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CITY OF FRANKFORT, BENZIE COUNTY, MICHIGAN
Proposed Medical Marihuana Caregiver Facility Ordinance

March 12, 2013

1 **THE CITY OF FRANKFORT HEREBY ORDAINS:**

2 That Chapter 8, Article 2: Zoning: General Provisions: Section 2: General Provisions
3 **amended** by the addition of a new subsection:

4 **8203.33 Medical Marihuana Primary Caregiver Facility**

5 It is the purpose and intent of the Sections of this Ordinance pertaining to the regulation of
6 Medical Marihuana Primary Caregiver Facility is to regulate the location and operation of,
7 but not to exclude, any Medical Marihuana Primary Caregiver Facility within the City, and to
8 minimize any negative secondary effects resulting from such location and operation. It is the
9 further purpose of this section to give effect to the intent of **Initiated Act 1 of 2008**, the
10 Michigan Medical Marihuana Act (**MMMA**) and not to establish any local program or
11 regulation that would violate or contravene any enforced State or Federal statute.

12 The MMMA authorizes a narrow exception to the general rule and law that cultivation,
13 distribution, and use of marihuana amount to criminal acts. It is the purpose of this section to
14 establish standards for the application of that narrow exception in the City of Frankfort to
15 enable legitimate and legally authorized practice of the Medical Marihuana Primary
16 Caregiver activity as set forth herein.

17 This ordinance does not intend that this Section seek to broaden the strict interpretation of
18 the MMMA or apply to activities not explicitly provided.

19 It is recognized that any Medical Marihuana Primary Caregiver Facility, because
20 of its very nature, has serious operational characteristics which may have the potential to
21 cause negative secondary effects upon nearby residential, educational, religious and other
22 public and private uses. Medical Marihuana Primary Caregiver Facility regulation is
23 necessary to ensure that their negative secondary effects do not contribute to the blighting
24 or downgrading of surrounding areas and do not negatively affect the health, safety and
25 general welfare of city residents and visitors.

26 The provisions of this Ordinance are not intended to offend the guarantees of the First
27 Amendment to the United States Constitution and are not intended to deny adults' access to
28 a Medical Marihuana Primary Caregiver Facility. Neither is it the intent of this Ordinance to
29 legitimize activities that are prohibited by City ordinance, and by state and federal law. If
30 any portion of this Ordinance relating to the regulation of a Medical Marihuana Primary
31 Caregiver Facility as referenced in this Ordinance is found to be invalid or unconstitutional
32 by a court of competent jurisdiction, the City intends said portion to be disregarded, reduced
33 and/or revised to be recognized to the fullest extent possible by law.

34 The City further states that it would have passed and adopted what remains of any portion
35 of the Ordinance relating to regulation of Medical Marihuana Primary Caregiver Facility
36 following the removal, reduction or revision of any portion so found to be invalid or
37 unconstitutional.

38 **NOW, THEREFORE**, to give substance to the above stated Article 2: **Zoning**
39 **General Provisions: Section 2, by adding subsection 8203.33**, the City of Frankfort
40 ordains the following changes to noted sections of Chapter 8 of the Municipal Code:

41 **Amend Article 1, Section 8106. Administration and Enforcement, paragraph**
42 **8106.01 Zoning Permits for Zoning Compliance and Plans, new subparagraph**
43 **6. Issue Permits for Medical Marihuana Primary Caregiver Facility** based on the
44 standards and application requirement of Section 8107 Site Development Plan
45 Review, subsection 8107.03.

— DRAFT —

CITY OF FRANKFORT, BENZIE COUNTY, MICHIGAN
Proposed Medical Marihuana Caregiver Facility Ordinance
March 12, 2013

46 **Amend by addition to Article 1, Section 8106.02** to add additional responsibility(s)
47 for the City Superintendent and/or Zoning Administrator a **new subparagraph**

48 **3(a)** the administrator will keep records of Medical Marihuana Primary
49 Caregiver Registration renewals and/or cancellations. The Administrator
50 records of Medical Marihuana Primary Caregiver Registration, renewals and
51 cancellations shall not be subject to Freedom of Information Act (FOIA)
52 disclosure since such disclosure would be a violation of the Federal
53 Standards under the Health Information Patient Protection Act (HIPPA).

