

CITY OF FRANKFORT, BENZIE COUNTY, MICHIGAN
Title: Medical Marihuana Caregiver Facility Zoning Ordinance
April ____, 2013

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

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3 That the Frankfort Zoning Ordinance be amended as follows:

4
5 1. Chapter 8, Article 2: Zoning: General Provisions be **amended** to add new
6 section 8203.33 to read in its entirety as follows:

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8 **8203.33 Medical Marihuana Primary Caregiver Facility**

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

18
19 The MMMA authorizes a narrow exception to the general rule and law that
20 cultivation, distribution, and use of marihuana amount to criminal acts. It is
21 the purpose of this section to establish standards for the application of that
22 narrow exception in the City of Frankfort to enable legitimate and legally
23 authorized practice of the Medical Marihuana Primary Caregiver activity as
24 set forth herein.

25
26 This ordinance does not intend that this Section seek to broaden the strict
27 interpretation of the MMMA or apply to activities not explicitly provided.

28
29 It is recognized that any Medical Marihuana Primary Caregiver Facility,
30 because of its very nature, has serious operational characteristics which may
31 have the potential to cause negative secondary effects upon nearby
32 residential, educational, religious and other public and private uses. Medical
33 Marihuana Primary Caregiver Facility regulation is necessary to ensure that
34 their negative secondary effects do not contribute to the blighting or
35 downgrading of surrounding areas and do not negatively affect the health,
36 safety and general welfare of city residents and visitors.

37
38 The provisions of this Ordinance are not intended to offend the guarantees of
39 the First Amendment to the United States Constitution and are not intended
40 to deny adults' access to a Medical Marihuana Primary Caregiver Facility.
41 Neither is it the intent of this Ordinance to legitimize activities that are
42 prohibited by City ordinance, and by state and federal law. If any portion of
43 this Ordinance relating to the regulation of a Medical Marihuana Primary
44 Caregiver Facility as referenced in this Ordinance is found to be invalid or
45 unconstitutional by a court of competent jurisdiction, the City intends said

46 portion to be disregarded, reduced and/or revised to be recognized to the
47 fullest extent possible by law.
48

49 The City further states that it would have passed and adopted what remains
50 of any portion of the Ordinance relating to regulation of Medical Marihuana
51 Primary Caregiver Facility following the removal, reduction or revision of any
52 portion so found to be invalid or unconstitutional.
53

54 **8203.33 a. Disclaimer of Immunity**

55 Nothing in this Ordinance shall be construed as allowing the use,
56 cultivation, distribution or possession of marihuana not in strict
57 compliance with the express provisions of the Michigan Medical
58 Marihuana Act (MMMA) and the provisions of this section. Further,
59 nothing in this ordinance shall be construed to undermine or provide
60 relief from federal or state government laws or statutes relative to the
61 use, cultivation, distribution or possession of marihuana or to create or
62 provide immunity from the federal or state law as it exists or to prevent
63 prosecution there under.
64

65 **b. Exceptions.** This section shall not be deemed to prohibit or restrict,
66 for the following purposes:
67

- 68 1) The use of medical marihuana by a Medical Marihuana
69 Qualifying Patient solely for his/her personal use at
70 his/her residence, hospital, or hospice at which he/she is
71 receiving care and in accordance with the provisions of
72 the MMMA and the administrative rules adopted there
73 under. The residential standards are subject to the
74 provisions of Chapter 8 of the City of Frankfort Municipal
75 Code at **Article 1, Section 8106.03** as amended by the
76 addition of paragraph 8, [Review Standards for Medical](#)
77 [Marihuana Caregiver Facility](#), as it would apply to
78 subparagraph a., MCL 512 (indoor) storage and a. (3)
79 security, b. Limits on Quantities, e., f, paragraph h
80 (relating to garbage and refuse), and paragraph 9,
81 [Application Standards for a Medical Marihuana Caregiver](#)
82 [Facility](#) as it applies to paragraph e. and f. If used within a
83 medical care or hospice facility, the written permission of
84 the hospital or hospice administrator is a prerequisite to
85 any institutional use of Medical Marihuana by a patient.
86
- 87 2) The storage of medical marihuana in accordance with the
88 MMMA and the Frankfort Review Standards, by a Medical
89 Marihuana Primary Caregiver is allowed for a single
90 registered Medical Marihuana Patient who is a member of
91 the Medical Marihuana Primary Caregiver's household

