

TEMPORARY ORDINANCE NO. 24-16

PERMANENT ORDINANCE NO. _____

AN ORDINANCE TO REPEAL AND REPLACE LANCASTER CODIFIED ORDINANCE PART ELEVEN – PLANNING AND ZONING CODE, TITLE THREE – ZONING AND PROPERTY RESTRICTIONS, CHAPTER 1123 – GENERAL PROVISIONS, AND ESTABLISH A NEW SECTION 1123.21 OF THE CODIFIED ORDINANCES OF THE CITY OF LANCASTER TITLED “MEDICAL MARIJUANA CULTIVATORS, PROCESSORS, AND RETAIL DISPENSERS” OF THE CODIFIED ORDINANCES OF THE CITY OF LANCASTER

WHEREAS, on June 8, 2016 the Ohio General Assembly adopted and the Governor signed into law 131 Sub. H.B. 523 with an effective date of September 8, 2016; and

WHEREAS, 131 Sub. H.B. 523, among other things, requires that the Ohio Department of Commerce and State Board of Pharmacy administer a Medical Marijuana Control Program; permits a patient, on the recommendation of a physician, to use medical marijuana to treat a qualifying medical condition; permits state regulatory oversight of the cultivation, processing, retail sale, use and physician recommendation of medical marijuana; authorizes the legislative authority of a municipal corporation or a board of township trustees to adopt regulations to prohibit or limit the number of retail medical marijuana dispensaries; and prohibits a cultivator, processor, retail dispensary, or laboratory from being located or relocating within 500 feet of a school, church, public library, public playground, or public park; and

WHEREAS, upon enactment of 131 Sub. H.B. 523 requires the creation of a state board that will, in time, determine a regulatory scheme to provide for the just and proper regulation of medical marijuana; and

WHEREAS, development and enactment of licensing and regulation of cultivation, processing, and dispensing will commence on September 8, 2016 and the law provides that the State has up to two years to establish licensing and regulation; and

WHEREAS, marijuana (cannabis) is listed with the Drug Enforcement Administration as a Schedule I drug having “no currently accepted medical use and a high potential for abuse” as of the date this ordinance was introduced; and

WHEREAS, City Council believes that until the State of Ohio develops, determines, and implements the licensing and regulatory guidelines and enforcement for businesses and trades involved in the cultivation, processing, and dispensing of “medical marijuana”, a DEA Schedule I drug, the only prudent course at this time is for City Council to ban such businesses and trades; and

WHEREAS, the elected City Council holding office in September, 2018 can revisit this ban with full knowledge of what licensing, regulatory, and enforcement requirements these “medical marijuana” businesses and trades are subject to under Ohio law; and

WHEREAS, pursuant to the Constitution of the State of Ohio and the Ohio Revised Code, municipal corporations have the power to adopt legislation deemed necessary

and proper to protect the health, safety, welfare, comfort and peace of the citizens of the municipality, including restricting areas used for businesses and trades; and

WHEREAS, City Council finds that prohibiting medical marijuana cultivators, processors, and retail dispensers within the City of Lancaster is necessary and proper to protect the health, safety, welfare, comfort and peace of the citizens of the municipality, including restricting areas used for businesses and trades; and

WHEREAS, the City Planning Commission approved on September 8, 2016 amendments to Chapter 1123 of the Codified Ordinances of the City of Lancaster after conducting a public hearing on the matter and attached hereto as Exhibit "A"; and

WHEREAS, the City must pass an ordinance to amend the zoning code;

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LANCASTER, STATE OF OHIO:

SECTION 1. That Part Eleven – Planning and Zoning Code, Title Three –Zoning and Property Restrictions, Chapter 1123 – General Provisions, be amended and replaced with the establishment of a new Section 1123.21 titled “Medical Marijuana Cultivators, Processors, and Retail Dispensers” with the text set forth in Exhibit “A” attached hereto and incorporated by reference herein.

SECTION 2. That existing Part Eleven – Planning and Zoning Code, Title Three – Zoning and Property Restrictions, Chapter 1123 – General Provisions, is repealed in its entirety.

