Valley Foods Co. v. Ward* , 460 Mich. 230, 236, 596 N.W.2d 119 (1999). "If the statutory language is unambiguous, ... [n]o further judicial construction is required or permitted because we must conclude that the electors intended the meaning clearly expressed." *People v. Bylsma* , 493 Mich. 17, 26, 825 N.W.2d 543 (2012) (quotation marks and citations omitted; alteration in original).

[505 Mich. 140]

III. ANALYSIS

Generally, local governments may control and regulate matters of local concern when such power is conferred by the state. *City of Taylor v. Detroit Edison Co.* , 475 Mich. 109, 117-118, 715 N.W.2d 28 (2006). State law, however, may preempt a local regulation either expressly or by implication. *Mich. Gun Owners, Inc. v. Ann Arbor Pub. Sch.* , 502 Mich. 695, 702, 918 N.W.2d 756 (2018), citing *Detroit v. Ambassador Bridge*

Co. , 481 Mich. 29, 35, 748 N.W.2d 221 (2008). Implied preemption can occur when the state has occupied the entire field of regulation in a certain area (field preemption) or when a local regulation directly conflicts with state law (conflict preemption). *Mich. Gun Owners, Inc.* , 502 Mich. at 702, 918 N.W.2d 756. In the context of conflict preemption, a direct conflict exists when "the ordinance permits what the statute prohibits or the ordinance prohibits what the statute permits." *People v. Llewellyn* , 401 Mich. 314, 322 n. 4, 257 N.W.2d 902 (1977).

We only address whether the MMMA is in direct conflict with the township's zoning ordinance. We do not address field preemption because the trial court did not base its preemption ruling on that doctrine. See *DeRuiter* , 325 Mich. App. at 287, 926 N.W.2d 268 (declining to address field preemption because "the trial court never based its ruling on field preemption of zoning"). Likewise, we do not consider express preemption because DeRuiter has

[949 N.W.2d 97]

not argued that the MMMA expressly preempts the zoning ordinance at issue.

Conflict preemption applies if "the ordinance is in direct conflict with the state statutory scheme[.]" *Llewellyn* , 401 Mich. at 322, 257 N.W.2d 902. An examination of whether the MMMA directly conflicts with the zoning ordinance

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must necessarily begin with an examination of both the relevant provisions of the MMMA and of the ordinance.

The MMMA affords certain protections under state law for the medical use of marijuana. MCL 333.26424. The MMMA defines the phrase "medical use of marihuana" as "the acquisition, possession, cultivation, manufacture, extraction, use, internal possession, delivery, transfer, or transportation of marihuana, marihuana-infused products, 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." MCL 333.26423(h). The MMMA states, in pertinent part, that a qualifying patient "is not subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action ... for the medical use of marihuana in accordance with this act[.]" MCL 333.26424(a). The MMMA also provides the same immunity to a primary caregiver in "assisting a qualifying patient ... with the medical use of marihuana in accordance with this act." MCL 333.26424(b). As a condition of immunity under either subsection, the MMMA requires a primary caregiver or qualifying patient who cultivates marijuana to keep their plants in an "enclosed, locked facility." MCL 333.26424(a) ; MCL 333.26424(b)(2).[2]

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Both lower courts held that the zoning ordinance here directly conflicts with the MMMA because the ordinance allows Byron Township to sanction a registered primary caregiver's "medical use of marijuana" when that use occurs in a commercially zoned location. In affirming the trial court's holding, the Court of Appeals relied on our decision in *Ter Beek II* . Like the case before us, *Ter Beek II* involved a challenge to a local zoning ordinance on the basis that the ordinance was preempted by the MMMA. In that case, we were tasked with deciding whether the city of Wyoming's zoning ordinance conflicted with, and was thus preempted by, the immunity provisions of the MMMA, MCL 333.26424(a) and (b). *Ter Beek II* , 495 Mich. at 19, 846 N.W.2d 531.

We said yes. The zoning ordinance in *Ter Beek II* prohibited land uses that were contrary to federal law and subjected such land uses to civil sanctions. Because the manufacture and possession of marijuana is prohibited under federal law, the Wyoming ordinance at issue in *Ter Beek II* had the effect of banning outright the medical use of marijuana in the city. As a result,

there was no way that patients and caregivers could engage in the medical use of marijuana under the MMMA without subjecting themselves to a civil penalty.

The Byron Township ordinance is different than the ordinance we considered in *Ter Beek II* . It allows for the medical use of marijuana by a registered primary caregiver but places limitations on where the

[949 N.W.2d 98]

caregiver may cultivate marijuana within the township (i.e., in the caregiver's "dwelling or attached garage" as part of a regulated "home occupation"). See Byron Township Zoning Ordinance, § 3.2.H.1 and § 3.2.H.2.d. But despite the differences, DeRuiter argues that the Byron Township ordinance is in direct conflict with the

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MMMA because the act protects a registered caregiver from "penalty in any manner" for "assisting a qualifying patient ... with the medical use of marihuana" so long as the caregiver abides by the MMMA's volume limitations and restricts the cultivation to an "enclosed, locked facility." See MCL 333.26424(b). The Court of Appeals agreed.

Admittedly, our preemption analysis in *Ter Beek II* considered the MMMA's prohibition on the imposition of a "penalty in any manner." *Ter Beek II* , 495 Mich. at 24, 846 N.W.2d 531. But while we sided with the plaintiff in *Ter Beek II* , we cautioned that "Ter Beek does not argue, and we do not hold, that the MMMA forecloses all local regulation of marijuana[.]" *Id.* at 24 n. 9, 846 N.W.2d 531.

Were we to accept DeRuiter's argument, the only allowable restriction on where medical marijuana could be cultivated would be an "enclosed, locked facility" as that term is defined by the MMMA. MCL 333.26423(d). Because the MMMA does not otherwise limit cultivation, the argument goes, any other limitation or restriction on cultivation imposed by a local unit of government would be in conflict with the state law.[10] We disagree. The "enclosed, locked facility" requirement in the MMMA concerns what type of structure marijuana plants must be kept and grown in for a patient or caregiver to be entitled to the protections offered by MCL 333.26424(a) and (b) ; the requirement does not speak to *where* marijuana may be grown. In other words, because an enclosed, locked facility could be found in various locations on various types of

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property, regardless of zoning, this requirement is not in conflict with a local regulation that limits *where* medical marijuana must be cultivated.

This result is not at odds with *Ter Beek II* , which involved an ordinance that resulted in a complete prohibition of the medical use of marijuana, despite the MMMA's authorization of such use, see MCL 333.26427(a). A local ordinance is preempted when it bans an activity that is authorized and regulated by state law. For example, in *Nat'l Amusement Co. v. Johnson* , 270 Mich. 613, 614, 259 N.W. 342 (1935), we considered a city ordinance that banned a person from " 'tak[ing] part in any amusement or exhibition which shall result in a contest to test the endurance of the participants.' " We concluded that the ordinance was preempted by a state statute that regulated "endurance contests" and made it unlawful to participate in such contests "except in accordance with the provisions of this act." *Id.* at 615, 259 N.W. 342 (quotation marks omitted). We explained:

> Where an amusement, which has been lawful and unregulated, is not evil *per se* but may be conducted in a good or bad manner, is the subject of legislation, regulatory, not prohibitory, it would seem clear that the legislature intended to permit continuance of the amusement, subject to statutory conditions. The statute makes it unlawful to conduct a walkathon only in violation of

> certain conditions. This is merely a common

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> legislative manner of saying that it is lawful to conduct it if the regulations are observed. [*Id.* at 616-617, 259 N.W. 342.]

We presumed that "the city may add to the conditions" in the statute but found it impermissible that "the ordinance attempt[ed] to prohibit what the statute permit[ted]." *Id.* at 617, 259 N.W. 342. As with the ordinance in *Nat'l Amusement*, Wyoming's ordinance in *Ter Beek II* had the effect of wholly prohibiting an activity (the medical

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use of marijuana) that the MMMA allows. But that does not mean that local law cannot "add to the conditions" in the MMMA. *Id.* DeRuiter's argument would result in an interpretation of the MMMA that forecloses all local regulation of marijuana—the exact outcome we cautioned against in *Ter Beek II*. See *Ter Beek II*, 495 Mich. at 24 n. 9, 846 N.W.2d 531. DeRuiter nevertheless emphasizes our statement that "the [Wyoming] Ordinance directly conflicts with the MMMA by permitting what the MMMA expressly prohibits—the imposition of a 'penalty in any manner' on a registered qualifying patient whose medical use of marijuana falls within the scope of § 4(a)'s immunity." *Id.* at 20, 846 N.W.2d 531. We appreciate the apparent contradiction and take this opportunity to clarify. Our analysis in *Ter Beek II* —in particular, our focus on whether the MMMA permitted the city to impose a sanction for violating the Wyoming ordinance—suggested that the MMMA's immunity language was the source of the conflict. That was true in *Ter Beek II* because the ordinance left no room whatsoever for the medical use of marijuana.

In *Ter Beek II*, the conflict giving rise to that preemption can be viewed as whether the city of Wyoming had completely prohibited the medical use of marijuana that the electors intended to permit when they approved the MMMA.[11] That view meshes with our caselaw, as indicated in our discussion of *Nat'l Amusement*. More recently, we declined to find a conflict between state and local law when a locality enacted regulations that are not "unreasonable and inconsistent

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with regulations established by state law," so long as the state regulatory scheme did not occupy the field. *Detroit v. Qualls*, 434 Mich. 340, 363, 454 N.W.2d 374 (1990) (holding that a city ordinance regulating the quantity of fireworks a retailer may store was not in conflict with a state law that limited possession to a "reasonable amount"). Similarly, in *Miller v. Fabius Twp. Bd.*, 366 Mich. 250, 255-257, 114 N.W.2d 205 (1962), we held that a local ordinance that prohibited powerboat racing and water skiing between the hours of 4:00 p.m. and 10:00 a.m. was not preempted by a state law that prohibited the activity " 'during the period 1 hour after sunset to 1 hour prior to sunrise.' " In both cases, we quoted favorably the following proposition:

> The mere fact that the State, in the exercise of the police power, has made certain regulations does not prohibit a municipality from exacting additional requirements. So long as there is no conflict between the two, and the requirements of the municipal bylaw are not in themselves pernicious, as being unreasonable or discriminatory, both will stand. The fact that an ordinance enlarges upon the provisions of a statute by requiring more than the statute requires

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> creates no conflict therewith, unless the statute limits the requirement for all cases to its own prescription. Thus, where both an ordinance and

> a statute are prohibitory and the only difference between them is that the ordinance goes further in its prohibition, but not counter to the prohibition under the statute, and the municipality does not attempt to authorize by the ordinance what the legislature has forbidden or forbid what the legislature has *expressly* licensed, authorized, or required, there is nothing contradictory between the provisions of the statute and the ordinance because of which they cannot coexist and be effective. Unless legislative provisions are contradictory in the sense that they cannot coexist, they are not deemed inconsistent because of mere lack of uniformity in detail. [*Miller*, 366 Mich. at 256-257, 114 N.W.2d 205, quoting 37 Am. Jur., Municipal Corporations, § 165, p. 790.

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> See also *Qualls*, 434 Mich. at 362, 454 N.W.2d 374, quoting 56 Am. Jur. 2d, Municipal Corporations, § 374, pp. 408-409.]

Under this rule, an ordinance is not conflict preempted as long as its additional requirements do not contradict the requirements set forth in the statute.[12]

Plaintiff has not argued that the state's authority to regulate the medical use of marijuana is exclusive. The geographical restriction imposed by Byron Township's zoning ordinance adds to and complements the limitations imposed by the MMMA; we therefore do not believe there is a contradiction between the state law and the local ordinance. As in *Qualls* and *Miller*, the local ordinance goes further in its regulation but not in a way that is counter to the MMMA's conditional allowance on the medical use of marijuana. We therefore hold that the MMMA does not nullify a municipality's inherent authority to regulate land use under the Michigan Zoning Enabling Act (MZEA), MCL 125.3101 *et seq.*,[13] so long as the municipality does not

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prohibit or penalize all medical marijuana cultivation, like the city of Wyoming's zoning ordinance did in *Ter Beek II*, and so long as the municipality does not impose regulations that are "unreasonable and inconsistent with regulations established by state law." *Qualls*, 434 Mich. at 363, 454 N.W.2d 374. In this case, Byron Township appropriately used its authority under the MZEA to craft a zoning ordinance that does not directly conflict with the MMMA's provision requiring that marijuana be cultivated in an enclosed, locked

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facility.[14]

DeRuiter also argues that Byron Township's permit requirement directly conflicts with the MMMA because it impermissibly infringes her medical use of marijuana. Again, we disagree. As with the zoning ordinance's locational restriction, the permit requirement does not effectively prohibit the medical use of marijuana.[15] The MZEA allows Byron Township to require

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zoning permits and permit fees for the use of buildings and structures within its jurisdiction.[16] Accordingly, Byron Township may require primary caregivers to obtain a permit and pay a fee before they use a building or structure within the township for the cultivation of medical marijuana. We express no opinion on whether the requirements for obtaining a permit from the township are so unreasonable as to create a conflict with the MMMA because that argument has not been presented to us.