54 **Amend Article 1, Section 8106.03 to add subparagraph b., and b. 1. (a) and (b):**

55 **8106.03 b. Revocation of Occupancy Permit.** Revocation by the
56 Administrator, with the approval of the Planning Commission, for violation of
57 City of Frankfort Zoning Ordinances, the Laws of the State of Michigan or
58 Federal Statutes.

59 1. A Medical Marihuana Primary Caregiver Facility when the State of
60 Michigan cancels or does not renew the Medical Care Giver or Medical
61 Marihuana Qualifying Patient registry identification for any reason.

62 a). All Medical Marihuana Primary Caregivers are required to
63 provide proof of initial and all subsequent renewals of registration
64 issued by the State of Michigan within ten (10) business days of
65 each renewal.

66 b). Caregivers will provide annual evidence (or more frequent, as
67 may be required by the Administrator) based on weekly records in
68 writing, of the number of qualifying patients being served by the
69 facility. At any time when the number of qualifying patients exceeds
70 five registered persons plus the Caregiver, if he/she is registered
71 qualified patient, the facility will be subject to revocation of the
72 occupancy permit, with prejudice, and immediately, by the
73 Administrator based on evidence discovered or provided.

74 **Amend to Article 1, Section 8107.03 Site Development Plan Review Procedure,**
75 **new paragraphs: paragraph 8: "Standards for Review for Medical Marihuana**
76 **Caregiver Facility"** The Zoning Administrator in accordance with the following
77 requirements shall evaluate an application for a Medical Marihuana Primary
78 Caregiver Facility using the following criteria: adding subparagraphs: **a. through m.**

79 a. Medical Marihuana Primary Caregiver Facility. All marihuana shall be
80 cultivated, processed, stored and packaged for delivery in an enclosed, locked and
81 secured building at all times [MCL 512 (indoor) and, except when it is being
82 delivered to Qualifying Patients pursuant to MCL 750.474. For the purposes of this
83 Section, each such facility shall comply with the requirements of MCL 512, and is
84 subject to the following:

85 (1) The inspection by the County Building Authority to assure
86 compliance with the Michigan Construction Code and the Michigan Fire Code before
87 an initial occupancy permit is issued, and,

— DRAFT —

CITY OF FRANKFORT, BENZIE COUNTY, MICHIGAN
Proposed Medical Marihuana Caregiver Facility Ordinance
March 12, 2013

88 (2) then annual inspections, or before the sale or change of ownership
89 of the Medical Marihuana Primary Caregiver Facility, by the County Building
90 Authority thereafter to continue compliance with all applicable Zoning Ordinances
91 and Construction and Fire Code Requirements.

92 (3) Each Facility shall be protected by a security system that is
93 monitored continuously and access to the facility by other than the registered
94 Medical Marihuana Primary Caregiver shall be prohibited. This provision shall not be
95 construed to prevent access by non-registered individuals over age 21, when
96 accompanied by the registered Medical Marihuana Primary Caregiver.

97 b. Limits on Quantities. A Medical Marihuana Primary Caregiver shall not
98 possess more than 2.5 ounces of processed marihuana, or more than twelve (12)
99 marihuana plants for each Medical Marihuana Qualifying Patient to whom he/she is
100 the Medical Marihuana Primary Caregiver. By MMMA provisions, each Registered
101 Medical Marihuana Primary Caregiver is limited to five (5) qualifying patients, plus if
102 he/she is a registered Medical Marihuana Qualifying Patient an additional 2.5
103 ounces of processed marihuana and twelve (12) marihuana plants. Therefore, the
104 maximum number of ounces of processed marihuana is limited to 15 ounces at any
105 one time, and seventy-two (72) marihuana plants.