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and whose residence is shared with the Medical Marijuana Primary Caregiver. The provisions of Chapter 8 of the Municipal Code at Article 1, Section 8106.03 as amended by the addition of paragraph 5, [Review Standards for Medical Marijuana Caregiver Facility](#), as it would apply to subparagraph (a), MCL 512 (indoor) storage and (a) (3) security, (b) Limits on Quantities, (e), (f), paragraph 5 (relating to garbage and refuse, and paragraph 6, [Application Standards for a Medical Marijuana Caregiver Facility](#) as it applies to paragraph e. and f.

- 3) The provisions of assistance to a Medical Marijuana Qualifying Patient by his/her designated Medical Marijuana Primary Caregiver relating to medical marijuana use, including distribution or other assistance, when it is in accord with MMMA and the administrative rules adopted there under, when at the residence of the Medical Marijuana Qualifying Patient or at a hospital, hospice or other medical care facility where the Qualifying Patient is receiving care.

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

d. **Changes** to the [Michigan Medical Marijuana Act M.C.L. 333.26421](#), and/or the regulations promulgated by the State of Michigan pursuant to the MMMA, shall have the effect of modifying these Sections of Chapter 8 of the Frankfort Municipal Ordinance, automatically. If amendment is not possible, creating a moratorium of sufficient time, not to exceed one year, for the adoption of amendments or replacement(s) of those sections, clause(s), or provisions.

e. **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 City Council hereby declares that it would have passed this Ordinance and 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.

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

135 1)The Official Regulating Map of the City of Frankfort adopted
136 May 10, 2012, designating the boundaries of all Zoning Districts in the
137 City. (See 8301.02 Zoning District Map)

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

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143 **2.** Chapter 8, Article 1: Planning be amended at Section 8106.01 to add new
144 subsection **6** to read in its entirety as follows:

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146 **6.** Issue permits for Medical Marihuana Primary Caregiver Facility
147 based on the standards and application requirement of [Section 8107](#)
148 [Site Development Plan Review, subsection 8107.03.](#)

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150 **3.** Chapter 8, Article 1: Planning be amended at Section 8106.02 to add new
151 subsection **(3)(a)** to read in its entirety as follows:

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153 **3(a)** The administrator will keep records of Medical Marihuana Primary
154 Caregiver Registration renewals and/or cancellations. The
155 Administrator records of Medical Marihuana Primary Caregiver
156 Registration, renewals and cancellations shall not be subject to
157 Freedom of Information Act (FOIA) disclosure since such disclosure
158 would be a violation of the Federal Standards under the Health
159 Information Patient Protection Act (HIPPP).

160
161 **4.** Chapter 8, Article 1: Planning be amended at Section 8106 to add new
162 subsection **3b** to read in its entirety as follows:

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164 **8106.03b Revocation of Occupancy Permit**

165 Revocation by the Administrator, with the approval of the Planning
166 Commission, for violation of City of Frankfort Zoning Ordinances, the
167 Laws of the State of Michigan or Federal Statutes.

168
169 1. A Medical Marihuana Primary Caregiver Facility when the State
170 of Michigan cancels or does not renew the Medical Care Giver or
171 Medical Marihuana Qualifying Patient registry identification for any
172 reason.

173
174 (a) All Medical Marihuana Primary Caregivers are required to
175 provide proof of initial and all subsequent renewals of
176 registration issued by the State of Michigan within ten (10)
177 business days of each renewal.

