

Charter Township of Orion

Ordinance No. 154

Licensed Marihuana Facilities Ordinance

Adopted November 6, 2017

AMENDED

September 16, 2019

AN ORDINANCE TO PROVIDE FOR THE REGULATION OF LICENSED MARIHUANA FACILITIES; TO DEFINE WORDS; TO AUTHORIZE THE OPERATION OF AND PROVIDE REGULATIONS FOR LICENSED MARIHUANA FACILITIES IN THE CHARTER TOWNSHIP OF ORION PURSUANT TO PUBLIC ACT 281 OF 2016, AS MAY BE AMENDED AND INITIATED LAW 1 OF 2018, MCL 333.27951 ET SEQ. AS MAY BE AMENDED; TO PROVIDE FOR AN ANNUAL FEE; TO PROVIDE PENALTIES FOR VIOLATION OF THIS ORDINANCE; TO PROVIDE FOR SEVERABILITY; TO REPEAL ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH AND TO PROVIDE AN EFFECTIVE DATE.

ARTICLE I – INTERPRETATION AND CONFLICTS

1. Any term defined by the Michigan Medical Marihuana Act, MCL 333.26421 et seq., as amended (“MMMA”), and the Michigan Medical Marihuana Facilities Licensing Act, MCL 333.27101, et seq., and the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951, et seq., as amended (“MRTMA”) shall have the definition given in the Act, as amended. If the definition of a word or phrase set forth below conflicts with the definition in the MMMA, MMFLA, or MRTMA or if a term is not defined but is defined in the MMMA, MMFLA or MRTMA then the definition in the MMMA, MMFLA, or MRTMA shall apply.
2. This Ordinance shall not limit an individual’s or entity’s rights under the MMMA.
3. All activities related to Licensed Marihuana Facilities, including those related to a Medical or Recreational Marihuana Cultivation/Grower Facility, Secure Transporter, Processor or a Safety Compliance Facility shall be in compliance with the rules of the Michigan Department of Licensing and Regulatory Affairs or any successor agency, and the rules, Ordinances and regulations of the Charter Township of Orion.
4. Any use which purports to have engaged in the cultivation or processing of Medical or Recreational Marihuana into a usable form, or the distribution or testing of Marihuana without obtaining the required licensing set forth in this Ordinance, shall be deemed to not be a legally established use, and therefore not entitled to legal nonconforming status under the provisions of this Ordinance and and/or state law.
5. The Township recognizes and intends to follow and be consistent with all state laws, rules or regulations adopted, now and in the future, by the State of Michigan and/or Licensing and Regulatory Affairs (LARA). This Ordinance, without amendment, may be interpreted to allow and permit any State or LARA approved law, rule or regulation as currently exists or as adopted in the future.

ARTICLE II – DEFINITIONS

The following terms shall have the definitions given:

1. “Annual Fee” means the non-refundable annual fee of Five Thousand Dollars (\$5,000.00) that the Township shall assess to defray the cost of administration and enforcement of this Ordinance.
2. “Applicant” means a Person or legal entity who applies for a Permit under this Ordinance.
3. “Application” means the application prepared by the Township for the use of an Applicant under this Ordinance. An Application shall be prepared by the Building, Planning & Zoning Director or Township Supervisor and made available on the Ordinance Effective Date.
4. “Application Fee” means a non-refundable application fee of up to Five Thousand dollars (\$5,000.00) that the Applicant shall submit concurrent with its initial submission of any Application under this Ordinance for the processing of an Application which may include, among other things, planning & zoning review, inspections, investigation, and public hearings. The fee for the annual renewal of a Permit under this Ordinance shall be set by resolution of the Township Board of Trustees under its Schedule of Fees in an amount not to exceed Five Thousand dollars (\$5,000.00).
5. “Authorized Signer” means the party that signs the Application: if the Applicant is an individual, by the individual; if a limited liability company, or a corporation, by an authorized agent.