To the extent DeRuiter argues that the immunity provisions of the MMMA contribute to a blanket prohibition on local governments regulating the

"medical use" of marijuana with respect to time, place, and manner of such use, *that* argument sounds in field preemption. DeRuiter made this claim in the trial court. But because the trial court and the Court of Appeals held that the ordinance was conflict preempted, neither court reached the issue.[17] Accordingly, we decline to address it at this time.

IV. CONCLUSION

We hold that Byron's Township's home-occupation zoning ordinance does not directly conflict with the MMMA. Accordingly, we reverse the Court of Appeals' holding to the contrary and remand to the trial court

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for further proceedings consistent with this opinion. We do not retain jurisdiction.

McCormack, C.J., and Markman, Zahra, Viviano, Clement, and Cavanagh, JJ., concurred with Bernstein, J.

Notes:

[1] For purposes of the Michigan Medical Marihuana Act, MCL 333.26421 *et seq.* , a "primary caregiver" means "a person who is at least 21 years old and who has agreed to assist with a patient's medical use of marihuana ...." MCL 333.26423(k). Primary caregivers with a registry identification card possess immunity from criminal prosecution under Michigan law for cultivating marijuana for their qualifying patients. MCL 333.26424(b).

[2] This opinion addresses zoning in the context of medical marijuana use and the MMMA. It does not address any zoning issues that may arise from the voter-initiated legalization of recreational marijuana. See 2018 IL 1, effective December 6, 2018.

[3] "Qualifying patient" means "a person who has been diagnosed by a physician as having a debilitating medical condition." MCL 333.26423(l).

[4] Although DeRuiter is both a registered qualifying patient and a primary caregiver, her challenge to Byron Township's zoning ordinance concerns only her rights as a primary caregiver.

[5] We use "locational restriction" in this opinion to denote a zoning restriction that regulates where an activity may occur within a municipality.

[6] The township amended § 3.2 of the Byron Township Zoning Ordinance on July 11, 2016. The postamendment version of the zoning ordinance is at issue in this case.

[7] The term "dwelling unit" is defined as "[a] building or portion of a building, designed for use and occupancy by one family for living and sleeping purposes and with housekeeping facilities. A recreational vehicle, vehicle chassis, tent or other transient residential use is not considered a dwelling." Byron Township Zoning Ordinance, § 2.3. Byron Township's zoning ordinance does not permit dwellings by right in commercially zoned districts. See Byron Township Zoning Ordinance, §§ 6.1 and 6.2.

[8] The Legislature subsequently amended the MMMA. See 2012 PA 512, effective April 1, 2013; 2012 PA 514, effective April 1, 2013; 2016 PA 283, effective December 20, 2016. Because these amendments do not concern preemption or local zoning restrictions, we are primarily concerned with the electorate's intent when determining whether a direct conflict exists between the MMMA and the Byron Township Zoning Ordinance.

[9] An "enclosed, locked facility" may be a "closet, room, or other comparable, stationary, and fully enclosed area ...." MCL 333.26423(d). The facility may be outdoors "if [marijuana plants] are not visible to the unaided eye from an adjacent property when viewed by an individual at ground level or from a permanent structure and are grown within a stationary structure that is enclosed on all sides, except for the base," or it may be in a vehicle under certain conditions. *Id.*

[10] DeRuiter argues that the MMMA permits her to cultivate medical marijuana in any enclosed, locked facility. She does not contend that it was impossible or impractical for her to cultivate marijuana in her home in accordance with Byron Township's zoning ordinance. Consequently, we do not address this latter possibility.

[11] While this Court has stated that "[t]he MMMA does *not* create a general right for individuals to use and possess marijuana in Michigan," *People v. Kolanek* , 491 Mich. 382, 394, 817 N.W.2d 528 (2012), the act plainly evinces an intent to permit that use, under certain circumstances, by persons who have a legitimate medical need. See MCL 333.26422 (findings and declarations).

[12] See *Nat'l Amusement Co.* , 270 Mich. at 616, 259 N.W. 342, quoting 43 C. J., p. 218 ("In order that there be a conflict between a State enactment and a municipal regulation both must contain either express or implied conditions which are inconsistent and irreconcilable with each other. Mere differences in detail do not render them conflicting. If either is silent where the other speaks, there can be no conflict between them. Where no conflict exists, both laws stand.... As a general rule, additional regulation to that of a State law does not constitute a conflict therewith.") (quotation marks omitted).

[13] The MZEA provides that "[a] local unit of government may provide by zoning ordinance for the regulation of land development and ... regulate the use of land and structures ...." MCL 125.3201(1). Moreover, even if the "enclosed, locked facility" requirement did concern where marijuana must be grown, this would not necessarily preclude a local governmental unit from imposing additional locational restrictions. *Rental Prop. Owners Ass'n of Kent Co. v. Grand Rapids* , 455 Mich. 246, 262, 566 N.W.2d 514 (1997) ("The mere fact that the state, in the exercise of the police power, has made certain regulations does not prohibit a municipality from exacting additional requirements.") (quotation marks and citations omitted).

[14] We do not decide whether Byron Township's ordinance conflicts with other aspects of the MMMA. Nor do we decide if the ordinance, which also precludes cultivating medical marijuana outside or in a structure detached from a residence, see Byron Township Zoning Ordinance, § 3.2.G.1 and § 3.2.H.2.d, has the practical consequence of prohibiting DeRuiter from cultivating the number of marijuana plants she is expressly permitted by the MMMA, see MCL 333.26426(d) ; MCL 333.26424(a) ; MCL 333.26424(b)(2).

[15] Byron Township's zoning ordinance provides that "[t]he operations of a registered primary caregiver, as a home occupation, shall be permitted only with the prior issuance of a Township permit." Byron Township Zoning Ordinance, § 3.2.H.3. Additionally, "[a] complete and accurate application shall be submitted ... and an application fee in an amount determined by resolution of the Township Board shall be paid." Byron Township Zoning Ordinance, § 3.2.H.3.a. To obtain a permit from the township, a caregiver must demonstrate that their grow operation is located in a full-time residence and provide state identification, their MMMA registry identification card, information about the equipment used to cultivate marijuana, and a description of the location being used to grow medical marijuana. Byron Township Zoning Ordinance, § 3.2.H.3.b. "A permit shall be granted if the application demonstrates compliance with [the] Ordinance, the MMMA and the MMMA General Rules." *Id.*

[16] The MZEA authorizes municipalities to "charge reasonable fees for zoning permits as a condition of granting authority to use ... buildings ... and structures ... within a zoning district established under this act." MCL 125.3406(1).

[17] At oral argument before this Court, DeRuiter conceded that her appeal does not concern field preemption.

EXHIBIT E

K-02a

500 West Big Beaver
Troy, MI 48084
troymi.gov

CITY COUNCIL AGENDA ITEM

Date: April 3, 2018

To: Honorable Mayor and City Council Members

From: Mark F. Miller, Acting City Manager
Lori Grigg Bluhm, City Attorney

Subject: Proposed Medical Marihuana Care Giver Grow Operation License Ordinance

---

The City of Troy is home to several medical marihuana care giver grow operations, which are allowed under the Michigan Medical Marihuana Act (MMMA). Since the time the MMMA was enacted in 2008, several cases have been litigated, providing further clarity as to the statutory provisions. These cases clarify the ability for municipalities to enact additional regulations, as long as the provisions do not conflict with State law. Also, in connection with Michigan Medical Marihuana Facilities Licensing Act (MMFLA), which is the state statute empowering municipalities to opt in to allow commercial medical marihuana facilities in their communities, local law enforcement is now granted access to the mandatory statewide system for the registry of patients and caregivers. This new authority is expressly provided for in the Marihuana Tracking Act, which was tie barred to the MMFLA. The Marihuana Tracking Act also expressly exempts patient and caregiver information from disclosure under the Freedom of Information Act, but allows for the collection of information for enforcement of the MMMA and MMFLA. As a result of these developments, City Administration proposes the attached Medical Marihuana Care Giver Grow Operation License Ordinance.

This proposed Ordinance pertains only to medical marihuana care giver grow operations, and does not permit commercial facilities or otherwise interfere with City Council's affirmative action in expressly opting out of the MMFLA. It provides some health, safety, and welfare protections for care giver facilities that allow a maximum of 72 plants to be grown for registered medical marihuana patients. Prior to issuing a moratorium, the City granted approximately 78 occupancy permits that allowed for medical marihuana care giver grow operations in the City. The City did not previously have a licensing ordinance, and instead issued occupancy permits only if the proposed location demonstrated compliance with the MMMA, including but not limited to having a separate locked enclosed facility for the cultivation of marihuana plants for each of the caregiver's connected patients.

This proposed Ordinance requires each proposed Medical Marihuana Care Giver Grow Operation to obtain licensure with the City. The license process requires a background check, and a verification of the registration status of the caregiver and the connected patients. The proposed Ordinance allows for an appeal if a license is suspended or revoked, or if a license is denied. It also allows for authorized City officials to do periodic inspections to insure compliance with the MMMA.

Since caregivers must decide between being involved with a commercial MMFLA grow facility (outside of the City), or continuing to serve as a registered caregiver in the City, it is anticipated that there will be some attrition. With this expectation, this proposed Ordinance allows current caregivers to apply for licensure, but otherwise limits the number of facilities to 1 per 370 persons. Absent contrary direction from City Council, it will be submitted as an action agenda item for April 23, 2018.

EXHIBIT F

5. Number of Qualifying Patients and Primary Caregivers Approved in Each County

As of May 31, 2021

County	Patients	Caregivers
Alcona	633	77
Alger	640	104
Allegan	5,482	736
Alpena	724	82
Antrim	1,298	193
Arenac	1,222	151
Baraga	129	17
Barry	2,310	289
Bay	5,369	384
Benzie	1,101	133
Berrien	3,970	639
Branch	1,846	307
Calhoun	2,746	388
Cass	1,634	300
Charlevoix	348	46
Cheboygan	676	88
Chippewa	547	80
Clare	1,566	262
Clinton	3,217	381
Crawford	1,073	124
Delta	741	141
Dickinson	534	121
Eaton	3,290	455
Emmet	141	33
Genesee	9,776	1,373
Gladwin	31	23
Gogebic	306	68
Grand Traverse	1,197	137
Gratiot	242	50
Hillsdale	1,143	226
Houghton	241	41
Huron	498	39
Ingham	2,166	416
Ionia	223	50
Iosco	210	25
Iron	165	35
Isabella	471	71
Jackson	4,278	561
Kalamazoo	3,324	420
Kalkaska	317	47
Kent	8,453	815
Keweenaw	156	28

County	Patients	Caregivers
Lake	258	51
Lapeer	3,607	486
Leelanau	768	70
Lenawee	3,249	456
Livingston	3,770	432
Luce	83	16
Mackinac	192	32
Macomb	29,523	4,358
Manistee	405	67
Marquette	266	91
Mason	435	57
Mecosta	209	39
Menominee	389	94
Midland	2,285	242
Missaukee	203	31
Monroe	4,343	493
Montcalm	1,747	317
Montmorency	108	37
Muskegon	2,966	380
Newaygo	1,638	248
Oakland	37,184	4,150
Oceana	1,303	216
Ogemaw	448	43
Ontonagon	112	19
Osceola	382	93
Oscoda	223	19
Otsego	85	29
Ottawa	3,246	351
Out of State	0	9
Presque Isle	118	27
Roscommon	531	62
Saginaw	3,776	407
Saint Clair	4,147	548
Saint Joseph	666	134
Sanilac	849	125
Schoolcraft	35	17
Shiawassee	2,650	330
Tuscola	3,644	570
Van Buren	1,758	295
Washtenaw	12,198	1,104
Wayne	46,911	4,083
Wexford	1,250	214
Total	**252,414**	**30,800**

EXHIBIT G

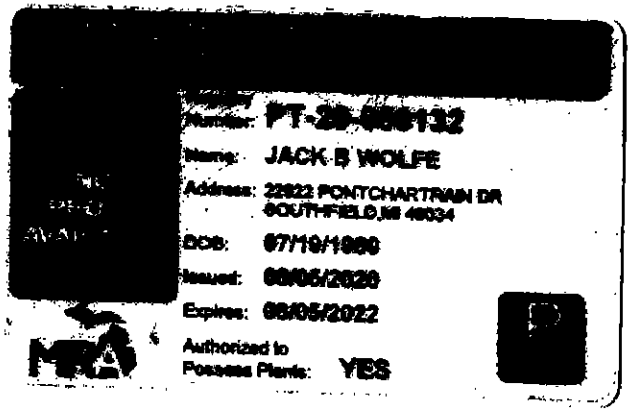
[redacted]
Number: PT-28-[redacted]132
Name: JACK B WOLFE
Address: 22922 PONTCHARTRAIN DR
SOUTHFIELD,MI 48034
DOB: 07/19/1980
Issued: 08/05/2020
Expires: 08/05/2022
Authorized to
Possess Plants: YES
[redacted]

EXHIBIT H

WEBERMAN LAW, P.C.