106 c. Combined Operations Prohibited. No more than one Medical Marihuana
107 Primary Caregiver shall occupy or otherwise operate in any one growing facility.
108 Within any one Medical Marihuana Primary Caregiver Facility, there shall be no
109 combination of growing or storage activities that would result in possession at any
110 time of marihuana and/or marihuana plants in excess of the amounts defined in (b.)
111 Limits on Quantity above.

112 d. Isolation Distance. A Medical Marihuana Primary Caregiver Facility shall
113 not be located less than 1,000 feet of any public, private or land use permitted
114 school; and shall not locate within the Federal Mandated "Drug Free School Zone";
115 and shall not be located less than 300 feet of any other Medical Marihuana Primary
116 Caregiver Facility. For the purposes of these isolation distances, measurements
117 shall be in a straight line from the front porch of the Medical Marihuana Primary
118 Caregiver Facility to the closest property boundary with a building containing a
119 school, in the first case, or between the front doors of two Medical Marihuana
120 Primary Caregiver Facilities, in the second case.

121 e. Dispensing Medical Marihuana. No Medical Marihuana Primary Caregiver
122 shall dispense medical marihuana to Medical Marihuana Qualifying Patients at the
123 Facility. The Marihuana Primary Caregiver shall deliver small quantities, not to
124 exceed 2.5 ounces for each Medical Marihuana Qualifying Patient.
125 TRANSPORTATION OF MEDICAL MARIHUANA is controlled by MCL 750.474.
126 Delivery shall take place within the house or building of the Medical Marihuana
127 Qualifying Patient. Any delivery vehicle used for such purpose shall be unmarked
128 and not bear any emblem or sign that would indicate the nature of its cargo.

129 f. Prohibited Activities. A Medical Marihuana Primary Caregiver Facility shall
130 not be used as a medical marihuana "dispensary" or "compassion club" and no

CITY OF FRANKFORT, BENZIE COUNTY, MICHIGAN
Proposed Medical Marihuana Caregiver Facility Ordinance
March 12, 2013

131 smoking or otherwise ingesting of medical marihuana shall be permitted on site. A
132 Medical Marihuana Primary Caregiver Facility shall not bear any sign or emblem that
133 would indicate the nature of the activity on site and any advertising it undertaken
134 shall not identify or disclose the location of the Medical Marihuana Primary Caregiver
135 Facility.

136 g. The proposed use shall conform to all standards of the zoning district
137 on which it is located and shall meet all requirements of **Section 8204:**
138 **Stormwater Management.**

139 h. The outdoor storage of garbage and refuse shall be contained in locked
140 steel containers, screened from view and located so as not to be visible from
141 neighboring properties or the adjacent roadways.

142 i. Entrances to the proposed facility must be posted on both the exterior and
143 interior walls, in a location clearly visible to those entering and exiting the
144 business, and using lettering no less than two (2) inches in height that:

145 1) "Person under the age of 21 are not permitted to enter the
146 premises", and,

147 2) "No alcoholic beverages of any type are permitted within the
148 premises."

149 j. No product or service for sale, or gift, or any picture or other representation
150 of any product or service for sale or gift, shall be displayed so as to visible
151 from the nearest adjoining roadway or a neighboring property.

152 k. Facility hours of operation shall be limited to **8:00 AM to 10:00 PM**, and at
153 no time may provide overnight or residential accommodations.

154 l. All off-street parking areas shall comply with **Section 8205.11 Parking**
155 **Standards** and **8205.12 Parking Location Standards** of this Ordinance.

156 All parking and public areas must be illuminated in accordance with
157 Administrator's approval of the lighting fixtures and light throw distances,
158 during all hours of operation of the facility and until one hour after the
159 business closes.

160 m. The building entrance and exit shall be handicap accessible to the extent
161 required by the Americans with Disabilities Act.

