



## New Case Law Restricts Local Zoning Control Over Medical Marijuana

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In an unpublished opinion released on October 30, 2018, the Michigan Court of Appeals held that a local zoning ordinance cannot prohibit medical marijuana caregivers from cultivating marijuana as a “home occupation.” *Charter Twp of Ypsilanti v Pontius*, Court of Appeals Docket No. 340487 (Oct. 30, 2018).

In *Pontius*, Ypsilanti Charter Township’s Zoning Ordinance permitted “medical marijuana dispensaries” and “medical marijuana nurseries” in areas of the Township zoned for light industrial use, but it did not permit such uses in residential districts. The Township’s ordinance defined “dispensaries” and “nurseries” as structures used by registered caregivers to provide medical marijuana to qualified patients under the 2008 Michigan Medical Marijuana Act (“MMMA”).

The Township brought a Zoning Ordinance enforcement action against Judith Pontius, a registered medical marijuana primary caregiver who grew medical marijuana in her home’s basement for her qualified patients. The Township argued that under its Zoning Ordinance, she could only grow medical marijuana in her home for her own use as a patient, and not as a caregiver for other patients.

The circuit court held in favor of the defendant caregiver, and the Court of Appeals affirmed, holding that the Township’s Zoning Ordinance was “void and unenforceable to the extent that it prohibited registered primary caregivers who complied with the MMMA from growing medical marijuana in residential districts for their qualified patients.”

The Court of Appeals relied on its recent decision in *Deruiter v Township of Byron*, which held that local zoning ordinances cannot prohibit registered caregivers from providing medical marijuana to patients in commercial zoning districts. In both cases, the Court of Appeals held that such local ordinances are preempted by the MMMA, which does not restrict the use of medical marijuana by patients and caregivers based on location.

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This case is the latest in a long line of judicial opinions deciphering the MMMA. Municipalities should review their ordinances and consider amending any provisions that restrict caregiver activities under the MMMA based on zoning district. This case does not address municipal ordinances under the Michigan Medical Marihuana Facilities Licensing Act of 2016, which specifically allows municipalities to impose zoning regulations on medical marijuana facilities. And, of course, if Proposal 1 passes, municipalities will also be required to decide whether they wish to permit recreational marijuana facilities and how they wish to regulate such facilities.

If you have questions about the *Pontius* case, medical marijuana regulations, or the possible impact of Proposal 1 on your community, please feel free to contact a member of the Foster Swift Municipal practice group.

