

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JOHN DOE and RICHARD ROE,  
Plaintiffs,

v

BLOOMFIELD TOWNSHIP,  
Defendant.

\_\_\_\_\_  
**THOMAS M. LOEB, ESQ.** (P25913)  
Attorney for Plaintiffs  
32000 Northwestern Hwy, Ste. 170  
Farmington Hills, MI 48334-1507  
(248) 851-2020  
[tmloeb@mich.com](mailto:tmloeb@mich.com)

\_\_\_\_\_  
**NEIL S. ROCKIND, ESQ.** (P48618)  
Co-counsel for Plaintiffs  
Neil Rockind, PC  
28411 Northwestern Hwy, Ste. 1150  
Southfield, MI 48034  
(248) 208-3800  
[Neil@rockindpc.com](mailto:Neil@rockindpc.com)

OAKLAND  
COUNTY

10-115591-CZ



Case No.  
Hon.

JUDGE D. LANGFORD MORRIS  
DOE, JOHN v BLOOMFIELD TW

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**COMPLAINT FOR DECLARATORY RELIEF**

There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the Complaint.

Plaintiffs, by their attorneys Thomas M. Loeb and Neil Rockind, complain against the above named defendant and states as follows:

**INTRODUCTION**

1. This is a declaratory judgment action against Bloomfield Township, complaining that it has passed two separate ordinances which have impacted the rights of Michigan Medical Marijuana patients and caregivers, in direct violation of the Michigan Medical Marijuana Act.

2. Specifically, plaintiffs complain that Ordinance number 627 (attached) requires that qualifying patients register with the Bloomfield Township Police Department and provide them protected and confidential information, including their name, home address, driver's licence number, and date of birth.
3. Ordinance number 628 (attached) prohibits the cultivation or distribution of medical marijuana by any registered patient or caregiver. This provision conflicts with and is in violation of the Michigan Medical Marijuana Act.
4. The plaintiffs, John Doe and Richard Roe, reside in Bloomfield Township. They are both registered medical marijuana patients and they wish to use and cultivate their medical marijuana there in order to treat their debilitating medical conditions. Moreover, both are registered medical marijuana caregivers, and other patients depend upon each of them for producing and delivering their medicine. These activities are all protected by the Michigan Medical Marijuana Act but prohibited by city ordinances. Under well-established state preemption law, the city ordinances must yield.

#### **THE PARTIES**

5. John Doe is a citizen of the State of Michigan and resides in the

Bloomfield Township. He is a certified medical marijuana patient, and a caregiver. As a caregiver, he has five (5) other patients. He desires to keep the nature of his medical ailments confidential. In light of the criminal penalties associated with Bloomfield Township's two ordinances, he must remain anonymous.

6. Richard Roe is currently a registered patient and registered caregiver. He resides in Bloomfield Township, and has done so for many years. His current registered patients include individuals who suffer from hepatitis c, muscular dystrophy, multiple sclerosis, epilepsy, and severe and crippling rheumaty arthritis. He desires to keep the nature of his medical ailments confidential. In light of the criminal penalties associated with Bloomfield Township's two ordinances, he must remain anonymous.
7. Bloomfield Township's ordinances precluding any patient or caregiver from growing his medicine has a profound and negative effect on the patients whom these plaintiffs care for, and for themselves.
8. Moreover, both plaintiffs desire to maintain their anonymity and confidentiality, as protect by Michigan's Medical Marijuana Act and by the administrative regulations governing the Act.
9. Defendant Bloomfield Township is a charter township organized under the laws of the State of Michigan.

## JURISDICTION AND VENUE

10. This court has jurisdiction over this civil action for a declaratory judgment under MCR 2.605.
11. This court has venue under MCL 600.615, as all parties to this lawsuit reside in Bloomfield Township, Oakland County, Michigan.

## FACTS

12. Plaintiffs John Doe and Richard Roe both reside in Bloomfield Township. Each plaintiff is a registered qualified patient, and a registered primary caregiver for others.
13. In 2008, the people of Michigan enacted the Michigan Medical Marijuana Act by voter initiative. See Initiated Law One of 2008, MCL 333.26421 et sec.
14. The measure passed with approximately sixty-three (63 %) percent of the vote.
15. The first two stated purposes of the Michigan Medical Marijuana Act are "to allow under state law the medical use of marijuana" and "to provide protections for the medical use of the marijuana".
16. In Section 2 of the Act, the people of the State of Michigan found and declared that "modern medical research, including as found by the National Academy of Sciences' Institute of Medicine in a March, 1999

report, has discovered beneficial uses for marijuana in treating or alleviating the pain, nausea, and other symptoms associated with a variety of debilitating medical conditions”.

