

LOCAL PROPOSAL

INITIATION OF ORDINANCE

To the Village Clerk of Ortonville: We, the undersigned qualified and registered electors, residents in the Village of Ortonville, in the county of Oakland, in the state of Michigan; respectively petition for initiation of an ordinance pursuant to section 6 of the Michigan Regulation and Taxation of Marihuana Act, to wit; an ordinance to be known as the "Adult Use Marihuana Establishments Ordinance" to provide for a number of adult use marihuana establishments to be operated in the Village. This ordinance repeals Ordinance 70 of 2019, the amendment to Title XI which added a new Chapter 115 "Marihuana Establishments," enacted March 26, 2019, effective on March 30, 2019.

The Village of Ortonville ordains:

Adult Use Marihuana Establishments Ordinance

Section 1. Title and Purpose.

This ordinance shall be known and cited as the "Adult Use Marihuana Establishments Ordinance." This ordinance repeals Ordinance 70 of 2019, the amendment to Title XI which added a new Chapter 115 "Marihuana Establishments," enacted March 26, 2019, effective on March 30, 2019 and any other ordinances or parts thereof that are inconsistent herewith. The purpose of this ordinance is to provide for licensed adult use marihuana retailer establishments within the Village of Ortonville to allow for the sale and/or transfer, and delivery of marihuana and marihuana-infused products to persons 21 years of age and older in the Village of Ortonville pursuant to the Michigan Regulation and Taxation of Marihuana Act of 2018, MCL 333.27951 et seq, and the State of Michigan's marihuana administrative rules, as amended and to establish the type and the number of locations for adult use marihuana retailer establishments; to establish procedures and timelines inherent to the granting, transfer, and revocation of licenses; to provide for an assessment of fees; and to regulate the operation of licensed adult use marihuana retailer establishments. It is the intent of this ordinance to promote the public health, safety, and general welfare of persons and property and ensure that quality of life is not impaired, and the stability of community is maintained. Commercial activity relating to marihuana could potentially expose neighbors and the community to the notoriously pungent odor of marihuana, camera surveillance, and privacy concerns in general, and attract overcurious youths or undesirable persons. Therefore, to mitigate the possibility of unintended consequences, the aim is to physically isolate these activities from the community by prohibiting commercial activity relating to marihuana as appropriate within certain distance requirements, to mitigate traffic congestion, and further protect the community from the impact of potential sudden change and distraction by providing a limited window for the first phase of applications.

Section 2. Type and Number of Locations for Adult Use Marihuana Establishments.

- A. This ordinance authorizes the following adult-use marihuana retail establishments and no less than the number of marihuana establishment business locations to operate in the Village of Ortonville: Two (2) marihuana retail establishments are authorized to operate at a single location each.
- B. Following the issuance of all marihuana establishment municipal licenses, the village may choose to allow for medical marihuana facilities as an equivalent license type only co-located at the location on the municipal license for which the equivalent license is to be operated.

Section 3. Application Requirements.

An applicant requesting approval for a municipal license, must provide a complete application to the village clerk's office, which shall include:

- A. Name, address, phone number, email, and social security number of each applicant including copies of each applicant's current government-issued photo identification.
- B. Entity formation and governing documents, a certificate of good standing, and tax identification number, if applicable.
- C. The address of the proposed establishment, its zoning classification, legal description and preliminary plans as defined herein depicting the relationship of the proposed or existing building to the surrounding property and uses, plans for parking, exterior lighting, fences, walls, landscaping, security plan and a floor plan that identifies purpose and use of all rooms where marihuana will be received, stored, manufactured, processed, packaged, loaded, unloaded, handled, displayed, dispensed or sold shall be identified in the floor plan.
- D. An operations plan outlining the manner in which the establishment will be operated consistent with the acts, the MRA administrative rules, and the Village of Ortonville's Code of Ordinances.
- E. A security plan that includes an alarm system that is operational 24 hours per day and 7 days a week. Security cameras shall, at a minimum, cover all entrances and/or exits, points of sale, and all areas where marihuana is stored or handled. All security camera feeds at the establishment shall maintain thirty (30) days of historical footage on file.
- F. Estimated costs for the construction of or renovations to the premises of the proposed marihuana establishment.
- G. A written statement as to the applicant's fitness, business character, relevant experience, and financial ability to meet the obligations and business undertakings for which the license is to be issued.
- H. The number and type of full and part time jobs that the establishment is expected to create and the commitment or preference to be given to employing village residents.
- I. An Internet Criminal History Access Tool (ICHAT) report for all applicants who have resided in Michigan for the past five (5) years. For applicants who reside in another state or who have not been a Michigan resident for more than five (5) years, an equivalent state sponsored or authorized criminal history access source from their state(s) of residence. Criminal history reports shall not be older than sixty (60) days from the date in which the application was submitted to the village.
- J. A community benefits proposal demonstrating an identifiable benefit to the village and a commitment to such plans, whether fiscally, through volunteer work, or both proposed by the applicant.
- K. An affidavit completed by all applicants attesting that all information submitted with the application is true and correct to the best of the applicant's knowledge.