7071 Orchard Lake Road, #245 • West Bloomfield, MI 48322-3404
(248) 737-4500 • Fax: (248) 737-1829 • danielweberman@yahoo.com

December 23, 2019

Mr. Jack B. Wolfe
Parker Place Holdings, LLC
7071 Orchard Lake Road, Suite 250
West Bloomfield, MI 48322

Mr. Michael W. Hosner
28108 Malvina Drive
Warren, MI 48088

Re: **FORBEARANCE LETTER AGREEMENT**
Parker Place Holdings v Michael Hosner
Oakland County Circuit Court Case No. 2019-171849-CB

Dear Messrs. Wolfe and Hosner:

It is my understanding that you have agreed to the following resolution of your disputes as evidenced by your signatures below:

RECITALS:

A. Parker Place Holdings, LLC ("Creditor"), obtained a judgment ("Judgment"), a copy of which is attached as **Exhibit A**, against Michael W. Hosner ("Debtor") (Creditor and Debtor are referred to collectively as the "Parties" and, singularly, sometimes as the "Party") on March 13, 2019, in the amount of $81,309.25;

B. The Judgment accrued statutory interest at the rate of 3.235% from the date of entry through today's date, December 16, 2019, calculated as $2009.30 for a total debt owed by Debtor as of today's date on the Judgment in the amount of $83,318.54 ("Total Judgment Debt") with a per diem of $7.31 ("Judgment Per Diem");

C. On April 4, 2019, the undersigned sent a letter (the "Letter") addressed to Creditor to provide to Debtor which, upon information and belief, Creditor sent by email to Debtor's email that was received by Debtor at fishindad45@gmail.com, wherein the undersigned at the request of Creditor granted a 2-month forbearance of any collection activities pending Debtor making an effort to retire the Judgment (the "Forbearance Period"). The Letter is attached as **Exhibit B;**

D. The Judgment included monies loaned through November 30, 2018 by Creditor to Debtor in order for Debtor to operate a City of Troy licensed caregiver medical marihuana growing facility for his 5 patients and himself growing 72 plants (the "Business") under the Michigan Medical Marihuana Act of 2008 ("MMMA") at 979 Badder, Troy, Michigan 48083 ("Badder Facility");

E. As of December 1, 2018, Creditor directly leased the space from the landlord for the Badder Facility at $2500/month NNN with $150 late fee if the rent was not paid on or before the 10th of each month ("Badder Rent") with Debtor subleasing the space from Creditor on the same terms;

F. Creditor deferred the Badder Rent owed by Debtor for the use of the Badder Facility until Debtor was able to generate a profit from the operations of his Business and, as of today's date, Debtor owes Creditor for unpaid rent and other rent related charges the amount of $34,000.00 ("Unpaid Rent"), which is in addition to the Total Judgment Debt.

G. Attached as **Exhibit C** is a schedule prepared by Creditor of all monies owed by Debtor to Creditor since June 1, 2018 through December 12, 2019, to operate his Business at the Badder Facility, including the Unpaid Rent, and which was to be paid back to Creditor upon Debtor generating any profit from the Business in the amount of $126,000.00 ("Badder Total Debt");

H. Debtor has not generated any profit or revenue from his Business operations to pay back the Badder Total Debt;

I. Debtor is currently working on trimming and curing the fifth crop of 34 plants ("Crop # 5") since Creditor's involvement in Debtor's Business with the sixth crop of 36 plants ("Crop #6") in its 6th week of the flowering stage;

J. The debt owing by Debtor to Creditor as of December 12, 2019, is the Badder Total Debt + the Judgment Per Diem equals $128,009.30 ("Total Hosner Debt"); and

K. Debtor acknowledges receipt from Creditor of the 30-day notice from Creditor to take possession of the Badder Facility (the "Notice") and the order to seize the Debtor's personal property at the Badder Facility (the "Order").

In consideration of the foregoing, and other good and valuable consideration the receipt of which is acknowledged by the Parties, and accepting as true and accurate the Recitals above incorporating them into this Forbearance Agreement (sometimes hereinafter referred to as this "Agreement") as if more fully stated therein, the Parties desire to extend the Forbearance Period upon the terms set forth below as follows:

FORBEARANCE AGREEMENT

1. **Troy 2020 License Renewal**: Contemporaneously with the execution of this Agreement, but no later than December 31, 2019, Debtor shall submit to Creditor a fully completed and signed renewal application (the "2020 Application") for the year 2020 for the Badder Facility for a medical caregiver grow under the MMMA, which shall be submitted to Troy for approval with Creditor advancing the monies necessary to submit the 2020 Application in order to obtain licensure approval for calendar year 2020 ("Troy 2020 License Renewal") and upon the approval of the City of Troy of Debtor's Troy 2020 License Renewal, the sum of $15,000.00 ("2020 Licensure Bonus") shall be deducted from the Total Hosner Debt.

2. **New Debt**: Creditor every month shall provide to Debtor within 10 days of the close

of the preceding month all new monies advanced or loaned to Debtor by Creditor which shall be added to the Total Hosner Debt less any payments made.

3. **Profit Sharing**: The Parties shall profit share ("Profit Share") 70/30 in favor of Creditor for Crop # 5 and Crop #6 (collectively, the "Crops") with Creditor and Debtor jointly taking the gross revenue generated from the Crops at the sole and absolute direction of Creditor and from the gross revenue generated, deduct, reimburse and/or pay as follows: (i) with regard to Crop #5 gross revenue, Creditor shall be reimbursed for the Badder Rent incurred for October-November, 2019; reimburse Creditor for the $2400.00 advanced to Debtor; and pay any testing fees owed at Iron Lab in connection with Crop #5 and, thereafter, the balance of the net revenue or profit shall be split 70/30 with Debtor receiving 30%, provided, however that Debtor shall receive a bonus of $2400.00 if gross revenue for Crop #5 is $36,000.00 or higher; and (ii) with regard to Crop #6 gross revenue, Creditor shall be reimbursed for the Badder Rent incurred for December-January, 2019; and pay any testing fees owed at Iron Lab in connection with Crop #6 and, thereafter, the balance of the net revenue or profit shall be split 70/30 with Debtor receiving 30%, provided, however that Debtor shall receive a bonus of $2500.00 if gross revenue for Crop #6 is $40,000.00 or higher.

4. **Credit/Offset of Total Hosner Debt**: All monies received by Creditor from crop net revenue shall credit and/or offset the Total Hosner Debt, including future crops (see below) at the Badder Facility with Creditor providing to Debtor a monthly accounting of how much of the Total Hosner Debt plus Per Diem, as amended below, has been repaid from profits within 15 days of the close of the preceding month with all payments first applied to the principal of the Total Hosner Debt and, thereafter, toward accruing interest.

5. **Future Crops**: Any future crops generated at the Badder Facility shall be split 70/30 until the Total Hosner Debt is reduced by $90,000.00, excluding the accrual of any Per Diem interest, as amended below and, thereafter, the Profit Share shall be amended to 50/50 until the Total Hosner Debt plus Per Diem, as amended below, are paid in full with the Profit Share amended a second time to 80/20 in favor of Debtor through December 31, 2021; provided, however, that any "new debt" incurred by Creditor and/or Debtor between the sale of one crop and another, verified by receipts, shall be reimbursed to the Party that incurred the debt before any split of profits.

6. **Troy 2021 License Renewal and 2021 Profit Share**: Notwithstanding anything herein to the contrary, Debtor shall timely submit to the City of Troy for its approval his renewal application (the "2021 Application") for the year 2021 for the Badder Facility for a medical caregiver grow under the MMMA, with Debtor required to pay all monies necessary to submit the 2021 Application in order to obtain licensure approval for calendar year 2021 ("Troy 2021 License Renewal") and, upon the approval of the City of Troy of Debtor's Troy 2021 License Renewal, the sum of $10,000.00 ("2021 Licensure Bonus") shall be deducted from the Total Hosner Debt plus Per Diem, as amended below and, if the Total Hosner Debt plus Per Diem, as amended below, has been paid in full, the 2021 Licensure Bonus shall be deducted from the 2021 Profit Share of Creditor, who shall, at a minimum, be entitled to 20% of all profits generated from the Business in 2021 presuming the Total Hosner Debt plus Per Diem, as amended below, have been paid in full and, the failure of Debtor to pay Creditor no less than a 20% Profit Share during 2021 shall result in liquidated damages against Debtor of $100,000.00.

7. **Lie Detector Test**: After submission of the 2020 Application to Troy but before the

end of the month in December 2019, Debtor shall either choose a lie detecting service or shall submit to the service selected by Creditor ("Lie Detector Test"), with Debtor answering the questions submitted by Creditor, which will pertain to any product and/or plant thefts which occurred at the Badder Facility from June, 2018, thru the date first written above, and the costs of such testing paid by Creditor, with any Lie Detector Test result indicating that Debtor was involved in any thefts at the Badder Facility, shall result in this Agreement being null, void and no further force and/or effect; provided, however, that Debtor will immediately peacefully vacate the Badder Facility allowing Creditor the right to continue operating at the Badder Facility under Debtor's Troy 2020 License Renewal without interference and that Debtor will also renew the license for the Badder Facility for the 2021 calendar year in return for Creditor not pursuing criminal and civil remedies against Debtor for his Lie Detector Test failure.

8. **Debtor Termination**: Notwithstanding anything herein to the contrary, after Crop #7, Creditor in its sole and absolute discretion shall have the right to terminate its relationship with Debtor but retain the Business and Debtor will peacefully vacate the Badder Facility allowing Creditor the right to continue operating at the Badder Facility under Debtor's Troy 2020 License Renewal without interference and that Debtor will renew the license for the Badder Facility for 2021; provided, however, that Creditor will give to Debtor a monthly accounting of how much of the Total Hosner Debt plus Per Diem charges, as amended below, has been repaid from profits since the termination.

9. **Forbearance**. Providing that all of the foregoing is complied with and abided by Debtor, Creditor shall forbear from evicting Debtor from the Badder Facility by the Notice, seizing the personal property of Debtor at the Badder Facility pursuant to the Order, pursuing any non-judicial foreclosure action against the house owned by Hosner's friend, Tracey Kaufmann ("Kaufmann Mortgage Lien"), since the default notices were already provided to her over 30 days ago, the foreclosure action could be commenced at any time and/or taking any other activities to collect the Total Hosner Debt including Per Diem (as amended below) or any portion thereof and Debtor shall not to remove any property or assets from the Badder Facility without Creditor's written permission or a court order while Debtor forbears hereunder any collection of the Total Hosner Debt. Upon the receipt by Creditor of $90,000.00 toward the Total Hosner Debt, but in no event subsequent to the harvest and sale of Crop #7, Creditor shall release and discharge the Kaufmann Mortgage Lien and the Judgment.

10. **Per Diem**: The Judgment Per Diem is no longer applicable as of the date of this Forbearance Letter Agreement with the interest accrual on the Total Hosner Debt calculated at 18% per annum as of the date of this Agreement with the recalculated per diem at $64/day ("Amended Per Diem"); provided, however, as set foerth above, payments made toward the Hosner Total Debt are first to principal then to accrued interest..

11. **Miscellaneous**:

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan without regard to principles of conflicts of law.

(b) Time is of the essence hereunder.

(c) If any term, provision, covenant or condition hereof or any application thereof should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all terms, provisions, covenants and conditions hereof, and all applications thereof not held invalid, void or unenforceable shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

(d) The title of the headings of the paragraphs of this Agreement are for convenience of reference only, and are not to be considered a part of the substance of this Agreement, and shall not limit or expand or otherwise affect any of the terms hereof.

(e) This Agreement creates a continuing obligation and the obligation of Debtor hereunder shall be binding upon Debtor and his successors, heirs, representatives and assigns, and shall inure to the benefit of and be enforceable by Creditor and its successors and assigns.

(f) DEBTOR AND CREDITOR DO HEREBY KNOWINGLY VOLUNTARILY, INTENTIONALLY, UNCONDITIONALLY AND IRREVOCABLY WAIVE THE RIGHT TO TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER DOCUMENTS EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON OR PARTY AND RELATED TO THIS TRANSACTION. THIS IRREVOCABLE WAIVER OF THE RIGHT TO A JURY TRIAL PURSUANT TO THE AGREEMENT HEREUNDER WAS A MATERIAL INDUCEMENT FOR CREDITOR TO FORBEAR AND ACCEPT THIS AGREEMENT.

(g) This is the entire agreement between the Parties with regard to forbearance by Creditor on collection of the Total Hosner Debt and any amendment thereto must be in writing and signed by the Party against whom enforcement is sought.

(h) This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement with facsimile signatures deemed originals.

The signatures of the Parties are below accepting this Agreement on the date first written above.