179 (b) Caregivers will provide annual evidence (or more frequent, as
180 may be required by the Administrator) based on weekly records
181 in writing, of the number of qualifying patients being served by
182 the facility. At any time when the number of qualifying patients
183 exceeds five registered persons plus the Caregiver, if he/she is
184 registered qualified patient, the facility will be subject to
185 revocation of the occupancy permit, with prejudice, and
186 immediately, by the Administrator based on evidence discovered
187 or provided.
188

189 5. Chapter 8, Article 1: Planning be amended at Section 8107.03 to add new
190 subsection **8** to read in its entirety as follows:
191

192 **8. Standards for Review for Medical Marihuana Caregiver Facility**

193 The Zoning Administrator in accordance with the following
194 requirements shall evaluate an application for a Medical Marihuana
195 Primary Caregiver Facility using the following criteria:
196

197 (a) **Medical Marihuana Primary Caregiver Facility.** All marihuana
198 shall be cultivated, processed, stored and packaged for delivery
199 in an enclosed, locked and secured building at all times **Public**
200 **Act 512 (indoor)** and, except when it is being delivered to
201 Qualifying Patients pursuant to **MCL 750.474**. For the purposes
202 of this Section, each such facility shall comply with the
203 requirements of **Public Act 512**, and is subject to the following:
204

205 1) The inspection by the County Building Authority to assure
206 compliance with the Michigan Construction Code and the
207 Michigan Fire Code before an initial occupancy permit is
208 issued, and,
209

210 2) Then annual inspections, or before the sale or change of
211 ownership of the Medical Marihuana Primary Caregiver
212 Facility, by the County Building Authority thereafter to
213 continue compliance with all applicable Zoning
214 Ordinances and Construction and Fire Code
215 Requirements.
216

217 3) Each Facility shall be protected by a security system that
218 is monitored continuously and access to the facility by
219 other than the registered Medical Marihuana Primary
220 Caregiver shall be prohibited. This provision shall not be
221 construed to prevent access by non-registered individuals
222 over age 21, when accompanied by the registered
223 Medical Marihuana Primary Caregiver.

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

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

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

- (e) **Dispensing Medical Marihuana.** No Medical Marihuana Primary Caregiver shall dispense medical marihuana to Medical Marihuana Qualifying Patients at the Facility. The Marihuana Primary Caregiver shall deliver small quantities, not to exceed 2.5 ounces for each Medical Marihuana Qualifying Patient. TRANSPORTATION OF MEDICAL MARIHUANA is controlled by **MCL 750.474**. Delivery shall take place within the house or building of the Medical Marihuana Qualifying Patient. Any delivery vehicle used for such purpose shall be unmarked and

- 268 not bear any emblem or sign that would indicate the nature of its
269 cargo.
- 270 (f) **Prohibited Activities.** A Medical Marihuana Primary Caregiver
271 Facility shall not be used as a medical marihuana "dispensary"
272 or "compassion club" and no smoking or otherwise ingesting of
273 medical marihuana shall be permitted on site. A Medical
274 Marihuana Primary Caregiver Facility shall not bear any sign or
275 emblem that would indicate the nature of the activity on site and
276 any advertising it undertaken shall not identify or disclose the
277 location of the Medical Marihuana Primary Caregiver Facility.
278
- 279 (g) The proposed use shall conform to all standards of the zoning
280 district on which it is located and shall meet all requirements of
281 **Section 8204: Stormwater Management**
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- 283 (h) The outdoor storage of garbage and refuse shall be contained in
284 locked steel containers, screened from view and located so as
285 not to be visible from neighboring properties or the adjacent
286 roadways.
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- 288 (i) Entrances to the proposed facility must be posted on both the
289 exterior and interior walls, in a location clearly visible to those
290 entering and exiting the business, and using lettering no less
291 than two (2) inches in height that:
292
- 293 1) "Person under the age of 21 are not permitted to enter
294 the premises", and,
295
- 296 2) "No alcoholic beverages of any type are permitted within
297 the premises."
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- 299 (j) No product or service for sale, or gift, or any picture or other
300 representation of any product or service for sale or gift, shall be
301 displayed so as to visible from the nearest adjoining roadway or
302 a neighboring property.
303
- 304 (k) Facility hours of operation shall be limited to **8:00 AM to 10:00**
305 **PM**, and at no time may provide overnight or residential
306 accommodations.
307
- 308 (l) All off-street parking areas shall comply with **Section 8205.11**
309 **Parking Standards** and **8205.12 Parking Location Standards**
310 of this Ordinance. All parking and public areas must be
311 illuminated in accordance with Administrator's approval of the
312 lighting fixtures and light throw distances, during all hours of

313 operation of the facility and until one hour after the business
314 closes.