6. “Effective Date” means the date this Ordinance becomes effective, which shall be the earlier of fifteen (15) days from the date of adoption or upon certification of the minutes of the meeting at which this Ordinance was adopted.
7. “Excise Fund Fee” means money due the Township from the Medical Marihuana excise fund under MCL333.27101 of the MMFLA by the State of Michigan.
8. “Grower”, as that term is defined in PA 281 of 2016, MCL333.27101 *et seq.*, means a licensee that is a commercial entity located in this state that cultivates, dries, trims, or cures and packages marihuana for sale to a Processor or provisioning center.
9. “Licensed Marihuana Facility” means the building, buildings or parcel in or on which the Permit Holder shall operate as a medical or recreational marihuana Grower, Processor, Secured Transporter or Safety Compliance facility under the Act.
10. “Marihuana-Infused Product” means a topical formulation, tincture, beverage, edible substance, or similar product containing any usable marihuana that is intended for human consumption in a manner other than smoke inhalation.
11. “Marihuana Regulatory Agency” means the agency responsible for issuing licenses to medical and recreational facilities.
12. “MMMA” means the Michigan Medical Marihuana Act of 2008, *MCL 333.26421 et seq.*
13. “MMFLA means the Michigan Marihuana Facilities Licensing Act, PA 28 of 2016, MCL 33, 27101 et seq.
14. “MRTMA” means the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, MCL 333.27951 et seq
15. “Permit” or “License” shall be used interchangeably and is the formal document of approval issued by the Township under this Ordinance.
16. “Permit Holder” or “Licensee” is a Person who holds a Permit/License issued pursuant to this Ordinance for the purpose of securing a State Operating License under the Act.
17. “Person” for the purposes of this Ordinance is any natural person or business entity formed for the purpose of, or having an interest in, a Permit issued pursuant to this Ordinance.
18. “Processor” shall have the same meaning as that term is defined in PA 281 of 2016, MCL 333.27101 *et seq.*, and Initiated Law 1 OF 2018 MCL 333.27953 *et seq.* PA 281 of 2016, MCL 333.27101 *et seq.* shall apply to medical marihuana facilities and Initiated Law 1 OF 2018 MCL 333.27953 *et seq.*, shall apply to recreational marihuana facilities.
19. “Safety Compliance Facility” shall have the same meaning as that term is defined in PA 281 of 2016, MCL 333.27101 *et seq.*, and Initiated Law 1 OF 2018 MCL 333.27953 *et seq.* PA 281 of 2016, MCL 333.27101 *et seq.* shall apply to medical marihuana facilities and Initiated Law 1 OF 2018 MCL 333.27953 *et seq.*, shall apply to recreational marihuana facilities.
20. “Secured Transporter” shall have the same meaning as that term is defined in PA 281 of 2016, MCL 333.27101 *et seq.*, and Initiated Law 1 OF 2018 MCL 333.27953 *et seq.* PA 281 of 2016, MCL 333.27101 *et seq.* shall apply to medical marihuana facilities and Initiated Law 1 OF 2018 MCL 333.27953 *et seq.*, shall apply to recreational marihuana facilities.
21. “State Operating License” means a license that is issued by L.A.R.A. that allows the licensee to operate as, among other things, a medical or recreational Grower, Processor, Secured Transporter or Safety Compliance facility.
22. “Township” shall mean the Charter Township of Orion.
23. All other terms used in this Chapter have the same definitions ascribed to them in the Act.

ARTICLE III – OPT-IN PROVISION

Pursuant to Section 205(1) of the Act, by adoption of this Ordinance, the Township authorizes and regulates the following marihuana activities and/or facilities for operation within the municipality: Grower, Processor, Safety Compliance Facility, and Secured Transporters.

ARTICLE IV – PROHIBITION OF CERTAIN LICENSED MARIHUANA FACILITIES

The Charter Township of Orion hereby prohibits all retail (dispensaries) marihuana establishments, from operating within the boundaries of the Township pursuant to Initiated Law 1 of 2018, Proposal 1 of 2018, as may be amended. As such, Recreational Marihuana Retailer Licensees may not sell or conduct a retail business within the Township. In addition, the Township opts out of the following state licenses: Marihuana Even Organizer License, Temporary Marihuana Event, and Designated Consumption Establishment. None of these licensed facilities may operate within the boundaries of the Township, however, all other licenses and uses allowed under the Initiative Law of 2018, Proposal 1 of 2018, shall be permitted.

