

ORDINANCE # O-36-2016

AN ORDINANCE PROHIBITING MARIJUANA PROCESSING SITES, MEDICAL MARIJUANA DISPENSARIES, MARIJUANA PRODUCERS, MARIJUANA PROCESSORS, MARIJUANA WHOLESALERS, MARIJUANA CULTIVATORS, AND MARIJUANA RETAILERS WITHIN THE VILLAGE OF BOLIVAR

WHEREAS, Ohio has passed recent legislation allowing the use of medical marijuana under certain conditions, known as House Bill 523; and

WHEREAS, this law contemplates the licensing of business who will be involved in the cultivating, processing, selling, and dispensing of marijuana; and

WHEREAS, this law and Article XVIII of the Ohio Constitution permits municipalities to prohibit these businesses within municipal limits; and

WHEREAS, 21 USC § 801, *et seq*, the Federal Controlled Substances Act, prohibits the manufacture, distribution, and possession of marijuana, and imposes criminal penalties for violating the act; and

WHEREAS, a number of cities with legal marijuana have reported negative impacts of marijuana cultivation, processing and distribution, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests; and

WHEREAS, marijuana plants, as they begin to flower and for a period of two months or more, produce a strong odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors; and

WHEREAS, in the case of multiple qualified patients who are in control of the same legal parcel(s) of property, or in the case of collective or cooperative cultivation, or in the case of a caregiver growing for numerous patients, a very large number of plants could be cultivated on the same legal parcel(s) within the Village; and

WHEREAS, the strong smell of marijuana creates an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery or armed robbery; and

WHEREAS, the indoor cultivation of marijuana has potential adverse effects to the structural integrity of the building(s) used, and the use of high wattage grow lights and excessive use of electricity increases the risk of fire which presents a clear and present danger to the building and its occupants; and

WHEREAS, one marijuana plant needs five to ten gallons of water per day or an estimated three billion liters of water per square kilometer in one season, and marijuana farmers have been found directly siphoning water from tributaries and other bodies of water. This extraordinary consumption of water not only negatively impacts the Village's efforts to conserve water resources but the reduction in available water negatively affects other plants and wildlife; and

WHEREAS, heavy use of pesticides to prevent rodents and other wildlife from eating marijuana plants, as well as poorly-built irrigation systems, has polluted the ecosystem and contaminated soil, groundwater, sewer systems and storm drains; and

WHEREAS, the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime (California Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use); and

WHEREAS, the negative effects on the public health, safety and welfare described above are likely to occur, and continue to occur, in the Village due to the establishment and operation of medical marijuana cultivation, processing, and dispensing activities; and

WHEREAS, it is in the best interest of the health, safety, and welfare of the citizens of the Village of Bolivar to prohibit the establishment of various activities relating to the producing, processing, wholesaling, selling, retailing and dispensing of marijuana in the area subject to the jurisdiction of the Village of Bolivar; and

WHEREAS, the Village Council has had public discussion on these issues; and

WHEREAS, based on the findings, above, the Village Council has determined that there exists a current and immediate threat to public health, safety and welfare if the Village does not enact an ordinance to ban the cultivation, processing, and dispensing of medical marijuana and cannabis in the Village of Bolivar and to prohibit the issuance or approval of business licenses, subdivisions, use permits, variances, building permits, or any other applicable entitlement for marijuana-related businesses.

Now, therefore be it ordained by the Village Council the Village of Bolivar, Ohio, as follows:

SECTION 1. PURPOSE AND FINDINGS.

The Village Council finds that state laws permitting the possession, distribution, cultivation and processing of medical marijuana do not preclude municipalities from enacting ordinances to prevent Medical Marijuana Cultivation, Medical Marijuana Processing facilities or activities and Medical Marijuana Dispensary. In order to promote and ensure the health, safety and welfare of the Village and its residents, the declared purpose of this ordinance is to prohibit Medical Marijuana Cultivation, Medical Marijuana Processing facilities or activities and Medical Marijuana Dispensary as provided in this ordinance.

SECTION 2: DEFINITIONS.

For purposes of this chapter, the following definitions shall apply:

"Medical Marijuana Cultivation" means any activity involving the growing, planting, harvesting, farming, drying, curing, grading, or trimming of medical marijuana or medical cannabis.

"Medical Marijuana Processing" means any method or activity used to prepare medical marijuana or medical cannabis or their by-products for commercial retail and/or wholesale use, including but not limited to: drying, cleaning, curing, packaging, and extraction of active ingredients to create marijuana-related products and concentrates.

"Medical Marijuana Dispensing" means a facility where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail

sale, including an establishment that delivers, pursuant to express authorization by local ordinance, medical cannabis and medical cannabis products as part of a retail sale.

"Cannabis" or "Marijuana" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

SECTION 3: Medical Marijuana Cultivation, Medical Marijuana Dispensing and/or Medical Marijuana Processing shall be prohibited in the Village, except where the Village is preempted by federal or state law from enacting a prohibition on any such activity. No use permit, variance, building permit, or any other entitlement, license, or permit, whether administrative or discretionary, shall be approved or issued for the activities of Medical Marijuana Cultivation, Medical Marijuana Processing, and Medical Marijuana Dispensing and no person shall otherwise establish or conduct such activities in the Village, except where the City is preempted by federal or state law from enacting a prohibition on any such activity for which the use permit, variance, building permit, or any other entitlement, license, or permit is sought.

SECTION 4: Nothing contained in this ordinance shall be deemed to permit or authorize any use or activity which is otherwise prohibited by any state or federal law.

SECTION 5: Medical Marijuana Cultivation, Medical Marijuana Dispensing, or Medical Marijuana Processing within the Village of Bolivar in violation of the provisions of this chapter is hereby declared a public nuisance and may be abated by all available means.

SECTION 6: EXISTING NONCONFORMING USE. Any Medical Marijuana Cultivation, Medical Marijuana Dispensing, or Medical Marijuana Processing facility, operation or activity existing or operating within the Village of Bolivar on the effective date of this ordinance shall cease operations forthwith.

SECTION 7: SEVERABILITY. The Village Council of the Village of Bolivar hereby declares that should any section, paragraph, sentence or word of this ordinance hereby adopted be declared for any reason to be invalid, it is the intent of the Village Council that it would have passed all other portions of this ordinance independent of the elimination herefrom of any such portion as may be declared invalid.

SECTION 8: CIVIL PENALTIES. In addition to any other enforcement permitted by this ordinance, the Law Director may bring a civil action for injunctive relief and civil penalties against any person or entity that violates this ordinance. In any civil action brought pursuant to this ordinance, a court of competent jurisdiction may award reasonable attorney's fees and costs to the prevailing party.

SECTION 9: CRIMINAL PENALTIES. The violation of any provision of this Article is unlawful and is a misdemeanor, punishable by a fine of not more than one thousand dollars (\$1,000.00) or a jail term of six (6) months, or both. Each and every day on which a violation occurs shall be deemed to be a separate violation.

READ: September 6, 2016, October 3, 2016 and November 7, 2016

PASSED: November 7, 2016

REBECCA HUBBLE, MAYOR

ATTEST:

MARIA APP, FISCAL OFFICER