315 (m) The building entrance and exit shall be handicap accessible to
316 the extent required by the Americans with Disabilities Act.
317

318 6. Chapter 8, Article 1: Planning be amended at Section 8107.03 to add new
319 subsection **9** to read in its entirety as follows:
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321 **9. Application Standards for Medical Marihuana Caregiver Facility**

322 The Zoning Administrator requires every applicant for a land use
323 permit to maintain, operate or conduct a Primary Medical Marihuana
324 Caregiver Facility to grow/manufacture or store medical marihuana for
325 delivery to a Registered Medical Marihuana Patient to file an
326 application under notarized oath with the City Clerk's Office and upon a
327 form provided by the City. The Application shall fulfill all of the
328 requirements indicated on the form, including but not limited to:
329 **subparagraph. a. to i:**
330

331 (a) Name, age, and address of the applicant and operator,
332 including:
333

334 1) Address of all partners of the applicant including proof
335 that the applicant and any proposed employees are at
336 least twenty-one (21) years of age.
337

338 2) Address of all operator(s) of the facility in cases where
339 this differs from the applicant.
340

341 3) In the case of corporations, partnerships, non-profit
342 corporations, or any other business types, the applicant
343 shall be the highest-level official or employee of the entity
344 such as Board President, Chief Executive Officer,
345 Executive Director, or comparable person.
346

347 4) If the applicant is a corporation, a copy of the articles of
348 incorporation and current corporate records disclosing
349 the identity and residential addresses of all directors,
350 officers, and shareholders. Include the address of the
351 corporation itself, if different from the address of the
352 Medical Marihuana Primary Caregiver Facility for
353 growing, manufacturing or storage, and the
354 name/address of the resident agent for the corporation.
355

356 5) If the applicant is a partnership, the name and residence
357 address of each of the partners and the partnership itself,

358 if different from the address of the Medical Marihuana
359 Caregiver Facility for growing, manufacturing or storage,
360 and the name and address of the resident agent.
361
362 6) Photo Identification of the applicant and operator and/or
363 driver's licenses issued and current, by the State of
364 Michigan.
365
366 7) The Medical Marihuana Caregiver Facility history of the
367 applicant: whether such person has had a business land
368 use permit revoked or suspended, the reason(s)
369 therefore, and the business activity or occupation(s)
370 subsequent to such action of suspension or revocation.
371
372 (b) Proof the applicant and its employees are Registered Medical
373 Marihuana Primary Caregivers with current registration with the
374 State of Michigan.
375
376 (c) The location and mailing address and all telephone numbers
377 where the business is to be conducted, and the name and
378 address of the owner, if different from the holder of the land use
379 permit, and written evidence of the applicant's right to
380 possession of the premises.
381
382 (d) An area map, drawn to scale, indicating within a radius of one
383 thousand (1,000) feet from the boundaries of the proposed
384 Medical Marihuana Primary Caregiver Facility site, the proximity
385 of the site to any school; and a three hundred (300) foot direct
386 line distance to any existing Medical Marihuana Primary
387 Caregiver Facility. That the map, its measurements, shall be
388 prepared by a Registered Surveyor, licensed by the State of
389 Michigan, and the site plan and map shall be filed with the
390 Zoning Administrator with the application. Administrative
391 resolution of any disputed isolation distances will be by
392 reference to Article 1, Section 8107.03 (d), and within the
393 Industrial- Entrepreneurial zoning district where this facility is a
394 permitted use.
395
396 (e) A Certification of Occupancy (or similar clearance to use) from
397 the County Building Department verifying the structure and
398 premises are in compliance with all existing building
399 construction, maintenance, building codes and safety
400 regulations, by reference to Article 1, Section 8107.03 a. The
401 Certificate of Occupancy is required within 60 days of the land