17. In the Act, the people of the State of Michigan further found and declared that “although federal law currently prohibits any use of marijuana except under very limited circumstances, states are not required to enforce federal law or prosecute people for engaging in activities prohibited by federal law. The laws of Alaska, California, Colorado, Hawaii, Maine, Montana, Nevada, New York, Oregon, Vermont, Rhode Island, and Washington do not penalize the medical use and cultivation of marijuana. Michigan joins in this effort for the health and welfare of its citizens.”
18. The Michigan Medical Marijuana Act decriminalized the medical use of marijuana for “debilitating medical conditions”.
19. Specifically, the Act provides that medical marijuana patients, registered as such with the State of Michigan based on a written certification from their physician, “shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty” for the medical use of marijuana.
20. The Act provides the same protections to registered primary caregivers who grow marijuana and persons other than registered primary caregivers

who assist a patient with using or administering marijuana or who are the presences or in the vicinity of the medical use of marijuana.

21. The "medical use" of marijuana is defined by the Michigan Medical Marijuana Act to include, among other things, the acquisition, possession, cultivation, use, and transportation of marijuana relating to the administration of marijuana to treat or alleviate a registered patient's debilitating medical condition.
22. Although the possession, cultivation, and use of marijuana for any purpose violates the federal Controlled Substances Act, the United States Department of Justice currently has an official policy of not enforcing federal drug laws against medical marijuana patients, caregivers, or others who comply with their state's medical marijuana law.
23. However, future Administrations can change this policy, or the policy itself may change under the current Administration.
24. Bloomfield Township's ordinances make it a crime to fail to register with the Township's Police Department. Specifically, failure to register with the police department subjects a certified patient or caregiver with a ninety-three (93) day misdemeanor, or a Five Hundred (\$500.00) fine or both.
25. Plaintiffs submit that Bloomfield Township's ordinances violate their right

to be free from self-incrimination, guaranteed by the Michigan Constitution (Const 1963, art 1, §17).

26. Moreover, these ordinances violate a properly registered medical marijuana patient or medical marijuana caregiver's right to confidentiality, as contained within the Michigan Medical Marijuana Act itself, as well as supporting administrative rules promulgated by Michigan's Department of Community Health. Michigan's Department of Community Health is the state agency that, pursuant to the Michigan Medical Marijuana Act, administers Michigan's Medical Marijuana law. See MCL 333.26426(h) and 2009 AACS R 333.121. A copy of that rule (entitled "Confidentiality") is attached to this Complaint for Declaratory Relief.
27. This court is empowered to enter a declaratory judgment under MCR 2.605.
28. Cities or Townships in Michigan may not adopt ordinances in direct conflict with a Michigan state statute. Such ordinances are preempted by Michigan State law and therefore void.
29. Although the Michigan Medical Marijuana Act provides that registered patients and their caregivers "shall not be subject to arrest, prosecution, or penalty in any manner" for the medical use of marijuana, to the extent that the Township requires registration, and precludes cultivation or

distribution, the medical use of marijuana in accordance with the Michigan Medical Marijuana Act is a crime within the Township of Bloomfield.

30. Bloomfield Township Ordinance numbers 627 and 628 are in direct conflict with and therefore preempted by the Michigan Medical Marijuana Act.
31. Ordinance numbers 627 and 628 are void and unenforceable against plaintiffs for their medical use of marijuana, including their cultivation of up to twelve (12) marijuana plants per registered patient, as allowed under the Michigan Medical Marijuana Act.
32. Moreover, to the extent that Bloomfield Township's ordinances require that qualified medical marijuana patients register with the Township's Police Department, these ordinances are in direct conflict with and therefore preempted by the Michigan Medical Marijuana Act's confidentiality provisions, the administrative rules promulgated pursuant to the Michigan Medical Marijuana Act, and plaintiff's state constitutional guarantee against self-incrimination.