ARTICLE V – PERMIT REQUIREMENTS

1. Any person or entity who wishes to operate as a licensed Grower, Processor, Safety Compliance Facility or Secured Transporter in the Township shall obtain a Permit issued under this Ordinance and must obtain a State Operating License.
2. The Application shall be signed by an Authorized Signer and is subject to an Application Fee.
3. All Permits issued under this Ordinance shall be subject to an Annual Fee.
4. The Township, through its Board of Trustees, may limit the number of locations issued under this Ordinance, and may revise this limit from time to time by Board resolution. As of the Effective Date, the following number of locations may be issued under this Ordinance: six (6) “Class C” Grower; two (2) Processor; two (2) Safety Compliance Facility; and two (2) Secured Transporter.
5. No person or entity may open or operate a facility doing business or purporting to do business under this Ordinance without first obtaining a Permit.
6. A person or entity who receives a Permit under this Ordinance shall display his/her Permit and State Medical and/or Recreational Marihuana Facility License in plain view clearly visible to Township officials and the Marihuana Regulatory Agency’s authorized agents.
7. The term of each Permit shall be one (1) year and is renewable unless revoked under Article IX or due to a violation of State law or this Ordinance existing at the time of renewal.
8. No person or entity wishing to operate a Licensed Marihuana Facility under this Ordinance may apply nor be granted any tax abatement or other personal or real tax decrease or advantage under any Orion Township ordinance, policy or procedure. Upon the filing of an application, the Permit Applicant voluntarily waives any right to apply for tax abatement, or other incentive for property tax reduction.

ARTICLE VI – LOCATION REQUIREMENTS

1. The Facility must be located in the Township’s IP (Industrial Park District) zoning district.
2. The Facility cannot be within one thousand five hundred (1,500) feet of a “church” in the Township.
3. The Facility cannot be within two thousand (2,000) feet of a residence located in a R-1, R-2, R-3, SF, SE, SR, RM, or MHP zoning district.
4. The Facility cannot be within two thousand five hundred (2,500) feet of a registered “school” within the Township.

5. The Facility shall not have an ingress or egress on a street or road that has an average traffic volume in excess of six thousand (6,000) vehicles per day, as calculated by averaging the three (3) most recent Average Annual Daily Traffic (AADT) counts (as available), as reported by Southeast Michigan Council of Governments (SEMCOG).
6. The Facility shall not have an ingress or egress on a street or road that directly also serves as an ingress or egress to a residential road or property located in a R-1, R-2, R-3, SF, SE, SR, RM, or MHP zoning district.
7. Distances specified in this Ordinance shall be measured from building edge to building edge.
8. If the Facility shall need a variance from what is set forth in Article V Section one (1) through six (6) above, the Applicant may submit a formal request for a variance to the Zoning Board of Appeals (“ZBA”). The ZBA shall only consider a variance request that is no more than fifteen percent (15%) out of compliance with the above location regulations.
9. It is the Township’s intention that Growers, Processors, Safety Compliance Facilities and Secured Transporters may operate within the same building under the following conditions: each licensed entity remains distinct and separate within different working areas and separate record keeping systems.
10. The location shall meet all applicable Ordinances and promulgated standards of the Township and, prior to opening, shall demonstrate to the Township that it meets the rules and regulations promulgated by the State Medical Marihuana Licensing Board.
11. The Facility location shall conform to all standards of the zoning district in which it is located.
12. If the Facility location is currently vacant land, the Applicant must submit a site plan and building plans with the Application.
13. No person shall reside in or permit any person to reside in the Facility or the grounds of the Facility.
14. Based upon an application for or amendment of a Conditional Rezoning, Planned Unit Development or other use Development Agreement of sufficient specificity, it is within the sole discretion and judgment of the Township Board of Trustees to consider and waive any or all of the Location Requirements of this Article VI based upon any or all of the following factors:
 - a. The location of the proposed Development or use meets the underlying purpose and intent of protecting the public's health and safety and is of such a unique character or unusual circumstances that its approval would be of similar impact as other approved locations, would not diminish in any substantial way the underlying purpose of the location requirements and no other reasonable grounds exists for denial of its approval.
 - b. The location of the proposed Development has a unique characteristic or barrier of such significance that one or more of the location requirements is rendered so insignificant or moot that allowing the proposed use would continue to satisfy and not diminish in any substantial way the purpose or health and safety concerns of this Ordinance.
 - c. Where denial of a Development or use under this Ordinance would violate any law or Court Order, would constitute an error at law or would otherwise uphold and enforce a location requirement that has been ruled illegal or unenforceable by any Court, Administrative Proceeding or any Legislative law, regulation or action.

