

STATE OF MICHIGAN

COUNTY OF OAKLAND

CHARTER TOWNSHIP OF WEST BLOOMFIELD

ORDINANCE NO. C-754

An Emergency Ordinance to establish and provide for the uninterrupted continuation of a moratorium on medical marijuana facilities.

THE CHARTER TOWNSHIP OF WEST BLOOMFIELD ORDAINS:

Section 1 of Ordinance

Chapter 2, Administration, of the West Bloomfield Charter Township Code is amended to add a new Article VII, Moratoriums, to read as follows:

ARTICLE VII. MORATORIUMS

DIVISION 1. MARIJUANA FACILITIES MORATORIUM.

Sec. 2-701. Definitions.

As used in this Division, the following words and phrases have the meanings indicated.

(a) MMMA means the Michigan Medical Marihuana Act, which has been codified at MCL 333.26421, *et seq.*, as passed by the voters on November 4, 2008.

(b) Marijuana Facilities means buildings, structures, vehicles, and/or land used or proposed to be used for the possession, use, cultivation, manufacturing, storage, packaging, dispensing, distribution or transportation of medical marihuana.

(c) Marijuana or marihuana means marihuana as defined in the Act, the State Public Health Code, MCL 333.7101, *et seq.*, and Federal Controlled Substance Act, 21 USC 801 *et seq.*

Sec. 2-702. Findings.

(a) The MMMA does not address the fact that activities it arguably allows are crimes under the Federal Controlled Substance Act.

(b) The MMMA does not provide any regulations as to where and on what conditions marijuana facilities may be located, prohibited or regulated under local government zoning and police power authority and does not provide police agencies with any meaningful ability to distinguish medical marijuana use under the MMMA from conduct that is illegal under controlled substance laws.

(c) There has been no action to date by the State to clarify or amend the MMMA to address the deficiencies and ambiguities regarding local government and police authority.

(d) There are numerous court cases pending throughout the State challenging municipal ordinances regulating marijuana facilities, but to date, there has been no published appellate court decision providing guidance to local governments regarding what regulatory approaches are legal or permissible.

(e) The township board has been advised that the desired court and/or legislative guidance on what, if any, ordinances are necessary, allowable, and/or appropriate regarding marijuana facilities is not expected in the near future.

(f) The township board has determined to continue the moratorium previously established by resolutions based on the findings in this section and the following reasons:

- (1) It is of major importance for the future overall development of the township to ensure that only lawful and reasonable land uses are authorized in the township;
- (2) At least two circuit court decisions have found the MMMA to be preempted by the Federal Controlled Substances Act.
- (3) The allowance of marijuana facilities in the township would likely have a significant impact on the character of the areas of the township where located and on the township as a whole with respect to property values, quality of life, and the public, health, safety and welfare of the township and its residents;
- (4) To promote and provide for the long term development of the township in a manner that does not undermine the overall character and planning of the township, by temporarily suspending consideration of marijuana facilities to avoid approval of a land use that was not required by the MMMA;
- (5) To ensure cohesive and sensible development and land uses consistent with the purpose, goals and objectives of the master plan as implemented by the zoning ordinance;
- (6) To allow time to clarify, and if necessary, amend the township's zoning and/or other ordinances in accordance with what is finally determined by the courts and/or legislature to be required by the MMMA, in a manner that is the most appropriate and safest path for the township to provide for the protection of the public health, safety, and welfare;
- (7) The consideration of rezoning, special land use, site plan, change of use, zoning compliance or other proposals relating to marijuana facilities on the premise that it is required by the MMMA, is premature and could result in the establishment of uses that the township was not required to afford lawful status to, which would be

inconsistent and incompatible with the township's planning and zoning objectives and the health, safety and welfare of the township and its residents; and

- (8) It is within the rights and authority of the township to establish reasonable regulations to control marijuana facilities in order to protect the public health, safety, and welfare.

Sec. 2-703. Moratorium.

Effective September 1, 2011 for a period of one (1) year through August 31, 2012, a moratorium is hereby established on the consideration, review or action by all Township entities, officials, employees and/or agents on applications, proposals, requests, permits, approvals, zoning compliance or certificates regarding or for marijuana facilities, or for the use and dispensing of marijuana, that might be proposed or presented to the Township as protected or allowed by the MMMA, and that during the moratorium period, no marijuana facility shall be allowed in the township.

Sec. 2-704. Moratorium relief.

During the period of a moratorium established in this Division, an aggrieved property owner or business petitioner may request and be entitled to a hearing before the township board for the purpose of attempting to demonstrate that the moratorium will preclude all viable economic use of their property or otherwise violate applicable provisions of state or federal law. A hearing shall be requested in a written submittal to the township clerk that describes the grounds for the request and will be scheduled for the next regular township board meeting. Upon concluding a hearing, the township board shall determine whether the petitioner has made the required demonstration, and if so, shall grant relief from the moratorium to the extent necessary to cure that effect or violation.

Section 2 of Ordinance

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

Section 3 of Ordinance

Should any section, subdivision, clause or phrase of this ordinance be declared by the court to be invalid, same shall not affect the validity of the ordinance as a whole or any part thereof, other than the parts invalidated.

Section 4 of Ordinance

All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this ordinance takes effect are saved and may be consummated according to the law in force when they are commenced.

Section 5 of Ordinance

This Ordinance is adopted as an Emergency Ordinance to establish and continue in an uninterrupted manner the moratorium previously established by Resolution through August 31, 2011, with the August 15, 2011 meeting at which this Ordinance was introduced and adopted being the last scheduled Township Board meeting before that date.

Section 6 of Ordinance

This Ordinance shall take effect immediately upon publication.

CERTIFICATION

I certify that this ordinance was introduced and adopted by the Board of Trustees of the Charter Township of West Bloomfield at a meeting of the Board duly called and held on August 15, 2011.

CHARTER TOWNSHIP OF WEST BLOOMFIELD

8/15/2011
Date:

By: Catherine Shaughnessy
Catherine Shaughnessy, Clerk

INTRODUCED/ADOPTED: August 15, 2011

PUBLISHED: