

## **Chapter 803 – Adult-Use (Recreational) Marihuana Facilities Licensing**

### **Section 803.1 – Intent**

To authorize the operation of and provide regulations for recreational marihuana establishments in Lenox Township Pursuant to the Michigan Regulation and Taxation of Marihuana Act; to provide for a licensing process; to provide for an annual fee; to provide penalties for violations of this Ordinance.

### **Section 803.2 – Enabling Authority and Purpose**

The purpose of the ordinance is, pursuant to the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, MCL 333.27951 *et seq.* (“MRTMA”), to regulate recreational marihuana establishments in the Township in order to protect the public health, safety, and general welfare of the Township’s residents, to provide reasonable regulations regarding Township licensing of recreational marihuana establishments, to provide a method to defray administrative costs of such establishments and to coordinate Township regulations and license approval with laws and regulations enacted by the State of Michigan.

### **Section 803.3 – Definitions**

Words used herein will have the definitions as provided for in MRTMA, and the administrative rules promulgated thereunder.

### **Section 803.4 – Recreational Marihuana Establishments**

Medical marihuana establishments that have been authorized to operate within the Township by the holder of a state operating license, are permitted to apply for adult use marihuana licensing.

No other license types as may be permitted or established by MRTMA and/or the Rules promulgated pursuant to MRTMA will be authorized in the Township.

### **Section 803.5 – Recreational Marihuana Establishment Licenses**

A. All applicants for a Township recreational marihuana establishment license must have been granted a provisional recreational or medical marihuana facility approval certificate for the

equivalent license type by the Township and must provide proof of such approval prior to or upon applying to the Township for a Township recreational marihuana establishment license.

- B. On and after the effective date of this Ordinance, or as otherwise provided by resolution of the Township Board of Trustees (Board), the Township will accept applications for any available authorized Township license to operate a recreational marihuana establishment within the Township. Any such application must be made on the Lenox Township Recreational Marihuana Facility License Application and must be submitted by mail or hand-delivered with all required attachments and attestations to the Township Clerk or her designee ("Clerk").
- C. The Township shall post the availability of any such licenses at the Township Hall and on the Township's website for any new application period, as determined from time to time as the case may be through this Ordinance or by Resolution of the Board. For all recreational marihuana establishments, the application period is thirty (30) days from the effective date of the ordinance or as otherwise established by the Board by resolution. The Board, by resolution, may establish and announce application periods, during which applications may be submitted and processed for one or more types of facility licenses, as designated by the Board at its discretion, based on the number of licenses remaining available after any prior licensing rounds and whether and to what extent applications remain pending for the respective facility types in a prior licensing round.
- D. Once the Clerk receives a complete application including the application fee, the application will be time and date stamped. All complete applications received within any application period, if applicable, will be considered for a provisional recreational facility conditional approval certificate. The Board will consider an application for a provisional recreational facility conditional approval certificate within sixty (60) days of the close of the application period, or, as the case may be via Board Resolution commensurate with Section 803.5(C), above, within sixty (60) days of submission of the application in the event no application period applies. After issuance of all available Township licenses for a type of facility (pursuant to Section 803.4), any other applications for that type of license which remain pending at that time are deemed by operation of law under this ordinance to be rejected due to lack of an available license type for that facility. Any applicant waiting for a provisional recreational facility conditional approval certificate may withdraw their application by written notice to the Clerk at any time. No application refund shall be permitted.
- E. If a provisionally approved applicant is denied a state operating license, then such provisional recreational facility conditional approval certificate will be canceled by the Clerk.
- F. A conditionally approved applicant will receive a license from the Township to operate the recreational marihuana establishment within the Township upon the applicant providing the Clerk proof that the applicant received a state operating license for the recreational marihuana facility in the Township and that the applicant met all other requirements of this Ordinance,

and all other Township ordinances for the operation of a recreational marihuana establishment, including, specifically, Chapter 719, Zoning Ordinance.

- G. In the event a marihuana facility does not commence operations within one year of issuance of a Township license, the license will be deemed forfeited, the marihuana facility will not commence operations, and the license will not be eligible for renewal. Provisional certificates are not transferable or saleable. No property interest exists in a provisional certificate.
- H. A licensee must not operate a recreational marihuana establishment at any location in the Township other than the address provided in the application to the Township and according to the Lenox Township Zoning Ordinance.

