

**Ordinance No. 2023-06**  
**TOWNSHIP OF BIRCH RUN**  
**SAGINAW COUNTY, MICHIGAN**  
**ADOPTED: July 11<sup>th</sup>, 2023**  
**PUBLICATION DATE: July 19<sup>th</sup>, 2023**  
**EFFECTIVE: July 26<sup>th</sup>, 2023**

An ordinance of the Township of Birch Run, Saginaw County, Michigan, to amend the Birch Run Township Zoning Ordinance; to ratify and confirm the remainder of the Birch Run Township Zoning Ordinance unless otherwise stated; to provide a procedure for conflicts with other laws; to provide for sanctions; to provide that pending proceedings are not affected; to provide for severability; to repeal all Ordinances or parts of Ordinances in conflict herewith; to provide for an Effective Date; and to direct the publication of this Ordinance or a legally-permissible summary.

**THE TOWNSHIP OF BIRCH RUN**  
**SAGINAW COUNTY, MICHIGAN**  
**ORDAINS:**  
**SECTION I**  
**AMENDMENT TO BIRCH RUN TOWNSHIP ZONING ORDINANCE**  
**BY ADDING SECTION 14.21**

- A. The following shall constitute the Authorization for the use described in this Amendment and the Township's findings regarding same. A registered primary caregiver, operating in compliance with the MMMA General Rules, the MMMA, the requirements of this section, and other applicable requirements of the Township's Ordinances, regulations, and resolutions shall be permitted as regulated by this Amendment. The Township makes the following findings, in support of its determination that the regulation of registered primary caregivers as provided in this section is consistent with the purposes and intent of the MMMA:
1. The MMMA does not create a general right for individuals to use, possess, or deliver marijuana in Michigan.
  2. The MMMA's protections are limited to individuals suffering from serious or debilitating medical conditions or symptoms, to the extent that the individuals' marijuana use is carried out in compliance with the provisions of the MMMA, including the provisions related to the operations of registered primary caregivers.

3. The MMMA's definition of "medical use" of marijuana includes the "transfer" of marijuana "to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition," but only if such "transfer is performed by a registered primary caregiver who is connected with the same qualifying patient through the registration process established by the Department of Licensing and Regulatory Affairs, and who is otherwise operating in strict compliance with the MMMA and the MMMA General Rules.
  4. The MMMA provides that a registered primary caregiver may assist a limited number of qualifying patients with their medical use of marijuana.
  5. The MMMA does not, therefore, create a new vocation for entrepreneurs or others who wish to engage in the sale of marijuana to an unlimited number of persons in a commercial setting. Instead, the MMMA is directed at improving the health and welfare of qualifying patients.
  6. The health and welfare of qualifying patients is improved by permitting the operations of registered primary caregivers as provided in this section, because this allows qualifying patients who suffer from serious or debilitating medical conditions or symptoms to obtain the benefits of the medical use of marijuana in a residential setting.
  7. By permitting the operations of registered primary caregivers in a residential setting, rather than in a commercial setting, this promotes the MMMA's purpose of ensuring that:
    - a. A registered primary caregiver is not assisting more than five qualifying patients with their medical use of marijuana, and
    - b. A registered primary caregiver does not unlawfully expand its operations beyond five qualifying patients, so as to become an illegal commercial operation, in the nature of dispensary, a marijuana collective, cooperative or by requiring the minimum lot size and setback requirements in this ordinance adverse impacts on nearby property shall be minimized.
- B. The following definitions shall apply to this Amendment to the Birch Run Township Zoning Ordinance. The following words, terms, and phrases shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning. All other words used herein shall have the definitions as provided for in the Michigan Medical Marijuana Act ("MMMA"), MCL 333.26423, as amended. Words that are undefined by both this Ordinance and by the MMMA shall be given their plain and ordinary meaning.