SECTION 3. That this Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, and for the further reason that this Ordinance is required to be immediately effective in order to comply with the recent enactment of 131 Sub. H.B. 523 by the Ohio General Assembly and to restrict and regulate city businesses and trades while the development and implementation of rules and regulations to govern businesses and trades involved in the cultivation, processing, retail sale, and dispensing of “medical marijuana”, a DEA Schedule I drug, are determined by the State of Ohio.

SECTION 4. It is found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council, and that all such deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

Passed: _____ after _____ reading. Vote: Yeas _____ Nays _____

Approved: _____

President of Council

Clerk: _____

Mayor

Offered by: _____

Second by: _____

Requested by Code Enforcement & Zoning Committee

(*changes in red)

**CHAPTER 1123
General Provisions**

1123.01	Zoning and Overlay Zoning Districts established.	1123.11	Screening walls or fences.
1123.02	Official Zoning Map established.	1123.12	Platting requirement.
1123.03	District boundary description and interpretation.	1123.13	Major street plan.
1123.04	Limitation on land use.	1123.14	Structure setback from abutting streets.
1123.05	Similar uses.	1123.15	Motorized vehicles.
1123.06	Division of lots.	1123.16	Essential services.
1123.07	Street frontage required.	1123.17	Family day care and family child care homes.
1123.08	One single-family dwelling per lot of record.	1123.18	Group residential facilities.
1123.09	Height exceptions.	1123.19	Convict Prerelease and/or Correctional Community Treatment Centers.
1123.10	Existing building encroachment on front yards or building setbacks.	1123.20	Location of cemeteries.
		1123.21	Medical marijuana cultivators, processors, and retail dispensaries.

1123.01 ZONING AND OVERLAY ZONING DISTRICTS ESTABLISHED.

The Zoning Districts and Overlay Zoning Districts set forth below are hereby established:

- AG Agriculture District
- RE Residential Single-Family Estate District
- RS-1 Residential Single-Family Low Density District
- RS-2 Residential Single-Family Medium Density District
- RS-3 Residential Single-Family High Density District
- RS-4 Residential Single-Family Highest Density District
- RM-0 Residential Multifamily Lowest Density District
- RM-1 Residential Multifamily Low Density District
- RM-2 Residential Multifamily Medium Density District
- RM-3 Residential Multifamily High Density District
- RMH Residential Manufactured Home District
- OM Office Medium Intensity District
- CN Commercial Neighborhood District
- CG Commercial General District
- CH Commercial High Intensity District
- CBD Central Business District
- IL Industrial Light District
- IM Industrial Moderate District
- IH Industrial Heavy District
- PUD Planned Unit Development (Overlay Zoning District)
- HP Historic Preservation District (Overlay Zoning District)
- WH Wellhead Protection District (Overlay Zoning District)
- FP Flood Plain District (Overlay Zoning District)

(Ord. 42-05. Passed 6-27-05.)

1123.02 OFFICIAL ZONING MAP ESTABLISHED.

The locations and boundaries of the various districts as defined herein shall be established by ordinance and shall be shown and delineated on the Official Zoning Map of the City of Lancaster. The Official Zoning Map shall be maintained by the Engineering Office of the City of Lancaster, and may be divided into parts, and such parts may be separately employed for identification purposes when adopting or amending the Official Zoning Map or for any reference to the Official Zoning Map. (Ord. 42-05. Passed 6-27-05.)

1123.03 DISTRICT BOUNDARY DESCRIPTION AND INTERPRETATION.

District boundary lines shall be described by legal description or by a map. When a legal description is used, the boundary line shall be deemed to extend to the centerline of abutting streets and shall be so designated on the Official Zoning Map. When a map is used, district boundary lines shall be established by dimensions, property lines, recorded lot lines, or the centerline of abutting street, alley, or railroad rights-of-way, as the same were of record at the time of adoption. In all cases where there is doubt as to the exact location of district boundary lines, the same shall be determined by the Board of Zoning Appeals. (Ord. 42-05. Passed 6-27-05.)