Sincerely,
DANIEL I. WEBERMAN
DANIEL I. WEBERMAN

ACCEPTANCE:

The undersigned Parties accept the foregoing Forbearance Letter Agreement in its entirety:

Jack B. Wolfe, Manager, on behalf of
Parker Place Holdings, LLC

Michael Hosner

EXHIBIT A

Approved, SCAO

Original - Court
1st copy - Plaintiff
Copies - All other parties

STATE OF MICHIGAN JUDICIAL DISTRICT 6th JUDICIAL CIRCUIT	DEFAULT REQUEST, AFFIDAVIT, ENTRY, AND JUDGMENT (SUM CERTAIN)	CASE NO. 2019-171849-CB
Court address: 1200 N. Telegraph Road, Pontiac, MI 48341		Court telephone no. 248-858-1000

Plaintiff name, address, and telephone no.		Defendant name, address, and telephone no.
Parker Place Holdings, LLC 7071 Orchard Lake Road, Suite 250 West Bloomfield, MI 48322 248-862-2018	v	Michael Hosner 28108 Malvina Drive Warren, MI 48088
Plaintiff's attorney, bar no., address, and telephone no. Daniel I. Weberman P41644 7071 Orchard Lake Road, Suite 245 West Bloomfield, MI 48322 248-737-4500		Defendant's attorney, bar no., address, and telephone no.

USE NOTE: Plaintiff must complete the Request and Affidavit and the Default Judgment before filing with the court.

REQUEST AND AFFIDAVIT

1. I request a default entry against Defendant Michael Hosner for failure to appear.
2. The claim against the defaulted party is for a sum certain or for a sum, which by computation can be made certain. I request judgment for: Damages: $ 80,914.00 Costs: $ 220.25 Attorney fee/Other: $ _____ Total judgment: $ 81,134.25
3. The amount requested for damages is not greater than the amount stated in the complaint.
4. The defaulted party is not an infant or incompetent person.
5. ☐ It is unknown whether the defaulted party is in the military service. ☑ The defaulted party is not in the military service.
   ☐ The defaulted party is in the military but there has been notice of pendency of the action and adequate time and opportunity to appear and defend has been provided. Attached, as appropriate, is a waiver of rights and protections provided under the Servicemembers Civil Relief Act. Facts upon which this conclusion is based are: (specify)
6. This affidavit is made on my personal knowledge and, if sworn as a witness, I can testify competently to the facts in this affidavit.

Subscribed and sworn to before me on 03/12/2019 (Date) in OAKLAND County, Michigan.

My commission expires: 06/08/2024 (Date) Signature: _____ (Deputy court clerk/Notary public)

Notary public, State of Michigan, County of OAKLAND

Daniel Weberman P41644 (Applicant/Attorney signature) (Bar no.)

DEFAULT ENTRY The default of the party named above for failure to appear is entered.

3/13/2019 (Date)

Lisa Brown (Court clerk)

/s/ S. Wagner

DEFAULT JUDGMENT IT IS ORDERED this judgment is granted in favor of the plaintiff(s) as follows.

Attach bill of costs if statutory limit is exceeded.

Damages: $ 80,914.00 Costs: $ 220.25 Attorney fee/Other: $ 175 Total judgment: $ 81,309.25

This judgment will earn interest at statutory rates, computed from the filing date of the complaint.

Judgment interest accrued thus far is $ waived and is based on: If needed, attach separate sheet.

☐ the statutory rate of _____% from _____ to _____

☐ the statutory 6-month rate(s) of _____% from _____ to _____

3/13/2019 (Date)

Lisa Brown (Court clerk/Judge)

/s/ S. Wagner

The judgment has been entered and will be final unless, within 21 days of the default judgment date, a motion to set aside the default is filed.

CERTIFICATE OF MAILING I certify that on this date I served a copy of this default entry and judgment on the parties or their attorneys by first-class mail addressed to their last-known addresses as defined by MCR 2.107(C)(3).

_____ (Date) _____ (Signature)

EXHIBIT B

WEBERMAN LAW, P.C.

7071 Orchard Lake Road, #245 • West Bloomfield, MI 48322-3404
(248) 737-4500 • Fax: (248) 737-1829 • danielweberman@yahoo.com

April 4, 2019

Mr. Jack B. Wolfe
Parker Place Holdings, LLC
7071 Orchard Lake Road, Suite 250
West Bloomfield, MI 48322

VIA HAND DELIVERY ONLY

Re: *Parker Place Holdings v Michael Hosner*
Oakland County Circuit Court Case No. 2019-171849-CB

Dear Mr. Wolfe:

This will confirm our recent discussions regarding the status of the above-referenced case and, in particular, whether or not you want to engage at this time any enforcement actions pertaining to the Default Judgment entered by the Court on March 13, 2019, in favor of Parker Place Holdings, LLC, and against Michael Hosner in the total amount of $81,309.25 (the "Judgment"). Examples of "enforcement actions" would include, but are not limited to, issuing garnishments against his wages at the salon at which he works, bank accounts and/or income tax refunds, scheduling a creditor's exam requiring Mr. Hosner to testify as to his assets and finances, placing liens on any property owned by Mr. Hosner, having the sheriff execute a writ to seize property (vehicles, business assets, equipment, electronics), challenging transfers of any assets in the last 5-years by Mr. Hosner as being fraudulent and the like. The Judgment continues to accrue interest at the statutory rate.

You have indicated that you do wish to forbear and not pursue any collection actions against Mr. Hosner at this time, as it is your intent to allow him the chance to repay the monies owed by successfully operating his grow business and turning a profit to pay you back, which will also benefit Mr. Hosner. You have spoken directly with Mr. Hosner regarding the timeframe and dates upon which you can expect a payment from him and are thus giving him this chance. In return, Mr. Hosner has agreed not to remove any property or assets from the business located at 979 Badder in Troy without your written permission or a court order.

You are also temporarily holding off on pursuing any non-judicial foreclosure action against the house owned by Mr. Hosner's friend, Tracey Kaufmann. Since the default notices were already provided over 30 days ago, the foreclosure action could be commenced at any time.

I have calendared this matter for two (2) months so that we can readdress the status to see if Mr. Hosner has made any effort to rectify this matter, such as by making payments to you. If anything changes prior to then, please let me know.

It is my understanding that you shall provide this letter to Mr. Hosner who may and shall rely upon it.

Thank you.

Sincerely,

DANIEL I. WEBERMAN
DANIEL I. WEBERMAN

EXHIBIT C

HOSNER - PARKER PLACE HOLDINGS

RECONCILIATION OF PAYMENTS OWING
FROM 6/30/18 - 12/12/19

Total Outlay from PPH 06/2018-12/12/19		76,565.19
Judgment from Court	$ 81,309.25	
Less fees through November 30, 2018 expenses	(35,000.00)	
Outstanding Due from Court Judgment		46,309.25
Additional undocumented cash outlay		3,125.56
TOTAL AMOUNT OWING THROUGH 12/12/19		**126,000.00**

EXHIBIT I

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JACK B. WOLFE, an individual,
Plaintiff,

vs.

Case No. _____CZ
Hon._____

CITY OF TROY, a Michigan municipal corporation

JURY DEMAND

Defendant.
_____/

Jack B. Wolfe
In Pro Per
7071 Orchard Lake Road, Suite 250
West Bloomfield, MI 48322
(248) 228-6307 (c)
(248) 862-2018 (w)
(248) 928-5009 (f)
wolfejack19@gmail.com
_____/

PROPOSED

EX PARTE ORDER GRANTING PLAINTIFF'S EX PARTE VERIFIED MOTION FOR SHOW CAUSE HEARING

At a session of said Circuit Court, held in the Courthouse
for the City of Pontiac, County of Oakland, Michigan,

ON: _____

PRESENT: HON. _____

This matter having come before this Court through Plaintiff's Verified Complaint for Declaratory and Injunctive Relief to Void Unconstitutional Troy Ordinance pertaining to Caregivers and Damages and Plaintiff's Ex Parte Verified Motion for Show Cause Hearing to Compel by Declaratory Judgment the Issuance by Defendant to Plaintiff of a Caregiver License and/or Stay Enforcement of Defendant's Caregiver Ordinance against Plaintiff during the pendency of this lawsuit ("Lawsuit"), this Court having reviewed the Verified Complaint and

Exhibits thereto, Ex Parte Verified Motion and the Brief in Support thereof with Exhibits thereto, and this Court otherwise being fully advised in the premises;

IT IS HEREBY ORDERED that Plaintiff's Ex Parte Verified Motion for Show Cause Hearing is **GRANTED**, as follows:

IT IS HEREBY ORDERED that a Show Cause Hearing ("SCH") is scheduled for **August 11, 2021, at 9:00 in the a.m.** before the Honorable _____, at the Oakland County Circuit Court, in Courtroom _____, wherein Defendant, City of Troy, is required to appear and SHOW CAUSE as to why this Court should not:

1. Declare and adjudge that the 2018 Chapter 104, *Medical Marihuana Grow Operation License Ordinance* for the City of Troy (the "Ordinance") regarding licensing Caregivers secured locked facilities for cultivation located in the City's IB zoned districts and limiting caregiver licenses to thirty-six (36) caregivers (the "Ceiling") was improperly presented, voted on and enacted as a use of the City's police powers to protect the health safety and welfare of the City when no emergency existed and the Ordinance was presented as a use of police power to avoid compliance with the Michigan Zoning Enabling Act ("MZEA"), MCL § 125.3101 *et. seq.*, and is, therefore, void *ab initio*;

2. Declare and adjudge that the Ordinance was a use of the City's zoning powers and did not comply with MZEA, as follows:

(a). The lack of notice(s) and the lack of any hearing(s) pertaining to the Ordinance prior to its enactment violated MZEA rendering the Ordinance void *ab initio;* and/or

(b). Alternatively, if the notice and hearing violations of MZEA did not render the Ordinance void, declare and adjudge that Plaintiff must be allowed to continue caregiver growing at the Badder Facility as that use existed at the time of the enactment of the Ordinance and the City did not have the authority to "take" this nonconforming use by the language of the Ordinance and, pursuant to the MZEA, the use must be grandfathered into the Ordinance as a nonconforming use;

IT IS HEREBY FURTHER ORDERED that notwithstanding the impact of violating MZEA by the enactment of the Ordinance, enter at the SCH declaratory judgment in favor of Plaintiff and against Defendant that the Ordinance, and specifically the Ceiling, directly conflicts

with and is otherwise field preempted by the 2008 initiative Michigan Medical Marihuana Act, MCL §§ 333.26421 et. seq. ("MMMA");

IT IS HEREBY FURTHER ORDERED this Court shall declare and adjudge the City Ordinance violations of the MMMA renders the Ordinance void *ab initio.*

IT IS HEREBY FURTHER ORDERED that, alternatively, at the SCH, strike down the Ordinance Ceiling, which limits caregiver licenses issued by the City to no more than 36 caregiver licenses, as expressly preempted by MMMA and, pursuant to *DeRuiter,* order Defendant to issue a caregiver license to Plaintiff;

IT IS HEREBY FURTHER ORDERED that at the SCH, notwithstanding entering judgment(s) as requested above, grant preliminary injunctive relief staying enforcement of the Ordinance as to Plaintiff during the pendency of this Lawsuit; and

IT IS FURTHER ORDERED that this Ex Parte Order for Show Cause Hearing, together with the Verified Complaint and Verified Motion with Brief in Support thereof and all Exhibits attached to the pleadings and motion shall be served upon Defendant within seven (7) days of the Show Cause Hearing with Proof of Service filed on or before the hearing date.

_____

CIRCUIT COURT JUDGE

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JACK B. WOLFE, an individual,
Plaintiff,

Case No. _____CZ

vs. Hon._____

CITY OF TROY, a Michigan municipal corporation
Defendant.
_____/

Jack B. Wolfe
In Pro Per
7071 Orchard Lake Road, Suite 250
West Bloomfield, MI 48322
(248) 228-6307 (c)
(248) 862-2018 (w)
(248) 928-5009 (f)
wolfejack19@gmail.com
_____/

EX PARTE VERIFIED MOTION FOR SHOW CAUSE HEARING TO COMPEL BY DECLARATORY JUDGMENT THE ISSUANCE BY DEFENDANT TO PLAINTIFF OF A CAREGIVER LICENSE AND/OR STAY ENFORCEMENT OF DEFENDANT'S CAREGIVER ORDINANCE AGAINST PLAINTIFF DURING THE PENDENCY OF THIS LAWSUIT

Plaintiff says as follows against Defendant ("Defendant", "City" and/or "Troy"):

1. Plaintiff's Ex Parte Verified Motion is brought pursuant to MCR 3.310 and MCR 2.605.

2. Plaintiff's Verified Complaint for Declaratory and Injunctive Relief to Void Unconstitutional Troy Ordinance Pertaining to Caregivers and Damages contemporaneously filed herewith and incorporated herein by reference ("Verified Complaint"), seeks to strike down a certain ordinance enacted by Defendant which unconstitutionally prohibits Plaintiff from caregiver cultivation at the secured locked facility at 979 Badder, Troy, Michigan 48083 ("Premises", "Property", "Badder" and/or "Facility"), within the City boundaries but on the border thereof.