The above waiver of location requirements shall have no effect on the prohibition on retail (dispensaries) marihuana establishments, which remain prohibited under this Ordinance and are not subject to waiver by the Board of Trustees or any other Board, Commission or Officer of the Township. Except as provided by law, the Board of Trustees' decision on any location waiver is discretionary within the standards set forth herein and is a final decision and not appealable to any Township Board or Commission. It is the intent of this Ordinance to only approve a location waiver in unique and rare circumstances where no substantial public benefit is derived from its denial.

ARTICLE VII – APPLICATION PROCEDURE

1. All Permit Applicants required by this Ordinance shall file an application with the Township Clerk. While this Article is intended to set forth the application process and timeline, no failure of the Township or its Clerk to act shall result in the

approval of a Permit. Rather, an applicant may appeal to the Township Board of Trustees for any alleged failure to act or timely act under this Ordinance. The Board of Trustees will take action on the appeal within thirty (30) days.

- a. The Clerk shall promptly review the Application for defects and notify Applicant in writing within five (5) business days of submission whether the Application is complete or requires additional information.
 - b. If the Application is complete, within three (3) business days, the Clerk shall forward the complete Application for review by the appropriate representatives of the Township's Planning and Zoning, Building, Fire and Police Departments.
 - c. If the Application is incomplete, the Applicant shall have thirty (30) calendar days from receipt of the written notice of any defect to supplement the Application for purpose of curing any defect. Within five (5) business days of receiving the Applicant's supplementation, the Clerk shall either give written notice to the Applicant that additional information is required, or shall forward the Application for review as set forth in Ordinance 1(b) above.
 - d. The Planning and Zoning Department shall confirm the Facility is located within the requirements of Article V (Location Requirements).
 - e. The Building Department shall confirm the existing building for the Facility has a Certificate of Occupancy, or shall give approval based on the site plan and building plans submitted, and conditioned on the future permitting and construction of all structures for the Facility in accordance with the Orion Township Building Code and Ordinances.
 - f. All facilities under this Ordinance must receive site plan approval from the Township's Planning Commission by a majority vote of those members present.
 - g. The Fire and Police Departments shall issue a report and guidance to the Planning Commission regarding any material issues concerning the specific location of the Facility and any impact of the health and safety of Township residents.
 - h. The above referenced Township departments shall make a recommendation to the Planning Commission within twenty (20) calendar days of submittal of the Application.
 - i. A site plan review of the Application by the Planning Commission shall occur within thirty (30) calendar days after receipt of the Application and Township department reviews.
 - j. The Planning Commission shall consider the Application at a public meeting without requiring a formal public hearing or notice thereof.
 - k. A Permit shall be approved if it meets the Township requirements under this Ordinance, and a Permit may be issued subject to further permitting and building approvals.
 - l. Prior to the expiration of the thirty (30) calendar days for review by the Planning Commission set forth above, the Planning Commission may request that the Applicant provide any additional information required by the Act this Ordinance or any other reasonable information deemed by the Township to be required for the consideration of a Permit; including, but not limited to, a complete site plan, interior diagram and summary of basic daily operations.
2. On or about December 15, 2017, the Township Clerk, or a Township designee, shall notify and file with the State this authorization and approval under the Act. Thereafter, upon request of the State Medical Marihuana Licensing Board, within ninety (90) days of an Application under this Ordinance being filed with the Township, the Township Clerk, or a designee, shall provide the following to the State Medical Marihuana Licensing Board:
- a. A copy of this Ordinance;
 - b. A copy of the applicable zoning regulations that apply to the Applicant's Facility;
 - c. A description of any violation or non-compliance with any Township Ordinance or applicable zoning regulations by the Applicant, but only if the non-compliance or violations are related to activities licensed under the Act or the MMMA, and have not been cured in accordance with this Ordinance.