#### **DEMAND FOR RELIEF**

**THEREFORE**, for all the above reasons plaintiffs request that this court:

- A. Assert jurisdiction over this matter;



B. Declare as follows:

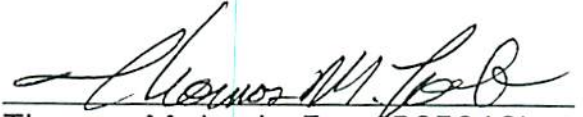
1. That Bloomfield Township's Ordinance numbers 627 and 628 are preempted by the Michigan Medical Marijuana Act to the extent it prohibits the medical use of marijuana as allowed under the Michigan Medical Marijuana Act. It is thus void and unenforceable against plaintiffs for their use or cultivation of up to twelve (12) marijuana plants per registered patient in an enclosed, locked facility in Bloomfield Township;
2. That, to the extent that Bloomfield Township's Ordinance numbers 627 and 628 require registration, it conflicts with the confidentiality provisions of and is preempted by the Michigan Medical Marijuana Act, the rules promulgated pursuant to the Michigan Medical Marijuana Act, and the state constitutional right to remain silent.

C. enter a declaratory judgment in favor of plaintiffs and against defendant; and

D. grant any other relief this court deems just and proper.

Dated: December 14, 2010

Respectfully submitted,



Thomas M. Loeb, Esq. (P25913)  
Attorney for Plaintiffs  
32000 Northwestern Hwy, Ste. 170  
Farmington Hills, MI 48334-1507  
(248) 851-2020  
[tmloeb@mich.com](mailto:tmloeb@mich.com)

Neil S. Rockind, Esq. (P48618)  
Co-counsel for Plaintiffs  
28411 Northwestern Hwy, Ste. 1150  
Southfield, MI 48034  
(248) 208-3800  
[Neil@rockindpc.com](mailto:Neil@rockindpc.com)

STATE OF MICHIGAN  
COUNTY OF OAKLAND  
CHARTER TOWNSHIP OF BLOOMFIELD

ORDINANCE NO. 627

MEDICAL MARIJUANA ZONING REGULATIONS ORDINANCE

AN ORDINANCE TO AMEND ARTICLE 2.0 DEFINITIONS, ARTICLE 3.0 ZONING DISTRICTS, AND ARTICLE 4 USE STANDARDS, IN CHAPTER 42 ZONING OF THE CODE OF ORDINANCES OF THE CHARTER TOWNSHIP OF BLOOMFIELD SO AS TO PROHIBIT AND/OR REGULATE THE USE, CULTIVATION, AND/OR DISPENSING OF MEDICAL MARIJUANA IN THE TOWNSHIP.

In the execution of this Section, it is recognized that there are some uses, because of their very nature, are recognized as having serious operational characteristics when under certain circumstances have a deleterious effect upon adjacent areas, as well as the community as a whole. Relying on such facts, the Township Board has concluded that special regulation of this use is necessary to ensure the public safety, health, and welfare of the Township.

**THE CHARTER TOWNSHIP OF BLOOMFIELD ORDAINS:**

Section 1.

Article 2. Definitions of Chapter 42, Zoning, is hereby amended to add a definition "medical marijuana usage" and shall read as follows:

50. Medical marijuana usage means any action engaged in the medical use of marijuana where the household patient is legally registered by the Michigan Department of Community Health (MDCH) in accordance with the Michigan Medical Marijuana Act (MMMA), as amended, and who legally registers their address with the Charter Township of Bloomfield. The cultivation and/or distribution of medical marijuana is strictly prohibited.

(The existing definitions 50 through 88 to be renumbered accordingly)

Section 2.

Article 3, Zoning Districts, Section 42-3.1.1 R-1 One-Family Residential is hereby amended to add Section 42-3.1.1 B. vii.

- vii. Medical marijuana usage by a registered patient subject to Section 42-4.44.

Section 3.

Article 3, Zoning Districts, Section 42-3.1.2 R-2 One-Family Residential is hereby amended to add Section 42-3.1.2 B. vii.

- vii. Medical marijuana usage by a registered patient subject to Section 42-4.44.

Section 4.

Article 3, Zoning Districts, Section 42-3.1.3 R-3 One-Family Residential is hereby amended to add Section 42-3.1.3 B. vii.