Section 4. Application Submittal and Review.

- A. Applications for a municipal license shall be prepared by the village and made available by the village clerk, unless the clerk fails to make such forms available within sixty (60) days of the effective date of this ordinance, in which case applicants may submit the required information and documentation without pre-prepared forms.
- B. All municipal license applications shall be accompanied by a receipt for the non-refundable annual fee.
- C. Upon receipt of an application and the annual fee, the village clerk shall score the applications within thirty (30) days following the last day of the 21-day application period. The village clerk may collaborate with village officials in their administrative area of expertise to assist with scoring the applications.

Section 5. Granting Conditional License Approval.

- A. The village council, by a majority vote, shall grant the top scoring applicants a conditional approval for a municipal license to fulfill the number of locations allowed.
 1. Items required to fulfill the conditional license approval for the issuance of a municipal license shall include:
 - a. Completing a site plan review as required by Article 6, Chapter 6.1 of the village's zoning ordinance.
 - b. Obtaining all necessary building permits and passing all inspections for the issuance of a certificate of occupancy.
 - c. A state operating establishment license from the Marihuana Regulatory Agency issued to the applicant at the location conditionally approved.
 - d. Proof of current liability insurance as required by state law.
 2. Conditional license approvals shall be documented by the village clerk and such approval shall be promptly provided to the approved applicant in writing.
 3. Applicants who were denied a conditional approval shall be documented by the village clerk and such denial shall be promptly provided to the denied applicant in writing.
 4. Conditional approvals shall expire eighteen (18) months following the date in which the relevant building permit was issued.

5. The construction of new buildings and/or alterations of existing buildings shall commence within six (6) months after the date of the conditional approval, with a completion date of no more than eighteen (18) months after the issuance of the relevant building permit. Extensions for completion of construction or alteration may be granted by the village for good cause.

Section 6. Issuance of License. Upon the completion of all items conditionally required and confirmation of such by the village clerk, the village clerk shall issue to the conditionally approved applicant a municipal license. Municipal licenses shall be valid for one (1) year from the date of issuance.

Section 7. Annual Municipal License Renewal. Municipal licenses shall be renewed upon payment of the nonrefundable annual fee.

Section 8. Criteria for Revocation.

- A. A municipal license shall automatically be revoked upon the revocation of or denial for a state operating license from the MRA at the location identified on the municipal license.
- B. Should the MRA suspend, revoke, or deny a state operating license at the location identified on the municipal license, the license holder shall maintain possession of the municipal license subject to reinstatement or transfer but shall not be authorized to operate unless and until the license is reinstated.

Section 9. Limited Right of Appeal. Applicants shall have the right to appeal a final village council decision by filing a Claim of Appeal with the Oakland County Circuit Court within twenty-one (21) days after the date of the final village council decision as provided in MCR 7.123, with the appeal limited to determination of whether the decision complied with the procedures and discretion of the village council under this ordinance, was authorized by law, and supported by competent, material, and substantial evidence in the record.

Section 10. Applicable Standards for Licensees.

- A. Licensee's shall comply with, maintain, and operate the establishment in accordance with the applicants plans of operation, the provisions of this ordinance, the acts, the administrative rules, the Village of Ortonville's Code of Ordinances, and all applicable federal, state, and local laws.
- B. Hours of operation for marijuana retailers in which they are open to the public shall be no earlier than 7:00 a.m. and no later than 11:00 p.m.
- C. Maintain insurance as required in section 5.
- D. All current state operating licenses and municipal licenses shall be prominently displayed within the establishment in a location where it can be easily viewed by the public.

Section 11. Transfer of Ownership. A transfer of ownership shall be granted by the village for a conditionally approved or licensed establishment upon evidence of the buyer's legal possession of the premises or entity and an adult use pre-qualification approval letter from the Marijuana Regulatory Agency.

Section 12. Village Responsibilities.

