

**Village of Ellsworth
Ordinance Number 1 of 2016**

An Ordinance to amend Article III Definitions and Article IV General Provisions of the Ellsworth Zoning Ordinance.

The Village of Ellsworth Ordains:

Section 1. Amendment of Article III Definitions

Article III of the Village of Ellsworth Zoning Ordinance is hereby amended to add the following definitions in their appropriate alphabetical locations, which new definitions shall read in their entirety as follows:

Enclosed, locked facility - That term as defined in Section 3 of Initiated Law 1 of 2008, as amended (Michigan Medical Marijuana Act), being MCL 333.26423.

Marijuana or marihuana - That term as defined in Section 7106 of Act No. 368 of the Public Acts of 1978, as amended (Michigan Public Health Code), being MCL 333.7106.

Medical Use - That term as defined in Section 3 of Initiated Law 1 of 2008, as amended (Michigan Medical Marijuana Act), being MCL 333.26423.

Primary caregiver - That term as defined in Section 3 of Initiated Law 1 of 2008, as amended (Michigan Medical Marijuana Act), being MCL 333.26423 who has registered with the Michigan Department of Licensing and Regulatory Affairs or any successor agency under the Michigan Medical Marijuana Act.

Primary caregiver facility - The dwelling in which a primary caregiver resides, or an accessory building to that dwelling, within which the primary caregiver performs primary caregiver services for qualifying patients.

Qualifying patient - That term as defined in Section 3 of Initiated Law 1 of 2008, as amended (Michigan Medical Marijuana Act), being MCL 333.26423 who has registered with the Michigan Department of Licensing and Regulatory Affairs or any successor agency under the Michigan Medical Marijuana Act, and includes the parents or legal guardians of a qualifying patient under the age of 18 who are serving as the primary caregiver as required by the Michigan Medical Marijuana Act exclusively for that qualifying patient under the age of 18.

Section 2. Amendment of Article IV General Provisions

Article IV General Provisions of the Village of Ellsworth Zoning Ordinance is hereby amended to add a new Section 4.22 to read in its entirety as follows:

Section 4.22 Medical Marijuana

1. Intent and Purpose. With regard to the Michigan Medical Marijuana Act (hereinafter referred to as the "MMMA"), Initiated Law 1 of 2008, MCL 333.26423, *et seq*, and its administrative rules, R 333.101, *et seq*, the purpose of this section is to implement land use regulations to address the medical use of marijuana in accordance with the MMMA.

Further, it is the intent of this ordinance to:

- protect the public health, safety, and general welfare of persons and property,
- to allow certain locations as specified below, and
- to require adequate separation between primary caregiver facilities to prevent clustering of grow operations in one area.

It is the further intent of this ordinance to comply with the MMMA while concurrently attempting to:

- protect the health, safety, and welfare of persons in the community, and also
- to address and minimize reasonably anticipated secondary effects upon children, other members of the public, and upon significant areas of the community, that would be reasonably expected to occur in the absence of the provisions of this ordinance.

This ordinance is designed to recognize the fundamental intent of the MMMA to allow the creation and maintenance of a private and confidential patient-caregiver relationship to facilitate the statutory authorization for the limited cultivation, distribution, and use of marijuana for medical purposes; and to regulate around this fundamental intent in a manner that does not conflict with the MMMA so as to address issues that would otherwise expose the community and its residents to significant adverse conditions, including the following: adverse and long-term influence on children; substantial serious criminal activity; and danger to members of the public.

This ordinance permits authorizations for activity based on the MMMA. 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 marijuana not in strict accordance with the express authorizations of the MMMA and this ordinance; and, 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.