- vii. Medical marijuana usage by a registered patient subject to Section 42-4.44.

Section 5.

Article 3, Zoning Districts, Section 42-3.1.4 RM Multiple-Family Residential is hereby amended to add Section 42-3.1.4 B. v.

- v. Medical Marijuana Usage by a registered patient subject to Section 42-4.44.

Section 6

Article 3, Zoning Districts, Section 42-3.1.14 PRD Planned Residential Development is hereby amended to add Section 42-3.1.14. C. v.

- v. Medical Marijuana Usage by a registered patient subject to Section 42-4.44.

Section 7

Article 3, Zoning Districts, is hereby amended to add Section 42-3.11 District regulations  
42-3.11 District regulations

Each district, as created in this article, shall be subject to the regulations contained in this ordinance. Other than as set forth in this Ordinance, uses for enterprises, activities, conduct, venture or other purposes that are contrary to federal, state or local laws are prohibited.

Section 8

Article 4, Use Standards, is hereby amended to add Section 42-4.44 Medical Marijuana Usage  
42-4.44 Medical Marijuana Usage

In the R-1 One-Family, R-2 One-Family, R-3 One-Family or RM Multiple Family Districts, only two (2) registered patients are permitted per single-family household or multiple family unit, subject to the following criteria:

1. Every registered patient shall register his or her name and address with the Township subject to Sec. 22-503. The Police Department shall maintain a confidential list of the persons to whom the Township has registered. Individual names and other identifying information such as the address are confidential and exempt from disclosure pursuant to the intent of the Michigan Marijuana Act, initiated Law 1 of 2008, Section 333.26426 Sec. 6. (b)(2).
2. Registration. It shall be unlawful in the Township for any person, company, corporation or other legal entity to engage in medical marijuana usage, unless registration shall first have been completed with the Township.

Section 9. Repealer.

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

Section 10. Severability.

If any section, clause or provision of this Ordinance shall be declared to be unconstitutional, void, illegal or ineffective by any Court of competent jurisdiction, such section, clause or provision declared to be unconstitutional, void or illegal shall thereby cease to be a part of this Ordinance, but the remainder of this Ordinance shall stand and be in full force and effect.

Section 11. Savings.

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 when they were commenced.

Section 12. Effective Date.

The provisions of this Ordinance are hereby ordered to take effect immediately upon publication.

Section 13. Adoption.

This Ordinance is hereby declared to have been adopted by the Township Board of the Charter Township of Bloomfield at a meeting thereof duly called and held on the 25<sup>th</sup> day of October 2010, and ordered to be given publication in the manner prescribed by the Charter Township of Bloomfield.

**CERTIFICATION**

I hereby certify that the foregoing Ordinance was adopted by the Board of Trustees of the Charter Township of Bloomfield at a meeting held on October 25, 2010, and that the original of this Ordinance is on file in my office.

Janet Roncelli, CMC  
Township Clerk

Introduced & Adopted by Board\*: October 25, 2010  
Published: October 31, 2010

\*The Planning Commission held a Public Hearing of Introduction on October 4, 2010, which was advertised on September 19, 2010.

STATE OF MICHIGAN  
COUNTY OF OAKLAND  
CHARTER TOWNSHIP OF BLOOMFIELD

ORDINANCE NO. 628

MEDICAL MARIJUANA ORDINANCE

AN ORDINANCE TO AMEND CHAPTER 22 OFFENSES, OF THE CODE OF ORDINANCES OF THE CHARTER TOWNSHIP OF BLOOMFIELD.

THE CHARTER TOWNSHIP OF BLOOMFIELD ORDAINS:

Section 1.

Division 7. Medical Marijuana

Sec. 22-501. Purpose and intent.

In the execution of this Section, it is recognized that there are some uses, which because of their very nature are recognized as having serious operational characteristics when under certain circumstances have a deleterious effect upon adjacent areas, as well as the community as a whole. Relying on such facts, the Township Board has concluded that strict regulation of this use is necessary to ensure the public safety, health, and welfare of the Township.

Sec. 22-502. Definitions.