162 **Amended to add Section 8107.03. 9.: "Application Standards for Medical**
163 **Marihuana Caregiver Facility."** The Zoning Administrator requires every applicant
164 for a land use permit to maintain, operate or conduct a Primary Medical Marihuana
165 Caregiver Facility to grow/manufacture or store medical marihuana for delivery to a
166 Registered Medical Marihuana Patient to file an application under notarized oath
167 with the City Clerk's Office and upon a form provided by the City. The Application
168 shall fulfill all of the requirements indicated on the form, including but not limited to:

169 **subparagraph. a. to i:**

170 a. Name, age, and address of the applicant and operator, including:

171 1). Address of all partners of the applicant including proof that the
172 applicant and any proposed employees are at least twenty-one (21)
173 years of age.

CITY OF FRANKFORT, BENZIE COUNTY, MICHIGAN
Proposed Medical Marihuana Caregiver Facility Ordinance
March 12, 2013

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- 2). Address of all operator(s) of the facility in cases where this differs from the applicant.
 - 3). In the case of corporations, partnerships, non-profit corporations, or any other business types, the applicant shall be the highest-level official or employee of the entity such as Board President, Chief Executive Officer, Executive Director, or comparable person.
 - 4). If the applicant is a corporation, a copy of the articles of incorporation and current corporate records disclosing the identity and residential addresses of all directors, officers, and shareholders. Include the address of the corporation itself, if different from the address of the Medical Marihuana Primary Caregiver Facility for growing, manufacturing or storage, and the name/address of the resident agent for the corporation.
 - 5). If the applicant is a partnership, the name and residence address of each of the partners and the partnership itself, if different from the address of the Medical Marihuana Caregiver Facility for growing, manufacturing or storage, and the name and address of the resident agent.
 - 6). Photo Identification of the applicant and operator and/or driver's licenses issued and current, by the State of Michigan.
 - 7). The Medical Marihuana Caregiver Facility history of the applicant: whether such person has had a business land use permit revoked or suspended, the reason(s) therefore, and the business activity or occupation(s) subsequent to such action of suspension or revocation.
- b. Proof the applicant and its employees are Registered Medical Marihuana Primary Caregivers with current registration with the State of Michigan.
- c. The location and mailing address and all telephone numbers where the business is to be conducted, and the name and address of the owner, if different from the holder of the land use permit, and written evidence of the applicant's right to possession of the premises.
- d. An area map, drawn to scale, indicating within a radius of one thousand (1,000) feet from the boundaries of the proposed Medical Marihuana Primary Caregiver Facility site, the proximity of the site to any school; and a three hundred (300) foot direct line distance to any existing Medical Marihuana Primary Caregiver Facility. That the map, its measurements, shall be prepared by a Registered Surveyor, licensed by the State of Michigan, and the site plan and map shall be filed with the Zoning Administrator with the application. Administrative resolution of any disputed isolation distances will be by reference to **Article 1, Section 8107.03 (d)**, and within the Industrial- Entrepreneurial zoning district where this facility is a permitted use.

CITY OF FRANKFORT, BENZIE COUNTY, MICHIGAN
Proposed Medical Marihuana Caregiver Facility Ordinance
March 12, 2013