1123.04 LIMITATION ON LAND USE.

No person, firm or corporation shall use or permit to be used any land or buildings, nor shall any person, firm or corporation make, erect, construct, move, alter, enlarge or rebuild or permit the making, erection, construction, moving, altering, enlarging or rebuilding of any building, structure or improvement, which is designed, arranged or intended to be used or maintained for any purpose or in any manner except in accordance with the use, height, area, yard, space, and other requirements established in the district in which such land, building, structure or improvement is located except as provided by Chapter 1153, Nonconformities. Nothing in this Code shall be deemed to require a change in the plans, construction, or designated use of any building, where a building permit has been lawfully issued prior to the effective date of this Code, and pursuant to such permit, construction is diligently carried to completion. Upon completion, such building or use shall be deemed nonconforming and may continue as regulated by Chapter 1153, Nonconformities. (Ord. 42-05. Passed 6-27-05.)

1123.05 SIMILAR USES.

(a) Determination as to whether a use is similar to uses permitted by right shall be considered as an expansion of use regulations of the district and not as a variance applying to a particular situation. Any use found similar shall thereafter be considered as a permitted use in that district.

(b) Applications for zoning permits for uses not specifically listed in the permitted building or use classifications of the zoning district, which the applicant feels qualify as a similar use under the provisions of this Section, shall be submitted to the Zoning Inspector.

(c) Within sixty (60) days after such submittal, the Board of Zoning Appeals shall determine whether the requested use is similar to those uses permitted in the specific district. In order to find that a use is similar, the Board of Zoning Appeals shall find that all of the following conditions exist:

- (1) Such use is not listed as a permitted use or Special Exception in another zoning district.

- (2) Such use conforms to basic characteristics of the classification to which it is to be added and is more appropriate to it than to any other classification.
- (3) Such use creates no increased danger to health and safety, creates no increased level of noise, vibration, dust, heat, smoke, odor, glare, or other objectionable influences, and does not create traffic congestion to an extent greater than normally resulting from uses listed in the classification to which it is to be added.
(Ord. 42-05. Passed 6-27-05.)

1123.06 DIVISION OF LOTS.

A lot shall not hereafter be divided into two or more lots, unless all lots resulting from such division conform to all the applicable regulations of the zoning district in which it is located.
(Ord. 42-05. Passed 6-27-05.)

1123.07 STREET FRONTAGE REQUIRED.

No lot shall contain any building used in whole or in part for residential purposes unless such lot has a minimum of thirty (30) feet of frontage on a public street or dedicated and improved right-of-way. For the purposes of this regulation an alley, as defined in Chapter 1161, shall not be considered as an acceptable dedicated right-of-way. This Section shall not apply to a substandard lot of record or a lot within an approved Planned Unit Development or in the RMH District. (Ord. 42-05. Passed 6-27-05.)

1123.08 ONE SINGLE-FAMILY DWELLING PER LOT OF RECORD.

Not more than one (1) permitted residential use shall be allowed on any single residential lot, except in the case of a lot which is within an approved Planned Unit Development.
(Ord. 42-05. Passed 6-27-05.)

1123.09 HEIGHT EXCEPTIONS.

The following structures shall not be subject to the height limitations of the district in which they are located:

- (a) Farm buildings and related structures.
- (b) Chimneys, elevators, equipment penthouses, monitors, cooling towers and ventilators, provided they are not intended for human occupancy and they do not extend more than twenty (20) feet above the top of the principal structure.
- (c) Belfries, clock towers, cupolas, domes, flag poles and spires, provided they are not intended for human occupancy and they do not exceed more than 150% of the maximum height of district in which they are located.
- (d) Signs, including outdoor advertising, provided that the height does not exceed the allowable maximum sign height in Chapter 1317.

Structures enumerated in subsections (b) and (c) above may be increased in height by the Board of Zoning Appeals as a special exception.
(Ord. 42-05. Passed 6-27-05.)

1123.10 EXISTING BUILDING ENCROACHMENT ON FRONT YARDS OR BUILDING SETBACKS.

Where an existing building or buildings on the same side of the street and within the same block encroach on the required front yard or building setback, the required front yard or building setback for new construction shall be established as follows:

- (a) If the proposed building is to be located more than 200 feet from an encroaching building, the proposed building shall conform to the front yard or setback established for the district in which the proposed building is to be located.
- (b) If the proposed building is to be located between adjacent buildings which conform to the required front yard or building setback, or between a conforming building and an intersecting street, the proposed building shall conform to the front yard or setback established for the district in which the proposed building is to be located.
- (c) If the proposed building is to be located within 200 feet of encroaching buildings on both sides and there are no intervening buildings, the front yard or building setback shall be the average of the front yard or setback of the two nearest front corners of the encroaching buildings.
- (d) If the proposed building is to be located within 200 feet of an encroaching building on one side, but not both sides, and there are no intervening buildings, the front yard or building setback shall be the average of the otherwise required front yard or setback and the setback of the nearest front corner of the encroaching building.

