

STATE OF MICHIGAN
COUNTY OF WAYNE
CITY OF ALLEN PARK

ORDINANCE #02-2017

AN ORDINANCE OF THE CITY OF ALLEN PARK CODE OF ORDINANCES; AMENDING CHAPTER 52, “ZONING”, ARTICLE III, “DISTRICT REGULATIONS”, DIVISION 2, “R-1A AND R-1B SINGLE-FAMILY, RESIDENTIAL DISTRICT” BY ADDING DIVISION 2.1, “MEDICAL MARIJUANA/RESIDENTIAL DISTRICT”, TO REGULATE THE LOCATION AND FUNCTION OF MEDICAL MARIJUANA QUALIFYING PATIENTS IN RESIDENTIAL AREAS OF THE CITY.

The City of Allen Park Ordains:

SECTION 1. Amendment to Code.

That Division 2.1, “Medical Marijuana” is added under Chapter 52 “Zoning”, Article III “District Regulations”, Division 2, “R-1A and R-1B Single-Family, Residential District”, to hereafter read as follows:

Chapter 52 “Zoning”
Article III District Regulations
Division 2.1, “Medical Marijuana/Residential District”

Section 52-180. –Definitions.

The following words shall have the meanings ascribed to them except where the context clearly indicates a different meaning:

City means the City of Allen Park.

Marijuana means that term as defined in section 7106 of the Public Health Code, 1978 PA 368, MCL 333.7106.

Medical use means the acquisition, possession, cultivation, use, or internal possession, of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a registered “qualifying patients” debilitating medical condition.

Primary caregiver means a person who is licensed to supply “medical marijuana” for up to five “qualifying patients,” and who is registered with the state department of community health for such purpose.

Qualifying patient means a person who has obtained a valid registration card from the Michigan Department of Community Health allowing them to possess and purchase medical marijuana.

Sec. 52-181. - Purpose and intent.

Residential Districts are districts in which the principal use of land is for single-family dwellings. For single-family residential districts, the specific intent of the legislation creating the districts includes the construction of and the continued use of the land for single-family dwellings and the prohibition of business, commercial or industrial use of the land and the prohibition of any other use which would interfere with the development or maintenance of single-family dwellings in the district. The growing or use of medical marijuana by anyone other than a resident qualifying patient is a use which is contrary to permitted uses within R1A and a R1B Single-Family Residential districts.

Nothing in this Article, or in any companion regulatory provision adopted in any other provision of this Code, is intended to grant, nor shall they be construed as granting, immunity from criminal prosecution for growing, sale, consumption, use, distribution, or possession of marijuana not in strict compliance with that Act and the General Rules. Also, since Federal law is not affected by that Act or the General Rules, nothing in this Article, or in any companion regulatory provision adopted in any other provision of this Code, is intended to grant, nor shall they be construed as granting, immunity from criminal prosecution under Federal law. The Michigan Medical Marijuana Act does not protect users, caregivers or the owners of properties on which the medical use of marijuana is occurring from Federal prosecution, or from having their property seized by Federal authorities under the Federal Controlled Substances Act.

Nevertheless, it is determined necessary for the health, safety and welfare of the city to adopt regulations regarding the location and use of medical marijuana “primary caregivers” and “qualifying patients”, due to the following factors:

- (1) Outside the purview of the Michigan Medical Marijuana Act the possession and use of marijuana (a schedule I drug) in the State of Michigan remains a misdemeanor offense. Possession with intent to deliver, delivery or manufacture of marijuana, remain felonies.
- (2) Marijuana is classified federally as a “Schedule I Drug” under the Controlled Substances Act and is illegal to possess, manufacture, distribute or dispense. Schedule I drugs, which include heroin and LSD, have a high potential for abuse and serve no legitimate medical purpose in the United States.
- (3) In May, 2001, the United States Supreme Court issued its decision in *United States v. Oakland Buyers' Cooperative and Jeffery Jones* holding that distribution of medical marijuana is illegal under the Federal Controlled Substances Act, 21 U.S.C. Section 841 (“CSA”), and there is no medical necessity defense allowed under federal law.
- (4) The location of and easy access to “medical marijuana caregivers” in close proximity to homes, apartments, schools, churches, licensed day care centers and public parks give

an impression of legitimacy to such uses and have adverse effects upon children, established family relations, property values and public safety.

- (5) The use of a residential structure in residential districts to grow marijuana for anyone other than a resident qualifying patient is a use which is contrary to permitted uses within an R1A and a R1B single-family residential district.

Sec. 52-182. - Locations.