1. “The Act” or “the MMMA” means the Michigan Medical Marijuana Act, MCL 333.26421, *et seq.*, as amended.
2. “Applicant means an individual or entity who/which applies for a Medical Marijuana Caregiver Permit.
3. “Marijuana” means the meaning given to it in Section 7601 of the Michigan Public Health Code, 1978 PA 368, as amended, MCL 333.7106 *et seq.*, as is referred to in section 3(d) of the Michigan Medical Marijuana Act, PA 2008, Initiated Law 1, MCL 333.26423(d).
4. “Marijuana Collective, Cooperative or Dispensary” means any facility, structure, dwelling or other location where medical marijuana is grown, cultivated, processed, stored, transmitted, dispensed, consumed, used, given, delivered, provided, made available to and/or distributed by two or more of the following: a registered primary caregiver or a registered qualifying patient, as defined by the MMMA, or a person in possession of an identification card issued under the MMMA, or in possession of an application for such an identification card. The term “collective” or “cooperative” shall not apply to an individual registered primary caregiver that provides necessary care and medical marijuana for medical use exclusively to his/her five or fewer designated qualifying patients in strict accordance with the MMMA and/or in the rules adopted by the department of licensing and regulatory affairs and/or the Michigan Marijuana Regulatory Agency, issued in connection with the MMMA. A “Marijuana collective, cooperative or dispensary” shall not include the following uses: a State-licensed health care facility; a State-licensed residential care facility for the elderly or infirm; or a residential hospice care facility, as long as any such use complies strictly with applicable laws and rules of the State of Michigan.
5. “Marijuana Cultivation Building” means an accessory structure, on a lot owned by a registered primary caregiver, within which marijuana is grown for medical use.
6. “Medical use of Marijuana” means the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer or transportation of Marijuana or paraphernalia relating to the administration of Marijuana to treat or alleviate a registered qualifying patient’s debilitating medical condition or symptoms associated with the debilitating medical condition, as defined under the Michigan Medical Marijuana Act, PA 2008, Initiated Law q, MCL 333.26421 *et seq.*

7. "Medical Marijuana Caregiver" means a "caregiver" as defined by the Michigan Medical Marijuana Act, MCL 333.26423, as amended.
8. "This Ordinance" means this Amendment to the Birch Run Township Zoning Ordinance.
9. "Permitted Premises" means the location at which the marijuana caregiver plants of the Medical Marijuana Caregiver permitted under this Ordinance are stored and maintained.
10. "Person" means an individual, corporation, company, partnership, or entity.
11. "Registered Primary Caregiver" means a registered primary caregiver, as defined in the Michigan Medical Marijuana Act, PA 2008, Initiated Law 1, MCL 333.26421 *et seq.*
12. "Registered Primary Caregiver Operation" or "caregiver operation" means a registered primary caregiver in possession of a valid registry identification card is permitted to assist a qualifying patient to whom he or she is connected through the Michigan Department of Community Health's registration process with the medical use of Marijuana in certain industrial and residential districts, subject to the restrictions contained in this Order, the Birch Run Township Zoning Ordinance, as well as other applicable state, Saginaw County, or Township statutes, ordinances, regulations, resolutions, and/or other applicable law.
13. "Qualifying Patient" means a qualifying patient defined as such in MCL 333.26423 of the Act and who has been issued and possesses a registry identification card under the Act.
14. "Registry Identification Card" means the document defined as such in MCL 333.26423 of the Act and which is issued by the State of Michigan to identify a person as a registered qualifying patient or registered primary caregiver.
15. "Enclosed Locked Facility" means a facility defined as such in MCL 333.26423 of the Act where Marijuana plants may be kept under the Act.
16. "Township" means the Township of Birch Run.
17. "Township Board" means the Birch Run Township Board of Trustees.

- C. The Birch Run Township Zoning Ordinance (and all appendices thereto) is hereby amended so as to list “Registered primary caregiver operations” operating under the Michigan Medical Marijuana Act, MCL 333.26421, *et seq.*, as a prohibited use in all zoning districts other than Residential and Agricultural Zoning Districts, where it shall be permitted as a Use By Right. The Caregiver must only obtain a Zoning Permit.
- D. Additionally, the following regulations shall apply to any parcel of property in the Township that is being used in whole or in part for Caregiver Marijuana Operations operating under the Michigan Medical Marijuana Act, MCL 333.26421, *et seq.* These standards apply to the location, use, and operation of any marijuana cultivation building/structure:
1. All parcels that are used in whole or in part for Caregiver Marijuana Operations operating under the Michigan Medical Marijuana Act, MCL 333.26421, *et seq.*, must have an occupied dwelling located on the Parcel.
  2. All Caregiver Marijuana Operations operating under the Michigan Medical Marijuana Act, MCL 333.26421, *et seq.*, must occur in a fully-enclosed structure located on the subject property.
  3. All accessory structure(s) located on any parcel used in whole or in part for Caregiver Marijuana Operations operating under the Michigan Medical Marijuana Act, MCL 333.26421, *et seq.*, must be setback at least 150 feet from the front public road and from all property lines separating the subject parcel from any adjacent parcel. The subject structure must be located no nearer than 200 feet from any occupied dwelling (other than an occupied dwelling located on the same parcel as the subject structure).
  4. The Marijuana Cultivation Building must meet all requirements for accessory structure pursuant to the Township’s Zoning Ordinance.
  5. The Marijuana Cultivation Building must comply with all applicable building codes and regulations.
  6. The medical use of Marijuana shall comply at all times with the MMMA and the MMMA General Rules, as amended.
  7. No more than one registered primary caregiver shall be permitted to operate on any one lot.
  8. Caregiver Medical Marijuana shall be permitted only on a parcel in Birch Run Township where a dwelling is located, and the dwelling must be occupied by the Caregiver.