- i. The Clerk shall give notice to the Applicant of any reported non-compliance or violation.

ARTICLE VIII – LICENSED MARIHUANA FACILITY LICENSE APPLICATION

As needed and in a timely manner, the Board of Trustees will adopt by resolution the Application for Permit under this Ordinance.

ARTICLE IX – MINIMUM OPERATIONAL STANDARDS FOR LICENSED MARIHUANA FACILITIES

1. The following minimum standards for Licensed Marihuana Facilities shall apply:
 - a. The Licensed Marihuana Facility shall comply at all times and in all circumstances with the Michigan Medical Marihuana Act, the Michigan Regulation and Taxation of Marihuana Act, and the general rules of the department of licensing and regulatory affairs, as they may be amended from time to time. Active operations shall be limited to between the hours of 7:00 a.m. and 9:00 p.m.;
 - b. Consumption and/or use of marihuana shall be prohibited at any facility;
 - c. All activity related to the facility shall be done indoors;
 - d. All Licensed Marihuana Facilities shall be contained within the building in a locked facility in accordance with the Michigan Medical Marihuana Facilities Licensing Act and the Michigan Regulation and Taxation of Marihuana Act, as amended;
 - e. All necessary building, electrical, plumbing and mechanical permits shall be obtained for any portion of the structure in which electrical wiring, lighting and/or watering devices are located;
 - f. That portion of the structure where the storage of any chemicals such as herbicides, pesticides, and fertilizers shall be subject to inspection and approval by the Orion Fire Department to ensure compliance with the Michigan Fire Protection Code;
 - g. There shall be no other accessory uses permitted within the same facility other than those associated with cultivating, processing, transporting or testing medical marihuana;
 - h. Litter and waste shall be properly removed and the operating systems for waste disposal are maintained in an adequate manner so that they do not constitute a source of contamination in areas where medical marihuana is exposed;
 - i. Floors, walls, and ceilings shall be constructed in such a manner that they may be adequately cleaned and kept clean and in good repair;
 - j. There shall be adequate screening or other protection against the entry or pests. Rubbish shall be disposed of so as to minimize the development of odor and minimize the potential for development of waste odor and minimize the potential for waste becoming an attractant, harborage or breeding places for pests;
 - k. Any buildings, fixtures and other facilities shall be maintained in a sanitary condition;
 - l. Each facility center shall provide its occupants with adequate and readily accessible toilet facilities that are maintained in a sanitary condition and good repair;
 - m. No Licensed Marihuana Facility shall be operated in a manner creating excessive noise, dust, vibrations, glare, fumes or odors detectible to the normal senses beyond the boundaries of the property on which the Medical Marihuana Facility operates or in violation of any other Ordinance;
 - n. All disposal systems for spent water and spent soil shall be approved by the Township; and

- o. Medical Licensed Facilities shall continuously monitor the entire premises on which they are operated with surveillance systems that include security cameras that operate twenty-four (24) hours a day, seven (7) days a week. The video recordings shall be maintained in a secure, off-site location for a period of thirty (30) days.
2. Exterior signage or advertising identifying the facility as a medical Marihuana facility shall be prohibited.