The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning:

Medical marijuana usage means any action engaged in the medical use of marijuana where the household patient is legally registered by the Michigan Department of Community Health (MDCH) in accordance with the Michigan Medical Marijuana Act (MMA), as amended, and who legally registers their Bloomfield Township address with the Charter Township of Bloomfield. The cultivation and/or distribution of medical marijuana is strictly prohibited.

Sec. 22-503. Registration of Qualifying Patient required.

It shall be unlawful in the Township for any person, company, corporation or other legal entity to engage in Medical Marijuana usage unless registration pursuant to Section 42-4.44 of the zoning ordinance of their name and Township residential address as the registered location for use of medical marijuana shall first have been completed with the Township. The Police Department shall maintain a confidential list of the persons to whom the Township has registered. Individual names and other identifying information such as the address are confidential and exempt from disclosure pursuant to the intent of the Michigan Marijuana Act, initiated Law 1 of 2008, Section 333.26426 Sec. 6.(b)(2).

Sec. 22-507. Penalties.

A person convicted of a violation of this Code is guilty of a misdemeanor punishable by imprisonment for not more than ninety three (93) days or a fine of not more than Five Hundred (\$500.00) dollars, or both.

Section 2. Repealer.

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

Section 3. Severability.

If any section, clause or provision of this Ordinance shall be declared to be unconstitutional, void, illegal or ineffective by any Court of competent jurisdiction, such section, clause or provision declared to be unconstitutional, void or illegal shall thereby cease to be a part of this Ordinance, but the remainder of this Ordinance shall stand and be in full force and effect.

Section 4. Savings.

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 when they were commenced.

Section 5. Effective Date.

The provisions of this Ordinance are hereby ordered to take effect immediately upon publication.

Section 6. Adoption.

This Ordinance is hereby declared to have been adopted by the Township Board of the Charter Township of Bloomfield at a meeting thereof duly called and held on the 25<sup>th</sup> day of October 2010, and ordered to be given publication in the manner prescribed by the Charter Township of Bloomfield.

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I hereby certify that the foregoing Ordinance was adopted by the Board of Trustees of the Charter Township of Bloomfield at a meeting held on October 25, 2010, and that the original of this Ordinance is on file in my office.

Janet Roncelli, CMC  
Township Clerk

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**BLOOMFIELD TOWNSHIP POLICE DEPARTMENT**  
**2010**

**Medical Marijuana Registration Form**

NAME \_\_\_\_\_

REGISTRATION NUMBER \_\_\_\_\_

DATE OF BIRTH \_\_\_\_\_

ADDRESS \_\_\_\_\_

TELEPHONE NUMBER \_\_\_\_\_

DRIVER'S LICENSE NUMBER \_\_\_\_\_

MMMA NUMBER \_\_\_\_\_

RESIDENCE      OWNED      RENTAL

IF YOUR RESIDENCE IS A RENTAL PROPERTY PLEASE PROVIDE THE FOLLOWING:

OWNER'S NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

TELEPHONE NUMBER \_\_\_\_\_

NUMBER OF REGISTERED PATIENTS RESIDING IN RESIDENCE \_\_\_\_\_



### ***Rule 333.121 Confidentiality***

#### **Rule 21.**

(1) Except as provided in subrules (2) and (3) of this rule, Michigan medical marihuana program information shall be confidential and not subject to disclosure in any form or manner. Program information includes, but is not limited to, all of the following:

(a) Applications and supporting information submitted by qualifying patients.

(b) Information related to a qualifying patient's primary caregiver.

(c) Names and other identifying information of registry identification cardholders.

(d) Names and other identifying information of pending applicants and their primary caregivers.

(2) Names and other identifying information made confidential under subrule (1) of this rule may only be accessed or released to authorized employees of the department as necessary to perform official duties of the department pursuant to the act, including the production of any reports of non-identifying aggregate data or statistics.

(3) The department shall verify upon a request by law enforcement personnel whether a registry identification card is valid, without disclosing more information than is reasonably necessary to verify the authenticity of the registry identification card.

(4) The department may release information to other persons only upon receipt of a properly executed release of information signed by all individuals with legal authority to waive confidentiality regarding that information, whether a registered qualifying patient, a qualifying patient's parent or legal guardian, or a qualifying patient's registered primary caregiver. The release of information shall specify what information the department is authorized to release and to whom.

(5) Violation of these confidentiality rules may subject an individual to the penalties provided for under section 6(h)(4) of the act.