3. On May 3, 2018, Defendant enacted zoning ordinance, Chapter 104, *Medical Marihuana Grow Operation License Ordinance* (the "Ordinance"), with a copy of the Ordinance attached as **Exhibit B** to the Verified Complaint, which restricted caregiver growing in Troy under the 2008 initiative Michigan Medical Marihuana Act, MCL §§ 333.26421 et. seq. ("MMMA"), with a copy of the MMMA statute attached as **Exhibit A** to the Verified Complaint, as follows:

A. Caregiver licenses were capped at 36 issued licenses (the "Ceiling") and Plaintiff was proverbial #37. Troy City Code, Chapter 104, § 3(B), with the Letter from Troy, attached as **Exhibit C** to Plaintiff's Verified Complaint, informing Plaintiff that he could not cultivate at the Badder Facility because there were no more available City licenses;

B. Any caregiver cultivation would have to take place in a secured, locked facility located in a zoned IB district, Integrated Industrial and Business, to receive a City license. Troy City Code, Chapter 104, § 8(A);

C. The City caregiver license was issued to the caregiver, personally, and did not attach to the secured locked facility location in the IB zoned district such that there could not be a successor caregiver growing at the location as the location was not licensed. Troy City Code, Chapter 104, § 9(D); and

D. The caregiver could not transfer the City license to another caregiver. Troy City Code, Chapter 104, § 9(E).

4. Prior to the Ordinance, "[t]he City did not previously have a licensing ordinance, and, instead, issued occupancy permits only if the proposed location demonstrated compliance with the MMMA, including, but not limited to having a separate locked enclosed facility for the cultivation of marihuana plants for each of the caregiver's connected patients." **Exhibit E**, City Memorandum attached to Verified Complaint.

5. The Badder Facility fully complied with the pre-Ordinance requirements of the City, as recognized as existing by the Memorandum, as Badder is located in an IB zoned district.

6. However, the Ordinance language specifically denied pre-existing non-conforming uses, such as Plaintiff's location, to be grandfathered into the newly enacted

Ordinance in violation of the Michigan Zoning Enabling Act ("MZEA") because, if the Premises was grandfathered in as required by law, this Lawsuit would be moot. The City allegedly avoided MEZA by alleging the Ordinance as an act of its police not zoning power. This was a lie.

7. The enactment of the Ordinance avoided in addition to the foregoing any public notice(s) and/or hearing(s) pertaining to the constitutionality of the Ordinance with the City Attorney asserting it was enacted under the City's police powers instead of its zoning powers thereby undermining the application of MZEA; however, clearly, the Ordinance is a zoning ordinance as it limits caregiver growing to IB zoned districts and should have had public notice(s) and hearing(s) under MZEA before it was voted on, passed and enacted.

8. The Ordinance was clearly designed to restrict and impede caregivers from working in Troy as the IB district restriction to cultivate would require the caregiver to rent space and convert the space to be compatible for caregiver cultivation; however, the space build out would not be undertaken since a landlord would not advance the build out cash outlay without the location licensed as well; the caregiver could not borrow the money from any commercial banks or National Associations since marihuana remained illegal at the federal level; and, a state or local bank or credit union would not loan the renovation money for the same reason the landlord would not underwrite the build out with the only reasonable and foreseeable option for any caregiver if not self-funded was for the caregiver to pursue third party private money or private funds. The entire objective of the Ordinance was to curtail caregiver growing in the City which is stating the obvious given the Ceiling.

9. Plaintiff, through his company, arranged private third party funds for the prior licensed caregiver, Michael W. Hosner ("Hosner") at the IB district, secured, locked Facility;

however, Hosner defaulted on the loans, as more fully set forth in the Verified Complaint, was an incompetent grower and had to be ultimately involuntarily removed by court orders from the Premises with Plaintiff left with no choice but to become the caregiver at the Badder Facility.

10. **However, the shortcomings, failures and/or violations of the Ordinance pursuant to MZEA all take a back seat and/or pale in comparison to the unconstitutional, blatantly arbitrary and discriminatory actions of Troy to limit or cap licensed caregivers in the City to a total of 36 or the Ceiling allowed in the City zoned IB district.**

11. The lack of "wokeness" of this Ceiling is astounding as Troy is the largest city in Oakland County at over 84,000 citizens with white privilege making up almost 70% of the population, Asian Americans comprising 25% that has a majority professional Indian constituency and African Americans making up less than 4%. Given these demographics the insidious intent of the Ordinance or at least its intended results is clear, especially coupled with the garbled justification for the Ceiling by the City attorney in the Memorandum at **Exhibit E** of the Verified Complaint and per the Metro Times article referenced at footnote 5 of the Verified Complaint.

12. Notwithstanding the foregoing, the Ceiling if not the entire Ordinance is preempted by the 2008 initiative Michigan Medical Marihuana Act, MCL § 333.26421 et. seq. ("MMMA") and, therefore, is unconstitutional as the MMMA does not otherwise limit cultivation as opined by the Michigan Supreme Court in *DeRuiter vs Township of Byron,* 505 Mich 130, 143; 949 NW 2d 91 (2020), with a copy of the *DeRuiter* ruling attached as **Exhibit D** to the Verified Complaint.

13. The Ordinance directly limits or caps caregivers in Troy to 36, where from a population calculation dividing the Oakland County population into the City population with the

percentage multiplied by the number of caregivers in Oakland County equates to Troy supporting over 250 caregivers! See ¶15 of the Verified Complaint and **Exhibit F** attached thereto.

14. It is anticipated that Troy will without hesitation and with feigned sincerity proclaim that the Ordinance does not **"prohibit"** caregiver cultivation as, indeed, Troy allows 36 of them!

15. Notwithstanding this anticipated disingenuous proclamation, which ignores the *DeRuiter* ruling, the Ordinance provides that a person who violates any provision of the Ordinance is subject to fines up to $500.00. **Exhibit B,** Verified Complaint, Troy City Code, Chapter 104, § 12.

16. The MMMA directly states, in pertinent part, that a qualifying patient "is not subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action . . . for the medical use of marihuana in accordance with this act[.]" **Exhibit A**, Verified Complaint, MCL § 333.26424(a).

17. The MMMA also provides the same immunity to a primary caregiver in "assisting a qualifying patient . . . with the medical use of marihuana in accordance with this act." *Id.* at MCL § 333.26424(b) (¶¶ 16-17 are otherwise known in the industry as Section 4 immunity).

18. Under the MMMA, the only statutorily defined locations where the possession and medical use of marihuana by patients and caregivers is prohibited are: (A) in school bus; (B) on the grounds of any preschool or primary or secondary school; and (C) in any correctional facility. *Id.* at MCL § 333.26427(b)(2).

19. Indeed, "[t]he medical use of marihuana is allowed under state law to the extent it is carried out in accordance with the provisions of this act." *Id.* at MCL § 333.26427(a).

20. Finally, Section 7(e) of the MMMA reads: "All other acts and parts of acts inconsistent with this act [MMMA] do not apply to the medical use of marihuana as provided for by this act." *Id.* at MCL § 333.26427(e).

21. Accordingly, the MMMA has five (5) separate provisions and/or expressed statements preempting any conflicting local law as set forth above in ¶¶ 16-20.

22. The *DeRuiter* opinion (**Exhibit D** of the Verified Complaint) was very narrow as it did not rule on issues not raised on appeal, which included whether MMMA Section 4 immunity from penalty in any manner conflict preempted the enforcement of any municipal ordinance, including the City Ordinance, and whether the clear field preemption of the MMMA set forth in Section 7(e) applies to a local zoning ordinance as this issue was also not raised in the *DeRuiter* appeal.

23. This Court is not handcuffed like the *DeRuiter* Court as to solely issues raised on appeal and can take judicial notice of the unambiguous and clear conflict preemption provisions in the MMMA as well as the precedent of *DeRuiter* recognizing that the MMMA does **NOT** limit in any manner caregiver cultivation and certainly not a limitation like the Ceiling that is arbitrary, unreasonable and smacks of discrimination.

24. This Verified Motion is accompanied by Plaintiff's Brief in Support thereof.

WHEREFORE, this Court should GRANT Plaintiff's Ex Parte Verified Motion and enter an Order for Defendant to Show Cause at a hearing on August 11, 2021 ("SCH") why this Court should not strike down as void *ab initio* Defendant's Ordinance as having been enacted in violation of the MZAA notice and hearing requirements and/or preempted by MMMA or, alternatively, granting Plaintiff's request to be grandfathered into the Ordinance as a nonconforming use or compel Defendant to issue to Plaintiff a caregiver license as the Ceiling is

not constitutional and Plaintiff's caregiver cultivation is taking place in a zoned IB district as required by the Ordinance and/or granting Plaintiff preliminary injunctive relief staying any enforcement against Plaintiff during the pendency of this Lawsuit.

VERIFICATION

The undersigned, under penalty of perjury and contempt of court, hereby affirms that the foregoing allegations are true and accurate to the best of his information, knowledge and belief.

/S/ JACK B. WOLFE
Jack B. Wolfe

Dated: July 21, 2021

Respectfully submitted,

/S/ JACK B. WOLFE
Jack B. Wolfe
In Pro Per
7071 Orchard Lake Road, Suite 250
West Bloomfield, MI 48322
(248) 228-6307 (c)
(248) 862-2018 (w)
(248) 928-5009 (f)
wolfejack19@gmail.com

Dated: July 21, 2021

BRIEF IN SUPPORT OF EX PARTE VERIFIED MOTION

I.
INTRODUCTION

Plaintiff is caregiver # 37 in the City of Troy but under the Troy Ordinance has been denied a license to caregiver cultivate in the City boundaries solely because he is #37. Between the Verified Complaint and Verified Motion, Plaintiff has made 141 allegations when, at the end of the day, the matter is simple: Can Troy limit caregiver cultivation licenses to 36 caregivers? Plaintiff says "no"; while, Defendant says "yes".

Defendant's presumed focus shall be on what it has allowed while Plaintiff's focus is on what is being denied. The beginning and ending of this analysis is the statute, the MMMA

(**Exhibit A** to Verified Complaint) which, as set forth above, makes five (5) separate statements of preemption to preclude a municipality from limiting the citizens of Michigan's initiative to allow caregiver growing in the State of Michigan.

Nowhere does the MMMA even hint to limiting the number of allowed caregivers in the state, county and/or municipality/township. *DeRuiter* analyzed in the context of the MMMA preemption whether the requirement that a caregiver cultivate in a secured locked facility could, by local zoning ordinance, determine the "where" of the facility location, which did not directly conflict with the MMMA and, therefore, was not preempted by the statute, but cautioned:

> "...[W]hether Byron Township's ordinance conflicts with other aspects of the MMMA [we do not decide]. Nor do we decide if the ordinance, which also precludes cultivating medical marijuana outside or in a structure detached from a residence, see Byron Township Zoning Ordinance, §3.2.G.1 and §3.2.H.2.d, has the practical consequence of prohibiting DeRuiter from cultivating the number of marijuana plants she is expressly permitted by the MMMA, see MCL 333.26426(d); MCL 333.26424(a); MCL 333.26424(b)(2)."

505 Mich at 150 at fn 14.

In other words, whether other "limitations" of the Byron Township ordinance violated the MMMA was not before the *DeRuiter* Court that day and from Plaintiff's perspective, what the Court was signaling is that even a "location styled local zoning ordinance" may at its inception or some time in its application in fact deny the proverbial # 37 caregiver the right to cultivate in a particular municipality and this would be preempted by the MMMA. The conclusion as stated above is simple: Troy's Ceiling violates and is preempted by the MMMA and there can be no justification for allowing it to continue given that # 37 is petitioning this Court. The only issue is, therefore, the remedy.

Plaintiff's remedy request is that pursuant to MZEA and/or MMMA, the Ordinance is struck down and declared unconstitutional by this Court's use of its power to order declaratory

relief or, alternatively, this Court grandfather's Plaintiff's Facility into the Ordinance as a nonconforming use or compels the issuance by the City to Plaintiff of his license. Notwithstanding these declaratory remedies, Plaintiff at a minimum requests a preliminary injunctive remedy to stay enforcement of the Ordinance as it pertains to Plaintiff during the pendency of this Lawsuit.

II.
STATEMENT OF FACTS

Plaintiff incorporates all of the allegations set forth in his Verified Complaint and Verified Motion as if more fully stated herein. Plaintiff would add that any location for the cultivation of 72 plants in an indoor secured locked facility comes with its unique environment, problems and demands that may take years to understand how to grow in the most efficient manner by integrating the lights, temperature, nutrients, watering cycles, plant strain and cultivation timing in order to maximize your yield and produce organic, clean tested product.