- 216 d. A Certification of Occupancy (or similar clearance to use) from the
- 217 County Building Department verifying the structure and premises are
- 218 incompliance with all existing building construction, maintenance, building
- 219 codes and safety regulations, by reference to **Article 1, Section 8107.03 a.**
- 220 The Certificate of Occupancy is required within 60 days of the land use permit
- 221 issue date, and is required before the opening or use of the facility for the
- 222 land use permitted use.
- 223 e. A Statement that the applicant will not violate any of the laws of the
- 224 State of Michigan or the ordinances of the City of Frankfort in conducting the
- 225 business for which the land use permit is used. It is understood that a
- 226 violation on the premises may be cause for objecting to the renewal of the
- 227 land use permit or revocation of the land use permit.
- 228 f. A signed release, included with the application form, permitting the City of
- 229 Frankfort Police Department to perform a criminal background check to
- 230 ascertain whether any of the applicant, operator, or any employee named on
- 231 the application have been convicted of a felony pursuant to the definitions of
- 232 Michigan Public Act 512 (effective 4/1/2013) or any person was convicted of a
- 233 felony involving illegal drugs or a felony that is an "assaultive crime" as
- 234 further defined under MCL 770.9a.
- 235 g. A description of the security plan for the facility, including, but not limited to,
- 236 any lighting, alarms, barriers, recording/monitoring devices, and/or security
- 237 guard arrangements proposed for the Medical Marihuana Caregiver Facility
- 238 and premises.
- 239 h. A Certificate of Casualty and Liability Insurance for fire and accident
- 240 damage in the amount of the value of the premises plus a minimum single limit
- 241 of \$500,000 for all occurrences.
- 242 i. Description of the process for tracking medical marihuana quantities and
- 243 inventory controls, including medical marihuana products received from
- 244 outside sources, as well as registered caregivers and patients on the premises
- 245 at all times.

246 **That Chapter 8 of the Municipal Code at Article 2, definitions, Section 8201**
247 **amended to add the following defined term(s) in alphabetical order:**

- 248 MARIHUANA. A controlled substance as defined in section 7106 of the public health code,
- 249 1978 PA 368, MCL 333.7106.
- 250 PRIMARY CAREGIVER. A person who is at least 21 years old and who has been
- 251 registered by State of Michigan Department of Community Health to assist with a Qualifying
- 252 Patient's use of medical marihuana. Subject to the definitions of Michigan Public Act 512
- 253 (effective 4/1/2013) of any person convicted of a felony involving illegal drugs or a felony that
- 254 is an "assaultive crime" as further defined under MCL 770.9a.
- 255 PRIMARY CAREGIVER FACILITY. A building in which the activities of a Primary
- 256 Caregiver as defined in the Michigan Medical Marihuana Act (Initiated Act 1 of 2008) and in
- 257 this Ordinance are conducted, and further defined by Michigan Public Act 512 Outdoors
- 258 and Indoors facilities.
- 259 QUALIFYING PATIENT. A person who has been diagnosed by a physician as having a
- 260 debilitating medical condition as provided by the Michigan Medical Marihuana Act and

— DRAFT —

CITY OF FRANKFORT, BENZIE COUNTY, MICHIGAN
Proposed Medical Marihuana Caregiver Facility Ordinance
March 12, 2013

261 who has obtained a duly issued registry identification card from the State Department of
262 Community Health as provided by said Act.

263 TRANSPORTATION OF MEDICAL MARIHUANA controlled by MCL
264 750.474.

265 Amend Chapter 8 of the Municipal Code at Article 3, Section 8308 to add the
266 following **Section 8301.03 Permitted Uses, under Section 8308 Industrial-**
267 **Entrepreneurial District** to add:

268 **Medical Marihuana Primary Caregiver Facility**

269 Amend Chapter 8 of the Municipal Code at Article 3, Section 8308 is amended to
270 add the following permitted use to the listing by **adding in Subparagraph a:**

271 **Medical Marihuana Primary Caregiver Facility, in compliance with**
272 **Article 1, Section 8107ff.**

273 Amend to add to **Article 8203.33** paragraph(s):

274 a. Disclaimer of Immunity. Nothing in this Ordinance shall be construed as allowing
275 the use, cultivation, distribution or possession of marihuana not in strict compliance
276 with the express provisions of the Michigan Medical Marihuana Act (MMMA) and the
277 provisions of this section. Further, nothing in this ordinance shall be construed to
278 undermine or provide relief from federal or state government laws or statutes relative
279 to the use, cultivation, distribution or possession of marihuana or to create or provide
280 immunity from the federal or state law as it exists or to prevent prosecution
281 thereunder.