#### **Section 803.6 – License Evaluation Criteria and Administrative Authority**

- A. The Clerk will circulate each application that has been timely received to the Township Treasurer, Building Official, Planning and Zoning Administrator, Fire Chief (or his designee), Engineer, Chief Ordinance Enforcement Official, and law enforcement agency, each of whom shall review the application to preliminarily verify and evaluate the information provided and to determine whether the application and marihuana facility, as proposed, is or will be in compliance with this Ordinance, the Zoning Ordinance, MRTMA, and other applicable State and Township ordinances, laws, rules, codes, and regulations, including undertaking any necessary investigations and inspections for such purposes, and issue a report directed to the Township Board regarding their respective preliminary findings and determinations. Said reports will be delivered to the Clerk. In the event the Township Treasurer, Building Official, Planning and Zoning Administrator, Fire Chief (or his designee), Engineer, Chief Ordinance Enforcement Official or law enforcement agency determines that the information in the application is incomplete or additional information is required in order to complete the review, the Clerk will be notified of same and the above-described report to the Township Board will not be issued unless and until the missing and/or additional information has been provided by the applicant.
- B. If at any time during the administrative review under this Section, it is determined that the information in an application is incomplete or additional information is required in order to complete the review, the Clerk will notify the applicant, in writing, of the deficiency or additional information required. All missing and additional information identified in the notice must be delivered to the Clerk within ten business days of the date of the notice. Upon written request of the applicant delivered to the Clerk prior to the expiration of the ten-day period, the Clerk may, in his or her sole discretion, grant an extension of time not exceeding thirty calendar days beyond the original ten-day period for delivery of missing and additional information. If all missing and additional information identified in the notice is not delivered to the Clerk within the time period, or any extension thereof: (1) processing of the application

will be discontinued; (2) the Clerk will issue a written notice to the applicant indicating that the application is rejected on the grounds that it is incomplete. No refund of the application fee shall be permitted. The applicant will not be prohibited from submitting a new application for the same facility in the future.

- C. The Clerk is granted the power and duty to implement and administer the license application process and issuance of provisional approval certificates and Township licenses issued under this ordinance fully and effectively. The Clerk, after consultation with other Township departments, may promulgate such rules as necessary to implement and administer this Ordinance.

#### **Section 803.7 – General Regulations for Authorized Recreational Marihuana Establishments**

- A. A licensed recreational marihuana establishment must only be operated within the Township by the holder of a state operating license issued pursuant to MRTMA, the Administrative Rules promulgated thereunder. The establishment must only be operated as long as the State operating license and Township license both remain in effect.
- B. Prior to operating a licensed recreational marihuana establishment within the Township pursuant to a state operating license, the establishment must comply with all applicable regulations, ordinances, and codes.
- C. Prior to operating an authorized recreational marihuana establishment within the Township pursuant to a state operating license, the establishment must comply with all Township construction and building ordinances, all other Township ordinances specifically regulating recreational marihuana establishments, including the Township Zoning Ordinance, and generally applicable Township police power ordinances. The establishment must only be operated as long as it remains in compliance with all such ordinances now in force or which hereinafter may be established or amended.
- D. If at any time a licensed recreational marihuana establishment violates this Ordinance, the Board may request that the State revoke or refrain from renewing the establishment's State operating license. Once such State operating license is revoked or fails to be renewed, the Clerk will cancel the Township license and the license will be available to another applicant for the specific type of recreational marihuana establishment license.
- E. A recreational marihuana establishment will be located no closer than one thousand (1,000) feet to any school and no closer than five hundred (500) feet to any place of worship, park, playground, public library, residentially zoned or occupied property, including, specifically, Residential Light Density, Residential Medium Density, Residential High Density, and Mobile Home Parks. The distances set forth above shall be measured as the shortest straight-line

distance between the marihuana facility that is located nearest to the listed use and the nearest building of the parcel on which the listed use is located.

- F. A recreational marihuana establishment must prevent smoke, odors, debris, dust, noise, lights, glare, heat, other emissions, or discharge from interfering with the reasonable and comfortable use and enjoyment of another's property. Whether smoke, odors, debris, dust, noise, lights, glare, heat, other emissions, or discharge interfere with the reasonable and comfortable use and enjoyment of the property will be measured against the objective standards of a reasonable person of normal sensitivity. No licensee, person, tenant, occupant, invitee, or property owner shall permit the emission of marihuana odor from any source to result in detectable odors outside of the marihuana facility.
- G. A marihuana retailer must not operate between the hours 9:00 PM and 9:00 AM.
- H. Marihuana cultivation may not be conducted openly or publicly and may not occur in detached outbuildings. Indoor lighting for marihuana cultivation is limited to light-emitting diodes (LEDs), compact fluorescent lamps (CFLs), or other fluorescent lighting. All other lighting used for growing marihuana is prohibited.
- I. No marihuana establishment may use metals, butane, propane, or other flammable product, or produce flammable vapors, to process marihuana unless permitted by applicable law, and the process used, and the premises themselves, are verified as safe and in compliance with all applicable codes by a qualified industrial hygienist. The Township may require a marihuana establishment to obtain verification from a qualified industrial hygienist that the manner in which the facility is cultivating, or processing marihuana complies with all applicable laws and does not produce noxious or dangerous gases or odors or otherwise create a danger to any person or entity in or near the businesses.
- J. Light cast by fixtures inside any building used for marihuana cultivation, production, or processing must not be visible outside the building after 7:00 PM or sunset (whichever is earlier) or before 7:00 AM, the prevailing time.
- K. All signage, marketing, and advertising must comply with MRTMA, Lenox Township, and Macomb County regulations.
- L. A licensed recreational marihuana establishment must consent to inspection of the facility by either Township officials or the Macomb County Sheriff's Department, upon reasonable notice, to verify compliance with this Ordinance.
- M. The Township expressly reserves the right to amend or repeal this Ordinance in any way including, but not limited to, complete elimination of or reduction in the type or number of

licenses for recreational marihuana establishments authorized to operate within the Township.