2. Regulations for Qualifying Patients. The medical use of marijuana by a qualifying patient in that qualifying patient's dwelling or an accessory building to that dwelling is hereby recognized as an accessory use to the principal residential use of the property and can be established without a zoning permit in any zoning district, but shall be subject to the following regulations:
 - a. The qualifying patient must be issued and at all times must maintain a valid registry identification card by the Bureau of Health Professions, Michigan Department of Licensing and Regulatory Affairs or any successor agency under the provisions of the MMMA.
 - b. All marijuana plants or products must be contained or grown within the dwelling, an accessory building to that dwelling, or outdoors in an enclosed, locked facility that permits access only by the qualifying patient.
 - c. If a room with windows within the dwelling or accessory building is utilized to grow marijuana for medical use, any artificial lighting shall be shielded to prevent glare, must not be visible from neighboring properties, and must not be visible from adjacent streets or public ways.
3. Regulations for Primary Caregivers. The medical use of marijuana by a primary caregiver in a primary caregiver facility is hereby authorized as a use by right in any zoning district, provided that all of the following regulations are met:
 - a. The primary caregiver must be issued and at all times must maintain a valid registry identification card by the Bureau of Health Professions, Michigan Department of Licensing and Regulatory Affairs or any successor agency under the provisions of the MMMA.
 - b. The primary caregiver must obtain a zoning permit under Article VIII of this Ordinance.
 - c. Except when being transported as provided in subsection i below, all marijuana plants or products must be contained within the primary caregiver facility or outdoors in an enclosed, locked facility that segregates the marijuana plants and products for medical use for each qualifying patient and that permits access only by the primary caregiver.
 - d. If a room with windows within the primary caregiver facility is utilized to grow marijuana for medical use, any artificial lighting shall be shielded to prevent glare, must not be visible from neighboring properties, and must not be visible from adjacent streets or public ways.

- e. Except as provided herein, no more than one (1) primary caregiver shall be permitted to provide primary caregiver services within a single primary caregiver facility. Provided, however, a husband and wife or not more than two (2) unrelated individuals whose relationship is of a permanent and distinct domestic character and who live as a single, nonprofit housekeeping unit with single culinary facilities may both be primary caregivers within the same primary caregiver facility.
 - f. The medical use of marijuana shall comply at all times with the MMMA and General Rules of the Bureau of Health Professionals, Michigan Department of Licensing and Regulatory Affairs or any successor agency, as they may be amended from time to time.
 - g. Except for any qualifying patients who reside with the primary caregiver of medical marijuana, no qualifying patients may be present at a primary caregiver facility for any purpose directly related to medical marijuana primary caregiver services. This subsection, however, shall not be construed to prohibit the presence of qualifying patients at a primary caregiver facility for purposes unrelated to medical marijuana primary caregiver services.
 - h. No children, including qualifying patients under the age of 18 (eighteen) shall be permitted at any time at a primary caregiver facility, except when (a) in the presence of his/her parent or guardian, or (b) the qualifying patient resides with the primary caregiver at the primary caregiver facility, or (c) the qualifying patient visits are for purposes unrelated to primary caregiver services.
 - i. No marijuana for medical use shall be dispensed by the primary caregiver to qualifying patients at the primary caregiver facility, except to a qualifying patient who resides with the primary caregiver at the primary caregiver facility. Except as provided herein, the primary caregiver shall deliver all marijuana for the medical use of such qualifying patient, and such delivery shall take place on private property away from public view. Any such delivery vehicle shall be unmarked and not bear any emblem or sign that would indicate the nature of its cargo. In addition, all marijuana for medical use delivered to a qualifying patient shall be packaged so the public cannot see or smell the marijuana.
 - j. No marijuana for medical use shall be consumed, smoked, or ingested by a qualifying patient by any method at a primary caregiver facility, except by a qualifying patient who resides with the primary caregiver at the dwelling.
 - k. A primary caregiver facility shall not have any signage visible from the outdoors that would indicate the nature of the primary caregiver services being conducted in the primary caregiver facility.
 - l. No primary caregiver facility shall be located in violation of any of the following spacing requirements:
 - 1) Four hundred (400) feet from any public or private school and its accessory structures;
 - 2) One hundred (100) feet from any church or place of worship and its accessory structures;
 - 3) Four hundred (400) feet from any preschool, child care or day care facility and its accessory structures;
 - 4) Four hundred (400) feet from The Moms and Tots Center;
 - 5) Four hundred (400) feet from The Good Samaritan Food Pantry;
 - 6) Two hundred (200) feet from any public facility, such as libraries, museums, parks, campgrounds, playgrounds, public beaches, boat launches, community centers, and other public places where children may congregate.

The above spacing requirement shall be from lot line to lot line.
 - m. The portion of the primary caregiver facility, including any room or area utilized to grow marijuana for medical use, shall contain electrical service and wiring certified by an electrician licensed in the State of Michigan, meeting the applicable requirements of the electrical code in effect in Antrim County.
4. Relationship to Federal Law. Nothing within this section is intended to grant, nor shall it be construed as granting, immunity from federal law.

Section 3. Severability.

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

Section 4. Conflicts.

If any provision of the Village of Ellsworth Zoning Ordinance conflicts with this Zoning Ordinance Amendment, then the provisions of this Zoning Ordinance Amendment shall control.

Section 5. Effective Date.

This Ordinance shall become effective eight (8) days after being published in a newspaper of general circulation within the Village.