- 402 use permit issue date, and is required before the opening or use
403 of the facility for the land use permitted use.
- 404 (f) A Statement that the applicant will not violate any of the laws of
405 the State of Michigan or the ordinances of the City of Frankfort
406 in conducting the business for which the land use permit is
407 used. It is understood that a violation on the premises may be
408 cause for objecting to the renewal of the land use permit or
409 revocation of the land use permit.
- 410
- 411 (g) A signed release, included with the application form, permitting
412 the City of Frankfort Police Department to perform a criminal
413 background check to ascertain whether any of the applicant,
414 operator, or any employee named on the application have been
415 convicted of a felony pursuant to the definitions of **Michigan**
416 **Public Act 512** (effective 4/1/2013) or any person was
417 convicted of a felony involving illegal drugs or a felony that is an
418 "assaultive crime" as further defined under **MCL 770.9a**.
- 419
- 420 (h) A description of the security plan for the facility, including, but
421 not limited to, any lighting, alarms, barriers, recording/monitoring
422 devices, and/or security guard arrangements proposed for the
423 Medical Marihuana Caregiver Facility and premises.
- 424
- 425 (i) A Certificate of Casualty and Liability Insurance for fire and
426 accident damage in the amount of the value of the premises
427 plus a minimum single limit of \$500,000 for all occurrences.
- 428
- 429 (j) Description of the process for tracking medical marihuana
430 quantities and inventory controls, including medical marihuana
431 products received from outside sources, as well as registered
432 caregivers and patients on the premises at all times.
- 433

434 7. Chapter 8, Article 2: Zoning: General Provisions be amended at
435 section 8201 to add additional definitions within the alphabetical order to read in their
436 entirety as follows:

437
438 **Marihuana**

439 A controlled substance as defined in section 7106 of the Michigan
440 public health code, **1978 PA 368, MCL 333.7106**.

441
442 **Primary Caregiver**

443 A person who is at least 21 years old and who has been registered by
444 State of Michigan Department of Community Health to assist with a
445 Qualifying Patient's use of medical marihuana. Subject to the
446 definitions of **Michigan Public Act 512** (effective 4/1/2013) of any

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person convicted of a felony involving illegal drugs or a felony that is an "assaultive crime" as further defined under **MCL 770.9a**.

Primary Caregiver Facility

A building in which the activities of a Primary Caregiver as defined in the Michigan Medical Marihuana Act (Initiated Act 1 of 2008) and in this Ordinance are conducted, and further defined by **Michigan Public Act 512 Outdoors and Indoors facilities**.

Qualifying Patient

A person who has been diagnosed by a physician as having a debilitating medical condition as provided by the Michigan Medical Marihuana Act and who has obtained a duly issued registry identification card from the State Department of Community Health as provided by said Act.

TRANSPORTATION OF MEDICAL MARIHUANA

As defined by **MCL 750.474**.

8. Chapter 8, Article 3: Section 8301.03 Permitted Uses be amended to add the following under subheading "Industrial" to Table 1, in alphabetical order:

Medical Marihuana Medical Care Facility, and,
in **column "IE"**, on the same line as above, a **"bullet" (.)** mark.

9. Chapter 8, Article 3: Zoning Districts: Section 8308 Industrial-Entrepreneurial District be amended to add at, **subparagraph a. Building Function**, in alphabetical order, the following:

Medical Marihuana Primary Caregiver Facility | permitted

The effective date of this Ordinance is _____, 2013.

I hereby certify the above ordinance was introduced on _____, 2013, at a regular meeting of the City Council and was enacted on _____, 2013, at a regular meeting of the City Council by a vote of Yes: ___ No: ___ at the City Offices, 412 Main Street, Frankfort, Michigan.

Robert Johnson, Mayor

Kimberly Kidder, City Clerk/Treasurer

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I hereby certify that the above ordinance was published in the Record Patriot, a weekly newspaper published in Benzie County, Michigan, on _____, 2013.

Kimberly Kidder, City Clerk/Treasurer