Provided, however, that in the application of subsections (c) or (d) above, the front yard or building setback shall not be reduced to less than 5 feet.

(Ord. 42-05. Passed 6-27-05.)

1123.11 SCREENING WALLS OR FENCES.

For the purpose of maintaining a compatible relationship between certain land uses, when a screening requirement is required by this Code, the following regulations shall apply:

- (a) When the provisions of this Code require construction of a screening wall or fence, unless otherwise specified, such screening wall or fence
 - (1) Shall consist of a fence, landscaped earthen mound of suitable slope, wall, planting or combination thereof installed, repaired, replaced and maintained to the total height required herein and to an opacity of not less than seventy-five percent (75%). The percentage of opacity shall be determined by measurement of any square foot of vertical surface of the screening from a point perpendicular thereto.
 - (2) Shall not be less than six (6) feet in height, except when in a required front yard in which case the screening wall or fence shall be four (4) feet in height.
 - (3) Shall be constructed with all braces and supports on the interior, except when both sides are of the same design and appearance.
 - (4) Shall be erected prior to the occupancy of the building or initiation of the use required to be screened.
 - (5) Shall be uniform in height except for significant changes in topography.
 - (6) Shall have consistency of design.
 - (7) Shall not be topped with barbed or razor wire.
 - (8) Shall not consist of a chain link fence which utilizes inserts of metal or other materials.
- (b) When screening consisting of live plants, alone or in combination with other materials, is installed, the plants
 - (1) Shall be selected for density of year round foliage
 - (2) Shall be selected to achieve the required height and density within three (3) years of installation

- (3) Shall have a minimum height of three (3) feet at time of installation
- (4) Shall be maintained in a healthy, live state and replaced as needed to comply with the original site plan and the specifications herein set forth.
- (c) When the erection of a screening wall or fence is required by this Code due to the location of the use adjacent to an R District, and the R District property abutting such use is an arterial or collector roadway, such screening wall or fence shall not be required, except as provided in Section 1123.11 (d) below.
- (d) For junk and salvage yards, as defined in Chapter 1161, the required screen or fence enclosing such use shall:
 - (1) Be a minimum of eight (8) feet high
 - (2) Be constructed of common fencing materials, designed and arranged to provide substantial visual separation from other land uses, and from view from adjacent streets, highways and thoroughfares.
 - (3) Be uniform in height, except for significant changes in topography
 - (4) Be constructed with all braces and supports on the interior, except when both sides are of the same design and appearance.
 - (5) Be erected prior to occupancy and/or use of the site.
- (e) The screening wall or fence shall be maintained by the owner of the lot containing the use required to construct the screening. Failure to maintain after notice by the Zoning Inspector shall constitute an offense hereunder.
- (f) The Board of Zoning Appeals, as a Special Exception, may:
 - (1) Modify or remove the screening requirement where existing physical features provide for the visual separation of the uses.
 - (2) Modify the screening requirement where alternative screening will provide for the visual separation of the uses.
 - (3) Grant an extension of time to erect a screen where properties which are to be benefited by the screen are undeveloped.
 - (4) Remove the screening requirement where the purposes of the screening requirement cannot be achieved, or is prohibited by other ordinances or regulations. (Ord. 42-05. Passed 6-27-05.)

1123.12 PLATTING REQUIREMENT.

(a) For the purposes of providing a proper arrangement of streets and assuring the adequacy of open spaces for traffic, utilities, and access of emergency vehicles, commensurate with the intensification of land use customarily incident to a change in zoning, a platting requirement is established as follows:

(b) For any land which has been rezoned to a zoning classification other than AG upon application of a private party, no building permit or zoning clearance permit shall be issued until that portion of the tract on which the permit is sought has been included in a subdivision plat or replat, as the case may be, submitted to and approved by the Planning Commission, and filed of record in the Office of the Fairfield County Recorder. Provided that the Planning Commission, pursuant to their exclusive jurisdiction over subdivision plats, may remove this platting requirement upon determining that the above purposes have been achieved by previous platting or could not be achieved by a plat or replat.
(Ord. 42-05. Passed 6-27-05.)