9. All activities allowed by this ordinance shall be conducted entirely within the marijuana cultivation building, except that (i) a qualifying patient may transport marijuana from the premises; and (ii) a registered primary caregiver may keep and cultivate, in an “enclosed, locked facility” up to 12 additional marijuana plants for personal use.
10. A sign identifying the medical use of marijuana by word, image or otherwise, or indicating that the medical use of marijuana is taking place on the lot shall not be permitted; nor shall any vehicle having such a sign be parked anywhere on the lot.
11. Outdoor storage of any marijuana product is prohibited on the lot on which the marijuana cultivation building is located.
12. Odors generated by the marijuana cultivation shall be contained within the marijuana-cultivation building. An industry-standard air filtration system shall be maintained and operated within the marijuana cultivation building to control vapors and odors that result from marijuana so that no vapors or odors are detectable outside the marijuana cultivation building. Any structure in which any Caregiver Marijuana Operations operating under the Michigan Medical Marijuana Act, MCL 333.26421, *et seq.*, must maintain an industry-standard air and odor filtration system to ensure that no noxious odors are emitted from the subject structure.
13. No person acting as a Medical-Marijuana Caregiver shall grow or otherwise cultivate any Marijuana unless said growing/cultivation is entirely performed in an enclosed, locked facility.
14. Except for lighting, heating, watering, drying or other equipment, or fertilizers, herbicides or other chemicals directly related to the medical use of marijuana, no other materials or equipment not generally associated with normal ownership, use, and maintenance of a dwelling shall be permitted.
15. Distribution of marijuana or use of items in the administration of marijuana shall not occur in the residential dwelling of the primary caregiver. A qualifying patient shall not visit, come to, or be present at the residential dwelling of the primary caregiver to purchase, smoke, consume, obtain, or receive possession of any marijuana.

16. Except for the primary caregiver, no other person shall deliver marijuana to the qualifying patient.
  17. Any patient under the age of 18 must comply with all provisions of the MMMA.
  18. No on-site consumption or smoking of marijuana shall be permitted in the marijuana cultivation building, or on the property of a primary caregiver, except for lawful medical marijuana consumption.
  19. Medical marijuana shall not be grown, processed, handled, or possessed in the marijuana cultivation building beyond that which is permitted by law.
  20. All necessary building, electrical, plumbing, and mechanical permits shall be obtained for any portion of the marijuana cultivation building in which equipment and devices that support the cultivation, growing or harvesting of marijuana are located or used.
  21. If marijuana is grown or located in a room with windows, all interior lighting shall be shielded to prevent ambient light from creating a distraction for adjacent properties.
  22. A registered primary caregiver shall not possess marijuana, or otherwise engage in the medical use of marijuana, in a school bus, on the grounds of any preschool or primary or secondary school, or in any correction facility.
- E. This Amendment is not applicable to the personal use of marijuana by qualifying patients. The use of the permitted facility of a qualifying patient to cultivate medical marijuana in accordance with the MMMA, solely for personal use, is not subject to this Amendment; however, all applicable state and Township ordinance requirements must be met. The provisions of this subsection do not apply to the personal use and/or internal possession of marijuana by a qualifying patient in accordance with the MMMA.