In the instant case, it has taken Plaintiff over 3-years and investing over $100,000.00 in rent, $25,000.00 for the build out and an additional $50,000.00 in lighting and temperature equipment for each patient grow room with the proper coordination of plant strain and nutrients that cannot be simply duplicated by moving to a new location out of the City of Troy. Indoor caregiver cultivation is almost an art form and cannot be understood without being taught by more experienced growers and even then there is a high degree of trial and error which can only be overcome over time.

The Badder Facility has been a permitted and/or licensed caregiver grows for over five (5) years and has finally come into its own but the arbitrary actions of the City under the Ordinance Ceiling are impeding Plaintiff's clear rights under the MMMA to continue to operate as a caregiver cultivation at the Badder Facility.

In 1936, the United States government released a propaganda movie as to the evils of marijuana called "Reefer Madness" showing high school students lured by drug pushers to try marijuana and then subsequently while high had a hit and run accident, suicide, conspiracy to commit murder, attempted rape, hallucinations and the descent into madness from being addicted to marijuana. The reefer madness days that marijuana is dangerous are forever over.

Today, over 80% of Americans believe marijuana is not harmful to people who use it[1] and the science shows, overwhelmingly, that for most people, marijuana is not a gateway drug.[2] Troy's misuse of its police powers (there was no pending emergency) to attempt to prevent caregivers from operating in its City boundaries conflicts with state law and the will of Michigan citizens who passed in 2008 the MMMA via a ballot initiative receiving the support of 63% (otherwise a political landslide) of Michigan's registered voters that marihuana has medical benefits.[3]

Indeed, in 2016, the State of Michigan passed the MMFLA. In 2018, the overwhelming majority of citizens of the State of Michigan voted for the right of adults in Michigan to recreationally use marijuana without their having to be a medical need with the state passing the Michigan Regulation and Taxation of Marihuana Act ("MRTMA"). If the City wants to regulate, let them opt into the MMFLA and regulate the number of licensed commercial cultivators, processors, facilitation centers, transporters and testing labs and also regulate retail establishment for adult recreational purchases while at the same time establishing a "green zone" for medical (i.e., the IB district) without the ad hoc Ordinance that violated MZEA and overstepped the City's authority with the Ceiling in direct conflict with the MMMA.

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[1] Blendon, Robert, Ph.D.,"POLITICO and Harvard's T.H. Chan School of Public Health", (2019 poll)
[2] Scharff, Constance, Ph.D., Psychology Today (August 26, 2014)
[3] Wolfe, Jeremy, Law Student, "Michigan's Medical Marihuana Act—Parting the Haze" (2012)

To this end, and until that time, Troy must issue to Plaintiff the caregiver license for marihuana cultivation at the Badder Facility.

III.
LEGAL ARGUMENT

A. THIS COURT SHOULD GRANT PLAINTIFF'S MOTION FOR SHOW CAUSE HEARING

Defendant's power to adopt the Ordinance is subject to Michigan's constitution and the law. Const. 1963, art. 7, § 22. Defendant was precluded from enacting the Ordinance without complying with the MZEA, which it did not comply with, as the Ordinance is a use of Defendant's zoning powers by requiring that caregivers can only locate their secured locked facility in an IB zoned district in the City with the Ordinance for political expediency disguised as use of the City's police powers to avoid notice, public hearings and grandfathering in Plaintiff's caregiver cultivation at the Badder Facility as a nonconforming use and, as a result, Defendant has violated Michigan's constitution.

Defendant is precluded from enforcing the Ordinance because it is in direct conflict with the MMMA statutory scheme, and the MMMA statutory scheme preempts the Ordinance by occupying this field of regulation to the exclusion of the Ordinance thus making the Ordinance caregiver limitation per the Ceiling unconstitutional.

MCR 2.605(A)(1) states:

> "(1) In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted."

Plaintiff is an interested party and the denial by Defendant to issue him a caregiver license because the Troy Ordinance only allows 36 caregivers or the Ceiling and he is the proverbial # 37 with the Ceiling preempted by the MMMA and, therefore, the limitation is an

actual controversy ripe for consideration as required by the foregoing Michigan Court Rule and should be declared and adjudged as unconstitutional.

MCR 3.310(A) governs the requirement of a Show Cause Hearing ("SCH") in order to issue a preliminary injunction in support of the further relief sought in Plaintiff's Verified Motion and Verified Complaint:

> (A) Preliminary Injunctions.
>
> (1) Except as other provided by statute or these rules, an injunction may not be granted before a hearing on a motion for a preliminary injunction or on an order to show cause why a preliminary injunction should not be issued.
>
> (2) Before or after the commencement of the hearing on a motion for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing on the motion. Even when consolidation is not ordered, evidence received at the hearing for a preliminary injunction that would be admissible at the trial on the merits becomes part of the trial record and need not be repeated at the trial. This provision may not be used to deny the parties any rights they may have to trial by jury.
>
> (3) A motion for a preliminary injunction must be filed and noticed for hearing in compliance with the rules governing other motions unless the court orders otherwise on a showing of good cause.
>
> (4) At the hearing on an order to show cause why a preliminary injunction should not issue, the party seeking injunctive relief has the burden of establishing that a preliminary injunction should be issued, whether or not a temporary restraining order has been issued.

MCR 2.605(A)(1) and MCR 3.310 (A)(1)-(4), together with the facts of this case and the case law cited to below, supports this Court granting the relief requested by Plaintiff.

B. PLAINTIFF HAS MET HIS BURDEN FOR INJUNCTIVE AND DECLARATORY RELIEF TO BE ORDERED AS REQUESTED

The factors to be weighed by a court when considering any kind of injunctive relief is well known: (1) There is a substantial likelihood of success on the merits; (2) that a substantial threat exists that will cause irreparably harm; (3) that the threatened injury outweighs the potential harm; and (4) that the granting of the relief is in the public interest. *See, e.g., State*

Employees Assn v Dept of Mental Health, 421 Mich 152 (1984); *Commonwealth Life Ins Co, v Neal,* 669 F2d 300 (1982); *Baker v Adams County/Ohio Valley School Board,* 310 F3d 927, 928 (6th Cir 2002).

The U.S. Sixth Circuit Court of Appeals has held that the same above factors are balanced when considering whether to enter *ex parte* relief. *Workman v Bredesen,* 486 F3d 896, 904 (6th Cir. 2007) (citations omitted). "A district court is required to make specific findings concerning each of the four factors, unless fewer factors are dispositive of the issue." *Six Clinics Holding Corp., II v. Cafcomp Systems, Inc,* 119 F3d 393, 399 (6th Cir 1997) (citations omitted); *United Foods & Commercial Workers Union, Local 1099 v Southwest Ohio,* 163 F3d 341 (6th Cir 1998) (mandatory injunctive relief turns everything back to the status quo so as to prevent irreparable harm).

In the instant case, all the factors are met to support this Court granting ex parte Plaintiff's request for the SCH where Defendant must be ordered to appear and show cause why the Ordinance should not be declared and adjudged as violating MZEA and/or the MMMA with the specific limitation of the Ceiling in the Ordinance in direct conflict with the MMMA and, therefore, unconstitutional with this Court striking down the Ordinance as void *ab initio* or, alternatively, grandfathering in the Premises as a nonconforming use allowing Plaintiff to continue caregiver cultivation at the Badder Facility or, alternatively, severing the Ceiling limitation from the Ordinance and ordering the City to issue to Plaintiff a caregiver license as Plaintiff's secured locked facility is located in the IB zoned district..

1. ***Plaintiff will prevail on the merits.***

a. The Ordinance violated MZEA:

"*Zoning and police power ordinances are not the same and should not be mixed together*" is the title to an article, dated, June 19, 2014, by Kurt H. Schindler, Michigan State

University Extension (the "Article"). A copy of the Article is attached as **Exhibit 1** and would appear to be on point! The Article stated as follows:

> "There is a difference [between a zoning and police power ordinance]. Knowing which is which is very important. It is important not to go too far in mixing elements of each together. This is because the process to create and adopt a zoning ordinance (hearings, notices, based on a plan, appeals, nonconformities and much more) is designed to place many legal due process and property rights protections on zoning. This is because zoning regulates the use of land, and as a nation we value private property rights. So when government regulates land use, there are many more hoops through which the regulators need to jump. Police power ordinances do not have as rigorous of a process. As a result, if a government in fact regulates land use, but adopts the ordinance as though it is, and calls it a "police power ordinance" **courts are not likely to uphold it.**"

Article at p 2 (emphasis added).

> "A police power ordinance does not regulate the "**use of land,**" rather; it regulates an **"activity."** Examples of "activity" include, among others, motor vehicle regulations, parking, health code, food safety, boats and marinas, blight, noise and junk. **But in these examples, the ordinances should not regulate where activities are located.**
>
> A zoning ordinance, on the other hand, regulates **"use of land."** It might also regulate "activity," but if an ordinance has regulation of land use, then it must be adopted as, and called, a zoning ordinance."

Article at p 3 (emphasis added but not with the quoted terms). The Ordinance in the instant case specifically involved "use of land" and regulated location but was called by the City Attorney and pushed through by the City Council, ignoring the inherent due process of MZEA, as a police power ordinance.

The Article cited to two (2) relevant cases. The first case cited in the Article was *Square Lake Condo Ass'n v Bloomfield Twp*, 437 Mich 310 (1991), which characterized a zoning ordinance as regulating use within a building on land allowed within a particular location, which pretty much described the instant Ordinance. The second case cited was *Belanger v Chesterfield Twp*, 96 Mich App 539, 541; 293 NW2d 622 (1980), which recognized that since township

parking regulations on residential streets are within the scope of a township police power authority that the number of boats that can be launched or docketed is very much akin to a "police power" parking regulation.

This latter case sheds light on the attempted pivot by the City attorney to call the Ordinance a police power regulation when it was actually a zoning ordinance. If it barks it is likely a dog but here the City attorney was calling the dog a duck by setting a fixed number of caregiver licenses at 36 similar to the "number of boats launched" and that there is no property right, whether real or personal, associated with the licenses issued to further the ruse that it was solely an "activity" being regulated, e.g., marihuana caregiver cultivation, and not a land or building use regulation limited to a specific location. The latter characterization of the "activity" of the Ordinance (i.e., caregiver growing) was critical to the insidious plan of the City to not call the Ordinance a zoning ordinance because this would mean having to grandfather in all the nonconforming uses (e.g., Badder, even though Badder was in an IB district) as likely many other caregivers were cultivating in residential districts in the City.

However, this Court should see through Defendant's charade and strike down the Ordinance as void *ab initio* for violating MZEA in its enactment and by trying to obfuscate the zoning ordinance as an act of police power by setting the Ceiling, which should also render the Ordinance void *ab initio* as the Ceiling directly conflicts with the MMMA by limiting caregivers, as more fully set forth below.

b. The Ordinance was preempted by the MMMA:

The Ordinance Ceiling specifically limiting the number of caregivers who can cultivate in Troy directly violates the MMMA. In *DeRuiter,* the Court ruled that limiting the **location** of the secured locked facility by zoning is not the same as an ordinance, whether by police power or

zoning, directly **limiting caregiver cultivation** "[b]ecause the MMMA does not otherwise limit cultivation..." with the City Ordinance expressly and/or impliedly preempted by the MMMA. 505 Mich at 143. *Ter Beek v City of Wyoming*, 495 Mich 1; 846 NW2d 531 (2014), held that any penalty is prohibited under Section 4 of the MMMA and, thus, enforcement of zoning cannot be permitted. *People v. Koon*, 494 Mich 1; 832 NW2d 724 (2013), holding that Section 7(e) provides the MMMA with field preemption.

Accordingly, the Ordinance or, at a minimum, the Ceiling, is void *ab initio* and Plaintiff is entitled to have issued to Plaintiff by Defendant the proverbial 37th caregiver City license to cultivate at the Badder Facility, which is in a zoned IB district. Based on the foregoing, Plaintiff has an extremely strong case and will prevail on the merits.

This factor favors Plaintiff.

2. *Plaintiff will be irreparably injured if denied the right to grow at Badder.*

Federal and State Courts throughout the country, including the State and Federal courts which service the State of Michigan, have long held that real property is unique. *In re Smith Trust*, 480 Mich 19, 20-21; 745 NW2d 754 (2008) (court entered order to compel specific performance). A leasehold estate or interest constitutes real property. *City of Detroit v Whalings, Inc*, 43 Mich App 1,8; 202 NW2d 816 (1972) [citing *Lookholder v State Highway Commissioner*, 354 Mich 28 (1958)] (leaseholder entitled to just compensation due to condemnation of property). The injured property holder may seek mandatory injunctive relief. See, *United Foods & Commercial Workers Union, Local 1099 v Southwest Ohio*, 163 F3d 341 (6th Cir 1998). A mandatory injunction is issued when a court directs a person to perform certain acts, as opposed to prohibitory injunction, which seeks to preserve the status quo. *mandatory injunction/wex/us law/cornell law school.[LLI].legal information; Black's Law Dictionary.* A

court may issue a preliminary mandatory injunction in unique situations. *Roda Drilling Company, et seq v Siegal, et seq,* 552 F3d 1203, 1208 (10th Cir 2009) (court granted a preliminary mandatory injunction ordering transfer of record title).