ARTICLE X – REVOCATION OR DENIAL OF RENEWAL

1. A Permit issued under this chapter may be revoked after a hearing at which the Orion Township Board of Trustees determines that any grounds for revocation under Ordinance exist. Notice of the time and place of the Hearing and the grounds for revocation must be given to the Permittee at least ten (10) days prior to the date of the Hearing, by first class mail to the address given on the license application or any address provided as a contact;
2. A Permit issued under this Ordinance may be revoked or not renewed based on any of the following:
 - a. Violation of this Ordinance as determined by a Court of law or the Orion Township Board of Trustees;
 - b. Any conviction of or release from incarceration for a felony under the laws of this State, any other state, or the United States within the past ten (10) years by the Applicant or any stakeholder of the Applicant as measured from the date of the Application or the date of becoming a stakeholder, whichever occurs later, or while permitted under this Ordinance; or any conviction of a substance-related felony by the Applicant or any stakeholder of the Applicant ever or while permitted under this Ordinance;
 - c. Commission of fraud or misrepresentation or the making of a knowingly false statement by the Applicant or any stakeholder of the Applicant while engaging in any activity for which this Ordinance requires a Permit;
 - d. The Licensed Marihuana Facility is determined by the Township to have become a public nuisance;
 - e. A material pattern of willful and knowing violations of this Ordinance;
 - f. A material pattern of willful and knowing violations of any other Ordinance or regulation of policy whether now enacted, or to be in the future, which the Township has the authority to enact and is mandated to enforce;
 - g. Failure to pay the Annual Fee when due;
 - h. Failure to pay the money owed to the State of Michigan under the Medical Marihuana excise fund pursuant to MCL333.27101 of the MMMA, if any;
 - i. A loss of license after a final determination by the State Marihuana Regulatory Agency;
 - j. Failure of a leased or existing facility to become fully operational within six (6) months of being granted a State license under the MMFLA. In the case of new construction, the applicant must obtain a site plan approval within twelve (12) months and completion of construction within eighteen (18) months of being granted a State license under the MMFLA. In no event shall the Permit under this Ordinance be renewed if the Licensed Marihuana Facility is not fully operational and has continuously been operational, except as provided herein.

ARTICLE XI – PENALTIES

1. The Township may require an Applicant or Licensee of a Licensed Marihuana Facility to produce documents, records, or any other material pertinent to the investigation of an application or alleged violation of this Ordinance or State law. Failure to provide the required material may be grounds for Permit denial, revocation or suspensions;
2. Any person in violation of any provision of this Ordinance or any provision of a Permit issued under this Ordinance is responsible for a misdemeanor, punishable by a fine of up to five hundred dollars (\$500.00) plus cost of prosecution, ninety (90) days imprisonment, or both, for each violation. This section is not intended to prevent enforcement of any provision of any other ordinances or State law;

3. All fines imposed under this Ordinance shall be paid within forty-five (45) days after the effective date of the order imposing the fine or as otherwise specified in the Order;
4. The Township Supervisor may temporarily suspend a Licensed Facility License without a Hearing if the Township Supervisor finds that public safety or welfare requires immediate action. The Township Supervisor shall cause the temporary suspension by issuing a Suspension Notice;
5. If the Township Supervisor temporarily suspends a Permit without a Hearing, the Permittee is entitled to a Hearing within ten (10) days after the Suspension Notice has been issued. The Hearing shall be limited to the issues cited in the Suspension Notice; and
6. If the Township Board of Trustees does not hold a Hearing within ten (10) days after the date of suspension was issued, then the suspended license shall be automatically reinstated and the suspension vacated.

ARTICLE XII – SAVINGS CLAUSE

Nothing in this Ordinance hereby adopted shall be construed to affect any just or legal right or remedy of any chapter, nor shall any just or legal right or remedy of any chapter be lost, impaired or affected by this Ordinance.

ARTICLE XIII – SEVERABILITY

The provisions of this Ordinance are hereby declared to be severable. If any article, section or provision is hereafter declared, void, or unenforceable for any reason by a court of competent jurisdiction, it shall not affect the remainder of such ordinance which shall continue in full force and effect. In the event of a final court decision, Michigan Department of Licensing and Regulatory Affairs Ruling, or any other Legislative action, which specifically and legally prohibits the limited prohibition on retail sale as stated in Article III above, this Ordinance shall be interpreted as a complete opt-out and prohibition of all recreational marihuana establishments within the Township pursuant to Initiated Law 1 of 2018, proposal 1 of 2018 as may be amended.

ARTICLE XIV – EFFECTIVE DATE

This Ordinance shall be published in a newspaper of general circulation in the Township of Orion, and shall become effective upon publication, as provided by law.

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