### **Section 803.8 – License and Annual Fee Required**

- A. No person will establish or operate a marihuana facility in the Township without first having obtained from the Township and the State a license for each such facility to be operated. License certificates must be kept current and publicly displayed within the facility. Failure to maintain or display a current license certificate will be a violation of this Ordinance.
- B. An annual nonrefundable fee must be paid to the Township for purposes of defraying the actual administrative, enforcement, and other costs associated with recreational marihuana facilities located in the Township. Such annual fee will be in an amount not to exceed five thousand dollars (\$5,000.00) per licensed facility as set by resolution adopted by the Board from time to time at the discretion of the Board.
- C. The annual nonrefundable fee required under this Section will be due and payable prior to issuance of a Township license and upon the application for renewal of any such license under this Ordinance.
- D. A valid Township license may be renewed on an annual basis by submitting to the Clerk a renewal application provided by the Township and payment of the annual license fee at least thirty days prior to the date of the license's expiration. The licensed establishment must pass a renewal inspection to assure that it and its systems comply with all State, Township, and ordinance requirements.
- E. The license fee requirement set forth in this Ordinance will be in addition to, and not in lieu of, any other licensing and permitting fee requirements imposed by any other federal or state law or regulation, or Township ordinance, including, without limitation, the fees associated with any applicable zoning, water, sewer, and building permits, and the license application fees under this Ordinance.
- F. The issuance of any license pursuant to this Ordinance does not create an exception, defense, or immunity to any person in regard to any potential criminal liability the person may have for the use, growing, cultivation, production, processing, distribution, provisioning, sale, transportation, or possession of marihuana under any law, including federal law.
- G. Separate licenses will be required for each marihuana facility type. Except as may be specifically provided in this ordinance, MRTMA, or related regulations, no two or more different recreational marihuana facilities may be treated as one premise. Equivalent licenses may operate at the same location.

## **Section 803.9 – Nonrenewal, Suspension, Revocation, Appeals, Penalties**

- A. It is hereby expressly declared that nothing in this Ordinance be held or construed to give or grant to any authorized recreational marihuana establishment a vested right, privilege, or permit to continued licensure from the Township for operations within the Township. No property right exists in any license or provisional certificate.
- B. Each license is exclusive to the licensee and a licensee, or any other person must apply to and receive Township Board approval before a license is transferred, sold, or purchased. Provisional certificates are not transferrable or saleable. The attempted transfer, sale, or other conveyance of an interest in a license without prior approval of the Board is grounds for suspension or revocation of the license or for other appropriate sanction. Licensees must report to the Clerk, in writing, any material change in the information required under MRTMA or this ordinance within ten business days of the change. A failure to report a material change may result in a suspension or revocation of the license.
- C. The Board, after notice and hearing, may suspend, revoke, or refuse to renew a license for any of the following reasons:
  - 1. The applicant or licensee, or his/her agent, manager, or employee, has violated, does not meet, or has failed to comply with any of the terms, requirements, conditions, or provisions of this Ordinance or with any applicable state or local law or regulation; or
  - 2. The recreational marihuana establishment has operated in a manner that adversely affects public health, safety, and welfare.
- D. Evidence to support a finding for nonrenewal, suspension, or revocation of a license may include, without limitation, a continuing pattern of conduct of drug-related criminal complaints within the premises of the recreational marihuana establishment or in the immediate surrounding area or an ongoing nuisance condition emanating from or caused by a recreational marihuana establishment.
- E. An applicant may appeal any Township decision regarding licensure, nonrenewal, suspension or revocation of a license to the full Board, upon written request within twenty-one days after notice of the Clerk's decision has been mailed to the applicant's last known address on file with the Clerk. An applicant requesting such an appeal must submit the request in writing with the reasons for the appeal to the Clerk. The Board will provide notice to the applicant at least ten days prior to the Board meeting of the time and date of the meeting at which the appeal will be heard. At such a Board meeting, the applicant will have the opportunity to present his/her case supporting the appeal request. The Board may reverse or affirm, wholly or partly, or

modify the decision of the Clerk. Any decision by the Board on an appeal will be final for purposes of judicial review.

- F. In addition to the possible denial, suspension, revocation, or nonrenewal of a license under the provisions of this Ordinance, any person, including, but not limited to, any licensee, manager or employee of a marihuana facility, or any customer of such facility, who violates any of the provisions of this Ordinance, shall be responsible for a municipal civil infraction that is subject to the penalties and relief specified or referenced in Chapter 401, "Municipal Civil Infraction," of the Lenox Township Code of Ordinances.