1123.13 MAJOR STREET PLAN.

“The Official Thoroughfare Map of the City of Lancaster”, hereinafter referred to as “The Major Street Plan”, as adopted by the City Council of Lancaster, Ohio, as Resolution 90-04 on June 14, 2004, as may be subsequently amended.
(Ord. 42-05. Passed 6-27-05.)

1123.14 STRUCTURE SETBACK FROM ABUTTING STREETS.

The structure setback from abutting streets shall be as provided for each zoning district.
(Ord. 42-05. Passed 6-27-05.)

1123.15 MOTORIZED VEHICLES.

(a) All motorized vehicles which are designed for travel upon public streets and which are being parked, stored or displayed for sale shall be parked, stored or displayed on an all-weather material as defined in Chapter 1161. Definitions. The foregoing provisions of this Section shall not apply to vehicles located within junk and salvage yards.

(b) The Board of Zoning Appeals may, as a special exception, permit the storage and/or display of motorized vehicles on a surface other than one consisting of an all-weather material if located behind the building setback line.
(Ord. 42-05. Passed 6-27-05.)

1123.16 ESSENTIAL SERVICES.

For the purposes of this Code, essential services, as defined in Chapter 1161, shall be considered a permitted use in all zoning districts. (Ord. 42-05. Passed 6-27-05.)

1123.17 FAMILY DAY CARE AND FAMILY CHILD CARE HOMES.

(a) “Type A Family Day Care Home” and “Type A Home” mean a permanent residence of the administrator in which the day care is provided:

- (1) For seven to twelve children at one time, including any children under six years of age who are related to a licensee, administrator or employee of the Type A home and who are on the premises of the Type A home; or
- (2) For four to twelve children at one time if four or more of the children are under two years of age, including any children under six years of age who are related to a licensee, administrator or employee of the Type A home and who are on the premises of the Type A home.
- (3) Type A homes are considered Special Exceptions and require approval of the Board of Zoning Appeals.
- (4) All Type A homes must be licensed by the State of Ohio and must follow the standards set forth by the Department of Human Services.

(b) “Type B Family Day Care Home” and “Type B Home” mean a permanent residence of the provider in which child care is provided for one to six children at one time and in which no more than three children are under the age of two years.

- (1) In counting children for the purpose of this section, any children under six years of age who are related to the provider and who are on the premises of the Type B home shall be counted. Children six years of age and older who are related to the provider, who are not publicly funded and who are on the premises of the Type B home shall not be included in this count.

- (2) A "Type B Home" also includes a home which is the permanent residence of the provider and the parent.
- (3) Type B homes are considered a permitted use in all R Districts.
- (4) Type B homes do not require a license as long as no more than six children are cared for at one time. Type B homes must be certified by local and/or State officials if child care is paid for with public funds.
- (5) No person shall be employed other than a member of the immediate family residing on the premises or as a substitute caregiver as required by the standards for a Type B Child Care Home, as adopted by the Ohio Department of Human Services.

(c) All licensed Type A and Type B homes must obtain a Zoning Clearance Permit, pursuant to Chapter 1155 if established after the effective date of this Ordinance.

(d) Any signs on the lot shall comply with the provisions of Chapter 1317 of the Codified Ordinances.

(e) No exterior alterations of the dwelling or any customary accessory structure shall be made which would detract from the residential character of the structure.

(f) No Type A family day care home may be located on a lot within 300 feet from any other lot containing a Type A family day care home if any boundary of said lots abut the same street.

(g) Type A Family Day Care Homes licensed by the State of Ohio, in existence on the effective date of this amendment, but which would be prohibited by the spacing requirements herein, may continue as otherwise required herein.
(Ord. 42-05. Passed 6-27-05.)