Irreparable injury has been defined as an injury that cannot be redressed through a monetary award; however, when the injury involves property that is unique, it is presumed irreparable injury shall occur. In passing on the adequacy of the legal remedies for the purpose of determining whether to issue an injunction, the court's primary consideration should be the immediate availability of the remedy. *Van Buren Public School District v Wayne County Circuit Court Judge,* 61 Mich App 6, 232 NW2d 278 (1975). *Basicomputer Corp v. Scott*, 973 F2d 507, 511 (6th Cir.1992). However, an injury is not fully compensable by money damages if the nature of the loss would make damages difficult to calculate. *Id.* at 511-512.

Notwithstanding the monies invested, Plaintiff has invested thousands of hours of time and energy for almost four (4) years into Badder Facility to create the best growing environment and has six (6) patients who will be hurt if Plaintiff was denied the opportunity to grow at Badder. Badder is unique property and therefore entitled to the presumption of irreparable harm if this Court does not issue mandatory injunctive relief to compel Defendant to issue to Plaintiff a caregiver license or stay enforcement of the Ordinance as to Plaintiff.

This factor favors Plaintiff.

3. *The injury to Plaintiff outweighs any potential harm to Defendant.*

Plaintiff has had the right to use his leased Property for caregiver cultivation taken without just compensation with the taking occurring due to the City Ordinance, which is patently unconstitutional. Troy has never received a complaint as to the operations at the Property. The

potential harm to Defendant is negligible if Defendant prevails; however, the only potential harm to Defendant if Plaintiff prevails is embarrassment.

This factor is in favor of Plaintiff.

4. *The public interest is served by granting the relief requested by Plaintiff.*

The public interest is vested in the City not enacting or enforcing an unconstitutional Ordinance, which public interest has been undermined since May 3, 2018, the date the Ordinance and Ordinance Ceiling were enacted.

This factor also favors Plaintiff.

IV.
CONCLUSION & RELIEF REQUESTED

On June 28, 2021, Justice Clarence Thomas of the Supreme Court of the United States issued a statement in connection with denying a writ of certiorari in connection with Petitioners operation of a medical marihuana dispensary in Colorado, as state law permitted, which in the petition of the Petitioner were unfairly treated and taxed under Section § 280E of the IRS Tax Code for its intrastate operations. *Standing Akimbo, LLC v United States*, 594 US _____ (2021). In *Akimbo*, Justice Thomas acknowledged how much times have changed with 36 States allowing medicinal marihuana use and 18 of those States also allowing recreational use from 16 years prior when the attitude toward the drug and enforcement thereof by the federal government were much more in lock step with the States and vice versa. Justice Thomas recognized that over the past years the Federal Government's current approach is a half-in, half-out regime that simultaneously tolerates and forbids local use of marihuana concluding that federal pot laws and policies may now be obsolete, stating: "A prohibition on intrastate use or cultivation of

marijuana may no longer be necessary or proper to support the Federal Government's piecemeal approach." A copy of the *Akimbo* denial is attached as **Exhibit 2.**

The piecemeal attempts at regulating under the MMMA by various cities and townships in Michigan have created the same question raised by Justice Thomas and should result in recognition that the MMMA expressly preempts local rule, especially in the case of the Ordinance Ceiling.

In the spirit of *Akimbo* and, for the reasons set forth above, this Court must GRANT Plaintiff's Ex Parte Verified Motion for Show Cause Hearing (a copy of the proposed Order is attached as **Exhibit I** to the Verified Complaint) where Defendant must appear and show cause why the Ordinance and/or the Ordinance Ceiling is not declared and adjudged void *ab initio* for violating MZEA and/or the MMMA or, alternatively, issue to Plaintiff his caregiver license and/or stay any enforcement of the Ordinance pending the resolution of this Lawsuit.

Dated: July 21, 2021

Respectfully submitted,

/S/ JACK B. WOLFE

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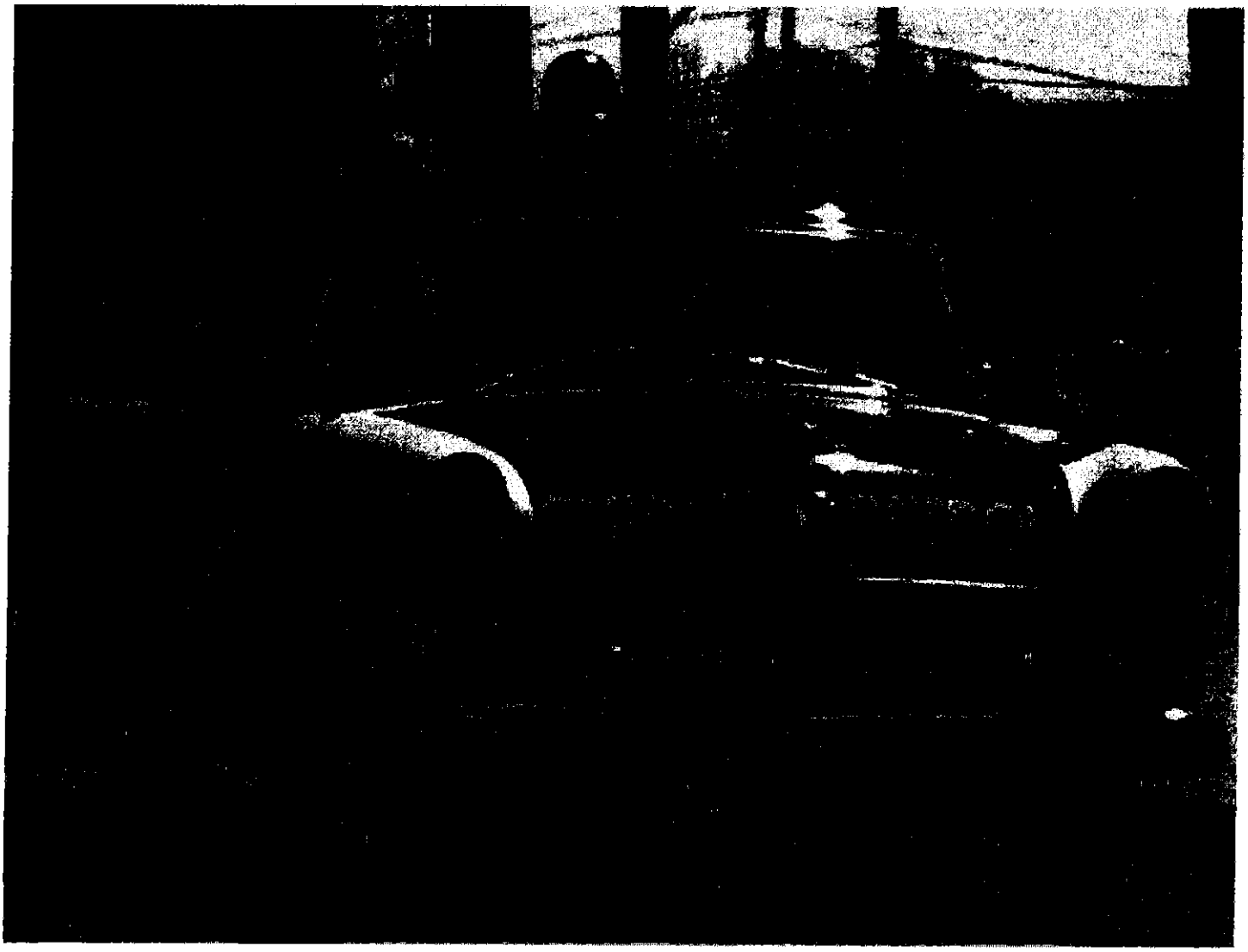
EXHIBIT 1

MICHIGAN STATE UNIVERSITY | MSU Extension

Zoning and police power ordinances are not the same, and should not be mixed together

Kurt H. Schindler, Michigan State University Extension - June 19, 2014

There are three types of ordinances local government might adopt. Important to focus on the difference between police power ordinances and zoning ordinances.



An ordinance is a law adopted by a township, village, city or county. There are different types of ordinances that a local government might adopt, and the process and procedures to adopt each are very different. There are generally three types of ordinances:

- Police power ordinance (sometimes just called "an ordinance")
- Zoning ordinance
- Budget or appropriations ordinance (also known by other names) (might also include personnel rules, or addressing for 9-1-1.)

In Michigan, local governments do not have authority to do anything unless the state legislature delegates that authority. General police power ordinance authority is extended to Michigan's municipalities (township, village and city). But counties have very limited –almost no – police power ordinance authority. All governments have the ability to adopt ordinances dealing with internal affairs, such as adopting the annual budget. That ordinance would include the budget amounts for that government, and may also include the rules and policies for management of the budget through the coming year.

A zoning ordinance can be adopted by a township, village, city or county. The authority from the state for zoning comes from the Michigan Zoning Enabling Act (MZEA). Often, Michigan State University Extension educators are explaining the difference between a zoning ordinance and a police power ordinance.

There is a difference. Knowing which is which is very important. It is important not to go too far in mixing elements of each together. This is because the process to create and adopt a zoning ordinance (hearings, notices, based on a plan, appeals, nonconformities and much more) is designed to place many legal due process and property rights protections on zoning. This is because zoning regulates the use of land, and as a nation we value private property rights. So when government regulates land use, there are many more hoops through which the regulators need to jump. Police power ordinances do not have as rigorous of a process. As a result, if a government in fact regulates land use, but adopts the ordinance as though it is, and calls it a "police power ordinance" courts are not likely to uphold it. So, then, what is the difference between police power and zoning ordinances?

First, a zoning ordinance must be based on a master plan. That master plan has to be

adopted pursuant to the Michigan Planning Enabling Act. Police power ordinances do not have such a requirement. The process of adopting a master plan also has those same safeguards: a process that involves public involvement, hearings, notices and much more. (See the article "Consider government planning at two levels: internal plans and plans for the entire community" to learn the difference between master plans and local government's internal plans.)

Local government has the authority to adopt police power ordinances regulating the public health, safety and general welfare of persons and property. For example a "township board of a township may, at a regular or special meeting by a majority of the members elect of the township board, adopt ordinances regulating the public health, safety, and general welfare of persons and property, including, but not limited to fire protection, licensing or use of bicycles, traffic and parking of vehicles . . . ." (MCL 41.181).

A police power ordinance does not regulate the "**use of land**," rather; it regulates an **"activity."** Examples of "activity" include, among others, motor vehicle regulations, parking, health code, food safety, boats and marinas, blight, noise and junk. But in these examples, the ordinances should not regulate where activities are located.

A zoning ordinance, on the other hand, regulates "**use of land.**" It might also regulate "activity," but if an ordinance has regulation of land use, then it must be adopted as, and called, a zoning ordinance.

The Michigan Supreme Court said, in *Square Lake Condo Ass'n v Bloomfield Twp*, 437 Mich 310 (1991), a zoning ordinance is defined as an ordinance which regulates the use of land and buildings according to districts, areas, or locations. The question whether or not a particular ordinance is a zoning ordinance **may be determined by a consideration of the substance of its provisions and terms, and its relation to the general plan of zoning in the city**. Examples of "land use" regulation include, among other, setbacks, parcel size, maximum structure height, building form and principal and accessory use of the land or use within buildings allowed within particular locations.

Courts have also recognized that "use of land" and "activities" of persons or business entities are neither absolute nor mutually exclusive. That means there will be grey areas in between the two types of ordinances. For example in one court case:

"Launching and docking boats on inland lakes are "activities," and the number of boats

that can be launched or docked is very much akin to a parking regulation on a residential street. It follows that since township parking regulations on residential streets are within the scope of a township's regulatory police power, *Belanger v Chesterfield Twp*, *supra* at 541 [96 Mich App 539, 541; 293 NW2d 622 (1980)], a township regulation of docking and launching boats on its inland lake is within the same scope of regulatory police power." (Brackets added)

Another aspect of zoning is the requirement that the regulation can never be retroactive. Existing land uses and activities must be allowed to continue. Those are called "nonconforming" uses, buildings or "parcels." See MSU (Michigan State University) Extension articles:

- Understanding nonconformity: Are you 'grandfathered' in?
- Zoning decisions travel with the land and are not temporary
- Zoning runs with the land, except when it doesn't

Police power ordinances, however, can be retroactive. Everyone, not just those doing new construction, may have to comply with the regulations in a police power ordinance. If the regulation of activity is in a zoning ordinance, then that regulation cannot be retroactive, as no regulations within a zoning ordinance can be retroactive. But the regulation of land use cannot be in a police power ordinance.

Further, in *Miller v Fabius Twp Bd*, 366 Mich 250 (1962) the court ruled a township cannot adopt a police power ordinance that conflicts with a county zoning ordinance. If that takes place, the county zoning ordinance has precedence. With any city, village, township or county ordinance, the MZEA reads the zoning "ordinance adopted under this act shall be controlling in the case of any inconsistencies between the ordinance and an ordinance adopted under any other law" (MCL 125.3210). However, in the case of a township, it has the option to adopt its own zoning ordinance, and if it does so then the township has divested the county of the power to zone (MCL 125.3209). The MZEA reads ". . . a township that has enacted a zoning ordinance under this act is not subject to an ordinance, rule, regulation adopted by a county under this act."

