

MUSSEY TOWNSHIP  
ST. CLAIR COUNTY  
STATE OF MICHIGAN

RESOLUTION 2021-01

RESOLUTION ESTABLISHING A MORATORIUM ON ISSUANCE OF CERTAIN  
PERMITS, APPROVALS, AND/OR CERTIFICATES AS THEY RELATE TO ANY  
MODIFICATIONS TO STRUCTURES IN ANY ZONING DISTRICT IN ORDER TO  
CULTIVATE MARIJUANA AS A PATIENT CAREGIVER

At a special meeting of the Township Board of Mussey Township, St. Clair County, Michigan, held at 7:30 p.m. on the 10<sup>th</sup> day of February, 2021, the following resolution was offered:

WHEREAS, on November 4, 2008, the Michigan voters passed the MICHIGAN MEDICAL MARIJUANA ACT, Initiated Law 1 of 2008, to allow under State of Michigan law, the medical use of marihuana; to provide protections for the medical use of marihuana; to provide for a system of registry identification cards for qualifying patients and primary caregivers.

WHEREAS, on December 4, 2008, Michigan's Medical Marijuana Act, MCL 333.26421, et seq. (the "Act"), took effect allowing both patients and/or their caregivers to cultivate medical marihuana within an enclosed, locked facility in order for those individuals to be entitled to the MMMA protections. As such, these enclosed locked facilities have been located on various locations, been constructed of varying materials using various public resources including sewers, electrical and water resources within various zoning districts.

WHEREAS, since the passage of the Act, caregiver cultivation of marijuana has resulted in problems including but not limited to insufficient or improper electrical supplies, inadequate ventilation leading to mold, offensive, odors, noise, other health hazards and/or other hazards which are associated with the cultivation of marijuana in various zoning districts and settings classifications.

WHEREAS the Township Trustees have been made aware through general reporting and find there are complaints of land use, noise, smell, dangerous structures, use of allowing materials and toxins that may enter drains and sewers, these facilities tax the electrical systems and transformers which have caused fires related to growing and marihuana use, and use of propane to make resins implicating the health, safety, and welfare of the residents related to the design, erection, repair, removal, demolition, or use and occupancy of buildings, structures, or premises. This health and safety concerns is in relation to structural strength, adequate egress facilities, sanitary equipment, light and ventilation, and fire safety and protecting the environment including wells, drains and sewer systems.

WHEREAS the Supreme Court of Michigan, in DERUITER v. TOWNSHIP OF BYRON, 505 Mich. 130 (2020), decided the issues that Registered primary caregivers cultivating medical marijuana under the MMMA does not provide general immunity to primary caregivers in assisting a qualifying patient with the medical use of marijuana, on condition of cultivation of marijuana in an “enclosed, locked facility”.

WHEREAS the Michigan Supreme Court, DeRuiter v Byron Township, found that a township's zoning ordinance that geographically restricted such caregiver marijuana cultivation to a particular zoning district did not directly conflict with the Act and that a township has the authority under the MZEA to require zoning permits and permit fees for the use of buildings and structures within its jurisdiction.

WHEREAS the Michigan Supreme Court of Michigan, Charter Township of Ypsilanti v Pontius, 948 NW2d 552. (SC: 158816) (2020) in lieu of granting leave to appeal, vacated a judgment of the Court of Appeals; and on remand the Court of Appeals on December 29, 2020 affirmed municipalities authority to enact zoning and regulatory ordinances related to caregivers under the MMMA cultivation of land uses.

WHEREAS it is a fundamental local unit of government responsibility to provide by zoning for the regulation of land use under the Michigan Zoning Enabling Act, 110 of 2006, which allows the regulation of land and structures through compatibility of adjacent land use to ensure appropriate locations and relationships, to limit nuisances in order to promote public health, safety, and welfare of the township residents.

WHEREAS, Mussey Township is amending its zoning ordinance for caregivers cultivation activities, which will require additional time in terms of amending the Township Zoning Ordinances and a public hearing, pertaining to land uses and building trade permits, zoning classifications and/or other requirements, and the township is considering allowing patient caregiver cultivation as a home occupation or placement on other zones to address the health and safety issues under its authority of the MZEA.

WHEREAS, the Township Board has concluded that during the pendency of its consideration of possible amendments to the Township Zoning Ordinances, it would be counterproductive if building and zoning permits and/or other approvals or applications for patient caregiver cultivation were allowed or permitted to move forward in any zoning districts and, therefore, the Township Board has concluded that during the course of review and consideration of the possible Zoning Ordinance amendments, there should be a deferral of review of all applications for building and zoning permits, approvals, or certificates related to patient caregiver medical marijuana cultivation within any zoning district, with the exception of those applications which have already been submitted and are being processed by the Township as of the date of this Moratorium; and

WHEREAS, an amendment to the Zoning Ordinances, pertaining to land use as it relates to the locations allowed for the patient caregiver to cultivate medical marihuana will require proceedings before the Township Planning Commission and the Township Board of Trustees under the process provided for in the MZEA, which include, but are not limited to, a public hearing before the Planning Commission and deliberations by the Township Board which may take approximately One Hundred Twenty (120) days;

NOW, THEREFORE, be it resolved that Mussey Township hereby adopts, effective immediately, a Moratorium upon the issuance of any and all permits, approvals, and/or certificates as they relate to any modifications to structures or units in any zoning district in order to cultivate marijuana as a patient caregiver, which are the nature that do not require structural changes or building code, plumbing, soil, sewer, drainage or electrical permits as determined by the building and zoning officials. Moratorium also applies to the operation and utilization of all applicable Mussey Township Ordinances.

RESOLUTION DECLARED ADOPTED by the Township Board this 10<sup>th</sup> day of February, 2021.

The foregoing resolution was certified at a special meeting of the ROLL CALL VOTE ON THIS RESOLUTION WAS AS FOLLOWS:

	<u>Yes</u>	<u>No</u>	<u>Abstaining</u>
Michael Lauwers, Supervisor	X	_____	_____
Sheila McDonald, Clerk	X	_____	_____
Deborah Lewis, Treasurer	X	_____	_____
Bruce Downey, Trustee	X	_____	_____
Monica Standel, Trustee	X	_____	_____

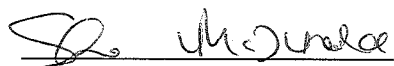
**AUTHENTICATION AND CERTIFICATION**

We hereby certify that the foregoing constitutes a true and complete copy of the resolution passed by majority vote at a Regular Meeting of the Township of Mussey held on the 10<sup>th</sup> day of February, 2021.

Witness my official signature this 10<sup>th</sup> day of February, 2021.



Michael Lauwers, Supervisor



Sheila McDonald, Clerk