A qualifying patient may grow and use medical marijuana in a residential district for himself only, subject to the following conditions:

- (1) The qualifying patient must live in and be the permanent resident of the dwelling;
- (2) The activity shall be solely confined within the dwelling with no outdoor storage of anything associated with the activity;
- (3) No internal or external alterations or construction features or equipment, not customarily found in residential areas, are permitted. Any alterations or construction are subject to any and all building codes, building permits and inspections associated with such alterations or construction;
- (4) Space for the activity shall not occupy more than 200 square feet of the dwelling;
- (5) The activity shall not generate noise or odors offensive or detrimental to the neighborhood;
- (6) The activity shall not interfere with the permitted uses in the neighborhood or make the premises unsuitable for the permitted uses;
- (7) The activity shall not cause a reduction in property values in the area; and

Sec. 52-183. – Restrictions.

A qualifying patient is subject to the following additional requirements:

- (1) The medical use of marijuana shall comply at all times and in all circumstances with the Michigan Medical Marihuana Act of 2008 (MCL 333.26421) and the General Rules of the Michigan Department of Community Health, as they may be amended from time to time.
- (2) A qualifying patient must possess a valid registration card issued by the Michigan Department of Community Health and shall at all times comply with each and every provision of the Michigan Medical Marihuana Act.
- (3) The dwelling in which marijuana is grown shall be subject to inspection by law enforcement, city code officials and members of the Michigan Department of Community Health.
- (4) That portion of the residential structure where energy usage and heat exceeds typical residential use, such as a grow room, and the storage of any chemicals such as herbicides, pesticides, and fertilizers shall be subject to inspection and approval by the Fire Department to insure compliance with the applicable Michigan Fire Protection Code.
- (5) The manufacture of marijuana oils/edibles/elixirs and the use of butane, carbon dioxide or any other chemical enhancements to process marijuana plants in dwellings, is prohibited.
- (6) All medical marijuana shall be contained within the dwelling in an enclosed, locked facility inaccessible on all sides and equipped with locks or other security devices that permit access only by the qualifying patient, as reviewed and approved by the Building Official and the Police Department.
- (7) All necessary building, electrical, plumbing and mechanical permits shall be obtained for any portion of the residential structure in which electrical wiring, lighting and/or watering devices that support the cultivation, growing or harvesting of marijuana are located.
- (8) If a room with windows is utilized as a growing location, any lighting methods that exceed usual residential periods between the hours of 10:00 pm to 7:00 am shall employ shielding methods, without alteration to the exterior of the residence, to prevent ambient light spillage that may create a distraction for adjacent residential properties.
- (9) A qualifying patient shall be liable for all costs associated with the investigation, prosecution, incarceration, booking, medical treatment, storage and destruction of evidence, and any other costs for the failure to comply with the provisions of this article resulting in the arrest and prosecution of any violators or violations at the dwelling..

Sec. 52-184. – Grow, Use, Dispense Prohibited.

No person shall grow or use medical or other marijuana in any Residential District in the City except as provided for in this Division.

Sec. 52-185. - Criminal penalty.

Any person violating any of the provisions of this article and any of the articles stated within, shall, upon conviction, be guilty of a misdemeanor and shall be punished by a fine of not more than \$500.00 and up to 93 days in jail.

Sec. 52-186. – Enforcement actions under other ordinances or codes; of nuisances.

Nothing in this article shall prevent the City from taking action under any of its city fire, housing, zoning or other health safety codes for violations thereof to seek injunctive relief or criminal prosecution of such violations in accordance with the terms and conditions of the particular ordinance or code under which the City would proceed against the property owner, designated property manager or occupant of any residential rental dwelling unit covered by this article.

Sec. 52-187. – Abatement.

Any violation of this article is hereby declared to be a nuisance. In addition to any other relief provided by this article, the city attorney may apply to a court of competent jurisdiction for an injunction to prohibit the continuation of any violation of this article. Such application for relief may include seeking a temporary restraining order, temporary injunction and permanent injunction.

SECTION 2. Repeal.

All ordinances or parts of ordinances in conflict herewith are repealed only to the extent necessary to give this ordinance full force and effect.

SECTION 3. Saving Clause.

Nothing in this Ordinance or in the code hereby adopted shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquiring or existing, under any act or ordinance hereby repealed; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

SECTION 4. Severability.

Should any word, sentence, phrase or any portion of this Ordinance be deemed invalid by any court of competent jurisdiction or by any state agency having authority to do so for any reason whatsoever, such holdings shall be construed and limited to such work, sentence, phrase, or any portion of the Ordinance deemed invalid and shall not be construed as affecting the validity of any of the remaining words, sentences, phrases or portions of this Ordinance.

SECTION 5. Publication.

The Clerk for the City of Allen Park shall cause this ordinance to be published in the manner required by law.

SECTION 6. Adoption.

This Ordinance is hereby declared to have been adopted by the City Council of the City of Allen Park, County of Wayne, State of Michigan, at a regular meeting, called and held on the 28th day of March, 2017.

WILLIAM MATAKAS, Mayor
City of Allen Park

MICHAEL I. MIZZI, City Clerk
City of Allen Park