1123.18 GROUP RESIDENTIAL FACILITIES.

"Group residential facilities" shall be defined and classified in Chapter 1161 of this Code. A Class I Type B group residential facility, as defined in Chapter 1161, is permitted by right in any zoning district that permits single-family dwellings. A Class I Type A group residential facility shall be considered as a Special Exception in the RM-2., RM-3, RM-4, CG and CH Districts, subject to the standards below. A Class II Type A or Type B group residential facility shall be treated as a Special Exception in the CG and CH Districts subject to the standards below:

- (a) The facility shall obtain all approvals and/or licenses as required by state and local laws.
- (b) The facility shall provide 24-hour supervision by trained and qualified professional personnel.
- (c) No exterior alterations of the structure shall be made which would be inconsistent with the residential character of the residential structures in the surrounding neighborhood.
- (d) The facility shall comply with the district regulations applicable to other properties in the zoning district in which they are located.
- (e) Such facilities shall be required to provide appropriate sleeping quarters without using normal living areas, such as living rooms, dining room or kitchen for sleeping.
- (f) Such facilities shall meet all applicable local and/or state building, safety and fire

safety requirements for the proposed use and level of occupancy.

- (g) Such facilities shall be reasonably accessible, by virtue of location or transportation provided by the applicant, to medical, recreational and retail services, and employment opportunities.
- (h) The applicant shall provide a plan indicating the manner in which the facility will maintain contact with neighborhood residents, including a structured procedure whereby their grievances may be filed and resolved.
(Ord. 42-05. Passed 6-27-05.)

1123.19 CONVICT PRERELEASE AND/OR CORRECTIONAL COMMUNITY TREATMENT CENTERS.

"Convict PreRelease and/or Correctional Community Centers" shall be defined and classified in Chapter 1161 of this Code. In order to provide opportunities for location of convict pre-release and correctional community treatment centers, to avoid over concentration of said facilities, and to establish the suitability of the requested use at the proposed location, a convict pre-release or correctional community treatment center shall be allowed as a Special Exception only in the IL or IM Districts. No application for a Special Exception for such a facility shall be accepted for review unless accompanied by sufficient documentation by the appropriate licensing or certifying agency determining the need for such a facility at the proposed location. The applicant shall be responsible for demonstrating compliance with the requirements of this Section. The Board of Zoning Appeals shall consider the following criteria in determining whether a location is appropriate for such a facility and may attach conditions to zoning clearance consistent with the purposes of this Section.

- (a) The facility shall be occupied by not more than thirty (30) residents, exclusive of staff, limited by the size of the existing or proposed building and its allocated space for sleeping quarters.
- (b) Prior to occupancy and continuously thereafter, the applicant convict pre-release and correctional community treatment center shall:
 - (1) Be licensed or certified by a federal, state, or local agency which requires screening potential residents.
 - (2) Comply with all applicable City codes,
 - (3) Agree in writing to maintain with the Lancaster Police Department a current list of all residents of the facility by name and photograph,
 - (4) Submit a copy of the B.1 License or Certificate to the Zoning Inspector initially prior to occupancy and therefore subsequent to each renewal.
(Ord. 42-05. Passed 6-27-05.)

1123.20 LOCATION OF CEMETERIES.

No person shall establish any cemetery or other place for the interment of dead bodies, human remains, or human ashes within the corporate limits of the City. However, nothing in this section shall prevent cemeteries existing before October 31, 2005, from acquiring land for expansion when done in accordance with the provision of the Ohio Revised Code.
(Ord. 84-05. Passed 12-12-05.)

1123.21 MEDICAL MARIJUANA CULTIVATORS, PROCESSORS AND RETAIL DISPENSARIES.

The term "medical marijuana" shall have the same meaning as in Section 3769.01(A) of the Ohio Revised Code, effective September 8, 2016.

No person shall open, establish or operate any business or commercial enterprise engaged as a cultivator, processor, or retail dispenser of medical marijuana within the corporate limits of the City.

No zoning clearance, permit, or other administrative approval shall be approved or issued by any administrative official of the City, nor shall any variance be approved or granted, to any person, business, or other applicant desiring or intending to operate a business or commercial enterprise engaged as a cultivator, processor, or retail dispenser of medical marijuana within the corporate limits of the City.