282 b. Exceptions. This section shall not be deemed to prohibit or restrict, for the
283 following purposes:

284 1. The use of medical marihuana by a Medical Marihuana Qualifying Patient
285 solely for his/her personal use at his/her residence, hospital, or hospice at which
286 he/she is receiving care and in accordance with the provisions of the MMMA and the
287 administrative rules adopted thereunder. The residential standards are subject to the
288 provisions of Chapter 8 of the City of Frankfort Municipal Code at **Article 1, Section**
289 **8106.03** as amended by the addition of paragraph 8, Review Standards for Medical
290 Marihuana Caregiver Facility, as it would apply to subparagraph a., MCL 512 (indoor)
291 storage and a. (3) security, b. Limits on Quantities, e., f, paragraph h (relating to
292 garbage and refuse), and paragraph 9, Application Standards for a Medical
293 Marihuana Caregiver Facility as it applies to paragraph e. and f. If used within a
294 medical care or hospice facility, the written permission of the hospital or hospice
295 administrator is a prerequisite to any institutional use of Medical Marihuana by a
296 patient.

297 2. The storage of medical marihuana in accordance with the MMMA and the
298 Frankfort Review Standards, by a Medical Marihuana Primary Caregiver is allowed
299 for a single registered Medical Marihuana Patient who is a member of the Medical
300 Marihuana Primary Caregiver's household and whose residence is shared with the
301 Medical Marihuana Primary Caregiver. The provisions of Chapter 8 of the Municipal
302 Code at Article 1, Section 8106.03 as amended by the addition of paragraph 5,
303 Review Standards for Medical Marihuana Caregiver Facility, as it would apply to
304 subparagraph (a), MCL 512 (indoor) storage and (a) (3) security, (b) Limits on

— D R A F T —

CITY OF FRANKFORT, BENZIE COUNTY, MICHIGAN
Proposed Medical Marihuana Caregiver Facility Ordinance
March 12, 2013

305 Quantities, (e), (f), paragraph 5 (relating to garbage and refuse, and paragraph 6,
306 Application Standards for a Medical Marihuana Caregiver Facility as it applies to
307 paragraph e. and f.

308 3. The provisions of assistance to a Medical Marihuana Qualifying Patient by
309 his/her designated Medical Marihuana Primary Caregiver relating to medical
310 marihuana use, including distribution or other assistance, when it is in accord with
311 MMMA and the administrative rules adopted thereunder, when at the residence of the
312 Medical Marihuana Qualifying Patient or at a hospital, hospice or other medical care
313 facility where the Qualifying Patient is receiving care.

314 **c. Enforcement.** Violations of any Section of this Ordinance shall be considered a
315 civil violation subject to the penalties established for violations under the Frankfort
316 Municipal Code.

317 **d. Changes** to the Michigan Medical Marihuana Act M.C.L. 333.7401, and/or the
318 regulations promulgated by the State of Michigan pursuant to the MMMA, shall have
319 the effect of modifying these Sections of Chapter 8 of the Frankfort Municipal
320 Ordinance, automatically. If amendment is not possible, creating a moratorium of
321 sufficient time, not to exceed one year, for the adoption of amendments or
322 replacement(s) of those sections, clause(s), or provisions.

323 **e. Severability.** If any section, clause, or provision of this Ordinance be declared
324 unconstitutional or otherwise invalid by a court of competent jurisdiction, said
325 declaration shall not affect the remainder of the Ordinance. The City Council hereby
326 declares that it would have passed this Ordinance and each part, section, subsection,
327 phrase, sentence and clause irrespective of the fact that any one or more parts,
328 sections, subsections, phrases, sentences or clauses be declared invalid.

329 **f. Maps of the City of Frankfort, Benzie County, Michigan.**

330 1). The Official Regulating Map of the City of Frankfort adopted May 10,
331 2012, designating the boundaries of all Zoning Districts in the City.

332 2). A Photomap of the Industrial-Entrepreneurial District with evidence of the
333 approximate 1,000-foot linear distance from Frankfort High School.