## **SECTION II** **PENALTIES**

In addition to any other penalty provision contained in the Birch Run Township Zoning Ordinance, any person who/which violates any provision of this Amendment shall be deemed responsible for a municipal civil infraction and fined in accordance with the following schedule:

	Minimum Fine	Maximum Fine
--- 1st offense within 3-year period*	\$ 75.00	\$500.00
--- 2nd offense within 3-year period*	\$ 150.00	\$500.00
--- 3rd offense within 3-year period*	\$ 325.00	\$500.00
--- 4th offense within 3-year period*	\$ 500.00	\$500.00

\*Determined on the basis of the date of commission of the offense(s).

Additionally, the violator shall pay costs which may include all expenses, direct and indirect, to which Birch Run Township has incurred in connection with the municipal civil infraction, including the actual attorney's fees incurred by Birch Run Township in prosecuting the municipal civil infraction. In addition, the Township shall have the right to proceed in any court of competent jurisdiction for the purpose of obtaining an injunction, restraining order or other appropriate remedy to compel compliance with this Ordinance. Each day that a violation of this Ordinance continues to exist shall constitute a separate violation of this Ordinance.

Further, any violation of this Amendment shall constitute a nuisance per se pursuant to the Birch Run Township Zoning Ordinance and the Michigan Zoning Enabling Act, which the Township may seek to abate.

**SECTION III**  
**RATIFICATION AND CONFIRMATION OF REMAINDER OF BIRCH RUN TOWNSHIP**  
**ZONING ORDINANCE**

Except as otherwise stated herein, the remainder of the Birch Run Township Zoning Ordinance is hereby confirmed and ratified.

**SECTION IV**  
**CONFLICTS WITH OTHER LAWS OR REGULATIONS**

If any provision of this Ordinance differs from a provision of any other applicable law, ordinance, rule, or regulation, both the provision of this Ordinance and the differing provision shall apply if possible. If the two (2) provisions are in conflict, then the provision establishing the higher or stricter standard shall apply.

**SECTION V**  
**PENDING PROCEEDINGS NOT AFFECTED.**

Nothing in this ordinance shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

**SECTION VI**  
**SEVERABILITY**

Should any section, clause or provision of this Ordinance be declared to be invalid by a court of competent jurisdiction, the same shall not affect the validity of the Ordinance as a whole or any other part thereof other than the parts so declared to be invalid. The Birch Run Township Board of Trustees hereby declares that it would have enacted this Ordinance even without whatever provision may be declared invalid by a court of competent jurisdiction.

**SECTION VII**  
**REPEAL OF CONFLICTING ORDINANCES**

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

**SECTION VIII**  
**EFFECTIVE DATE**

This Ordinance and the rules, regulations, provisions, requirements, orders and matters established and adopted hereby shall take effect after the expiration of the seventh day following publication as required by law following adoption by the Township Board.

**SECTION IX**  
**TOWNSHIP PUBLICATION**

The Township Clerk is hereby ordered and directed to cause a Notice of Ordinance adoption to be published in a newspaper of general circulation within Birch Run Township.

This ORDINANCE was offered by Board member Riley Kiessling supported by Board member Fred Sheridan at a meeting on July 11<sup>th</sup>, 2023. The members of the Township Board voted as follows:

YEAS: Watts, K. Kiessling, Letterman, C. Trinklein, Sheridan, D. Trinklein Jr., R. Kiessling,

NAYS: None

ABSTAIN: None

This Ordinance is hereby declared to have been adopted by the Birch Run Township Board of Trustees, County of Saginaw, State of Michigan, at a regular meeting held on the 11<sup>th</sup> day of July 2023 and ordered to be given publication in the manner prescribed by law.

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Ray Letterman, Supervisor

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Riley Kiessling, Clerk

Date of Publication: July 19<sup>th</sup>, 2023

Newspaper: Birch Run/Bridgeport Herald.

**\*\*\*The Certification of the Township Clerk is contained on the following page\*\*\***

**\*\*\*The balance of this page is intentionally left blank\*\*\***

CERTIFICATION

ADOPTED

YEAS: Watts, K. Kiessling, Letterman, C. Trinklein, Sheridan, D. Trinklein Jr., R. Kiessling,

NAYS: None

ABSENT: None

State of Michigan, County of Saginaw,

I, the undersigned Township Clerk for the Township of Birch Run, Saginaw County, Michigan, certify that the above [Ordinance] adopted by the Township Board of Trustees of the Township of Birch Run on the 11<sup>th</sup> day of [July] [2023], and was recorded in full in the Minutes of the Meeting of the Township Board of Trustees on said date.

Dated: [July 12<sup>th</sup>, 2023]

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Riley Kiessling, Clerk

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