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EXHIBIT 2

SUPREME COURT OF THE UNITED STATES

STANDING AKIMBO, LLC, ET AL., *v.* UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 20–645. Decided June 28, 2021

The petition for a writ of certiorari is denied.

Statement of JUSTICE THOMAS respecting the denial of certiorari.

Sixteen years ago, this Court held that Congress' power to regulate interstate commerce authorized it "to prohibit the local cultivation and use of marijuana." *Gonzales* v. *Raich*, 545 U. S. 1, 5 (2005). The reason, the Court explained, was that Congress had "enacted comprehensive legislation to regulate the interstate market in a fungible commodity" and that "exemption[s]" for local use could undermine this "comprehensive" regime. *Id.*, at 22–29. The Court stressed that Congress had decided "to prohibit *entirely* the possession or use of [marijuana]" and had "designate[d] marijuana as contraband for *any* purpose." *Id.*, at 24–27 (first emphasis added). Prohibiting any intrastate use was thus, according to the Court, "'necessary and proper'" to avoid a "gaping hole" in Congress' "closed regulatory system." *Id.*, at 13, 22 (citing U. S. Const., Art. I, §8).

Whatever the merits of *Raich* when it was decided, federal policies of the past 16 years have greatly undermined its reasoning. Once comprehensive, the Federal Government's current approach is a half-in, half-out regime that simultaneously tolerates and forbids local use of marijuana. This contradictory and unstable state of affairs strains basic principles of federalism and conceals traps for the unwary.

This case is a prime example. Petitioners operate a med-

ical-marijuana dispensary in Colorado, as state law permits. And, though federal law still flatly forbids the intrastate possession, cultivation, or distribution of marijuana, Controlled Substances Act, 84 Stat. 1242, 1247, 1260, 1264, 21 U. S. C. §§802(22), 812(c), 841(a), 844(a),[1] the Government, post-*Raich*, has sent mixed signals on its views. In 2009 and 2013, the Department of Justice issued memorandums outlining a policy against intruding on state legalization schemes or prosecuting certain individuals who comply with state law.[2] In 2009, Congress enabled Washington D. C.'s government to decriminalize medical marijuana under local ordinance.[3] Moreover, in every fiscal year since 2015, Congress has prohibited the Department of Justice from "spending funds to prevent states' implementation of their own medical marijuana laws." *United States* v. *McIntosh*, 833 F. 3d 1163, 1168, 1175–1177 (CA9 2016) (interpreting the rider to prevent expenditures on the prosecution of individuals who comply with state law).[4] That policy

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[1] A narrow exception to federal law exists for Government-approved research projects, but that exception does not apply here. 84 Stat. 1271, 21 U. S. C. §872(e).

[2] See Memorandum from Dep. Atty. Gen. to Selected U. S. Attys., Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana (Oct. 19, 2009); Memorandum from Dep. Atty. Gen. to All U. S. Attys., Guidance Regarding Marijuana Enforcement (Aug. 29, 2013). In 2018, however, the Department of Justice rescinded those and three other memorandums related to federal marijuana laws. Memorandum from U. S. Atty. Gen. to All U. S. Attys., Marijuana Enforcement (Jan. 4, 2018). Despite that rescission, in 2019 the Attorney General stated that he was "'accepting the [2013] Memorandum for now.'" Somerset, Attorney General Barr Favors a More Lenient Approach to Cannabis Prohibition, Forbes, Apr. 15, 2019.

[3] See Congress Lifts Ban on Medical Marijuana for Nation's Capitol, Americans for Safe Access, Dec. 13, 2009.

[4] Despite the Federal Government's recent pro-marijuana actions, the Attorney General has declined to use his authority to reschedule marijuana to permit legal, medicinal use. *E.g.*, *Krumm* v. *Holder*, 594 Fed. Appx. 497, 498–499 (CA10 2014) (citing §811(a)); Denial of Petition to Initiate Proceedings to Reschedule Marijuana, 81 Fed. Reg. 53688

has broad ramifications given that 36 States allow medicinal marijuana use and 18 of those States also allow recreational use.[5]

Given all these developments, one can certainly understand why an ordinary person might think that the Federal Government has retreated from its once-absolute ban on marijuana. See, *e.g.*, Halper, Congress Quietly Ends Federal Government's Ban on Medical Marijuana, L. A. Times, Dec. 16, 2014. One can also perhaps understand why business owners in Colorado, like petitioners, may think that their intrastate marijuana operations will be treated like any other enterprise that is legal under state law.

Yet, as petitioners recently discovered, legality under state law and the absence of federal criminal enforcement do not ensure equal treatment. At issue here is a provision of the Tax Code that allows most businesses to calculate their taxable income by subtracting from their gross revenue the cost of goods sold *and* other ordinary and necessary business expenses, such as rent and employee salaries. See 26 U. S. C. §162(a); 26 CFR. 1.61–3(a) (2020). But because of a public-policy provision in the Tax Code, companies that deal in controlled substances prohibited by federal law may subtract only the cost of goods sold, not the other ordinary and necessary business expenses. See 26 U. S. C. §280E. Under this rule, a business that is still in the red after it pays its workers and keeps the lights on might nonetheless owe substantial federal income tax.

As things currently stand, the Internal Revenue Service is investigating whether petitioners deducted business expenses in violation of §280E, and petitioners are trying to

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(2016).

[5] Hartman, Cannabis Overview, Nat. Conference of State Legislatures (June 22, 2021), https://www.ncsl.org/research/civil-and-criminal-justice/marijuana-overview.aspx. The state recreational use number does not include South Dakota, where a state court overturned a ballot measure legalizing marijuana. *Ibid.*

prevent disclosure of relevant records held by the State.[6] In other words, petitioners have found that the Government's willingness to often look the other way on marijuana is more episodic than coherent.

This disjuncture between the Government's recent laissez-faire policies on marijuana and the actual operation of specific laws is not limited to the tax context. Many marijuana-related businesses operate entirely in cash because federal law prohibits certain financial institutions from knowingly accepting deposits from or providing other bank services to businesses that violate federal law. Black & Galeazzi, Cannabis Banking: Proceed With Caution, American Bar Assn., Feb. 6, 2020. Cash-based operations are understandably enticing to burglars and robbers. But, if marijuana-related businesses, in recognition of this, hire armed guards for protection, the owners and the guards might run afoul of a federal law that imposes harsh penalties for using a firearm in furtherance of a "drug trafficking crime." 18 U. S. C. §924(c)(1)(A). A marijuana user similarly can find himself a federal felon if he just possesses a firearm. §922(g)(3). Or petitioners and similar businesses may find themselves on the wrong side of a civil suit under the Racketeer Influenced and Corrupt Organizations Act. See, *e.g.*, *Safe Streets Alliance* v. *Hickenlooper*, 859 F. 3d 865, 876–877 (CA10 2017) (permitting such a suit to proceed).

I could go on. Suffice it to say, the Federal Government's current approach to marijuana bears little resemblance to

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[6] In their petition for a writ of certiorari, petitioners contend that the lack of a deduction for ordinary business expenses causes the tax to fall outside the Sixteenth Amendment's authorization of "taxes on incomes." Therefore, they contend the tax is unconstitutional. That argument implicates several difficult questions, including the differences between "direct" and "indirect" taxes and how to interpret the Sixteenth Amendment. Cf. *National Federation of Independent Business* v. *Sebelius*, 567 U. S. 519, 570–571 (2012); *Taft* v. *Bowers*, 278 U. S. 470, 481–482 (1929). In light of the still-developing nature of the dispute below, I agree with the Court's decision not to delve into these questions.

the watertight nationwide prohibition that a closely divided Court found necessary to justify the Government's blanket prohibition in *Raich*. If the Government is now content to allow States to act "as laboratories" "'and try novel social and economic experiments,'" *Raich*, 545 U. S., at 42 (O'Connor, J., dissenting), then it might no longer have authority to intrude on "[t]he States' core police powers . . . to define criminal law and to protect the health, safety, and welfare of their citizens." *Ibid.* A prohibition on intrastate use or cultivation of marijuana may no longer be necessary *or* proper to support the Federal Government's piecemeal approach.

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JACK B. WOLFE, an individual,
Plaintiff,

vs.

Case No. _____CZ
Hon._____

CITY OF TROY, a Michigan municipal corporation

JURY DEMAND

Defendant.
_____/

Jack B. Wolfe
In Pro Per
7071 Orchard Lake Road, Suite 250
West Bloomfield, MI 48322
(248) 228-6307 (c)
(248) 862-2018 (w)
(248) 928-5009 (f)
wolfejack19@gmail.com
_____/

PROPOSED

EX PARTE ORDER GRANTING PLAINTIFF'S EX PARTE VERIFIED MOTION FOR SHOW CAUSE HEARING

At a session of said Circuit Court, held in the Courthouse
for the City of Pontiac, County of Oakland, Michigan,

ON: _____

PRESENT: HON. _____

This matter having come before this Court through Plaintiff's Verified Complaint for Declaratory and Injunctive Relief to Void Unconstitutional Troy Ordinance pertaining to Caregivers and Damages and Plaintiff's Ex Parte Verified Motion for Show Cause Hearing to Compel by Declaratory Judgment the Issuance by Defendant to Plaintiff of a Caregiver License and/or Stay Enforcement of Defendant's Caregiver Ordinance against Plaintiff during the pendency of this lawsuit ("Lawsuit"), this Court having reviewed the Verified Complaint and

Exhibits thereto, Ex Parte Verified Motion and the Brief in Support thereof with Exhibits thereto, and this Court otherwise being fully advised in the premises;

IT IS HEREBY ORDERED that Plaintiff's Ex Parte Verified Motion for Show Cause Hearing is **GRANTED**, as follows:

IT IS HEREBY ORDERED that a Show Cause Hearing ("SCH") is scheduled for **August 11, 2021, at 9:00 in the a.m.** before the Honorable _____, at the Oakland County Circuit Court, in Courtroom _____, wherein Defendant, City of Troy, is required to appear and SHOW CAUSE as to why this Court should not:

1. Declare and adjudge that the 2018 Chapter 104, *Medical Marihuana Grow Operation License Ordinance* for the City of Troy (the "Ordinance") regarding licensing Caregivers secured locked facilities for cultivation located in the City's IB zoned districts and limiting caregiver licenses to thirty-six (36) caregivers (the "Ceiling") was improperly presented, voted on and enacted as a use of the City's police powers to protect the health safety and welfare of the City when no emergency existed and the Ordinance was presented as a use of police power to avoid compliance with the Michigan Zoning Enabling Act ("MZEA"), MCL § 125.3101 *et. seq.*, and is, therefore, void *ab initio*;

2. Declare and adjudge that the Ordinance was a use of the City's zoning powers and did not comply with MZEA, as follows:

(a). The lack of notice(s) and the lack of any hearing(s) pertaining to the Ordinance prior to its enactment violated MZEA rendering the Ordinance void *ab initio;* and/or

(b). Alternatively, if the notice and hearing violations of MZEA did not render the Ordinance void, declare and adjudge that Plaintiff must be allowed to continue caregiver growing at the Badder Facility as that use existed at the time of the enactment of the Ordinance and the City did not have the authority to "take" this nonconforming use by the language of the Ordinance and, pursuant to the MZEA, the use must be grandfathered into the Ordinance as a nonconforming use;

IT IS HEREBY FURTHER ORDERED that notwithstanding the impact of violating MZEA by the enactment of the Ordinance, enter at the SCH declaratory judgment in favor of Plaintiff and against Defendant that the Ordinance, and specifically the Ceiling, directly conflicts

with and is otherwise field preempted by the 2008 initiative Michigan Medical Marihuana Act, MCL §§ 333.26421 et. seq. ("MMMA");

IT IS HEREBY FURTHER ORDERED this Court shall declare and adjudge the City Ordinance violations of the MMMA renders the Ordinance void *ab initio*.

IT IS HEREBY FURTHER ORDERED that, alternatively, at the SCH, strike down the Ordinance Ceiling, which limits caregiver licenses issued by the City to no more than 36 caregiver licenses, as expressly preempted by MMMA and, pursuant to *DeRuiter,* order Defendant to issue a caregiver license to Plaintiff;

IT IS HEREBY FURTHER ORDERED that at the SCH, notwithstanding entering judgment(s) as requested above, grant preliminary injunctive relief staying enforcement of the Ordinance as to Plaintiff during the pendency of this Lawsuit; and

IT IS FURTHER ORDERED that this Ex Parte Order for Show Cause Hearing, together with the Verified Complaint and Verified Motion with Brief in Support thereof and all Exhibits attached to the pleadings and motion shall be served upon Defendant within seven (7) days of the Show Cause Hearing with Proof of Service filed on or before the hearing date.

_____

CIRCUIT COURT JUDGE