Upon the effective date of this ordinance, the village shall abide by the following:

- A. Applications for a marijuana establishment shall be made available no later than forty-five (45) calendar days from the effective date of this ordinance.
- B. A consecutive twenty-one (21) calendar day period shall be established for the village to receive applications for a municipal license no later than sixty (60) calendar days from the effective date of this ordinance.
 1. The village shall not execute a moratorium, resolution, ordinance, or any other provision or action that will prevent or delay the village from accepting applications within sixty (60) calendar days from the effective date of this ordinance.
- C. Applications for a marijuana establishment shall be reviewed and presented to village council for the issuance of conditional approvals within thirty (30) calendar days following the last day of the 21-day application period to apply to the village for a municipal license.
 1. The village shall not execute a moratorium, resolution, ordinance or any other provision or action that will prevent or delay the village from completing the application review or the granting of conditional approvals within thirty (30) calendar days.
- D. The competitive process is intended to select applicants who are best suited to operate in compliance with MRTMA. For scoring purposes, a subjective or sliding scale shall not be used to award points. Point values shall only be awarded if the applicant demonstrates full and strict compliance. Marijuana retail establishments shall not be distinguished or treated differently in any other ordinance or its application or interpretation, or by any person or municipal board or commission, from other permitted indoor retail sales businesses, shops, markets, drug stores, and bakeries.
- E. In the event of a tie between multiple scoring applicants where there are not enough locations for the type of license requested, the village council shall deliberate to determine, by a majority vote, the applicant who best addresses the village's goal and objectives and the following criteria in section 12(F) to identify the top scoring applicants for conditional license approval. A lottery shall not be used to break a tie between top scoring applicants. For scoring purposes, a subjective or sliding scale shall not be used to award points.
- F. Total point values shall not exceed sixty (60) points. Point values shall only be awarded if the applicant demonstrates strict compliance.
 1. Points shall be awarded for each of the following applicable subsections:
 - a. Applicant holds one (1) or more adult use state operating license. Twenty-five (25) points;
 - b. Applicant holds one (1) or more adult use prequalification authorization. Fifteen (15) points;
 - c. Applicant holds one (1) or more medical state operating license. Ten (10) points.
 2. Applicant's residency preference:
 - a. The applicant's ownership structure includes one (1) or more individuals who are residents of Oakland County and have been so domiciled for more than ten (10) years. Ten (10) points – maximum 10 points total for each complete application.

Section 13. Activities Prohibited.

- A. The village shall allow marijuana retail activities only within or on the premises of a building dedicated to single-use as a marijuana retailer with no other business activities onsite.
- B. Commercial marijuana related activities shall not be allowed or authorized unless the facility is adjacent to a street, as defined by the Village of Ortonville's Zoning Ordinance, where at any given point along such street located within the village, the vehicle count, as reported by the Southeast Michigan Council of Governments (SEMCOG) Traffic Volume Map, is 20,000 vehicles per day or greater.
- C. Commercial marijuana related activities shall not be allowed or authorized within 850 feet from a K-12 school measuring a straight line from the closest building line of the physical structure of the school to the property line of the proposed marijuana establishment.
- D. Commercial marijuana related activities shall not be allowed or authorized within 1,000 feet from a licensed childcare center measuring a straight line from the closest building line of the physical structure of the childcare center to the property line of the proposed marijuana establishment.
- E. Commercial marijuana related activities shall not be allowed or authorized within 2,000 feet from a park measuring a straight line from the closest line of the physical structure of the proposed marijuana establishment to the closest property line of the park.
- F. Commercial marijuana related activities shall not be allowed or authorized within 500 feet of a pre-existing conditionally licensed marijuana facility, measuring from the closest building line between the proposed marijuana establishments.
- G. Commercial marijuana related activities that abut residentially zoned properties shall not be allowed or authorized.
- H. No other use or property shall require minimum distancing.

Section 14. Fees. The village council by resolution may establish the amount of the non-refundable annual fee, not to exceed five thousand (\$5,000.00) dollars per application, to be assessed to the applicant.

Section 15. Harmony with state laws and regulations. Any companion provision enacted, or application prepared by the village, to effectuate this ordinance shall not be unreasonably impracticable or inconsistent with this or any other village ordinance, the acts, or the administrative rules.

Section 16. Delivery. The village shall not restrict delivery service hours for a licensed retail establishment where the license holder has been authorized to provide a delivery service by the MRA.

Section 17. Drive-Through. Should the acts or administrative rules allow for drive throughs and/or exterior walk-up windows, such activity shall be allowed for by the Village of Ortonville.

Section 18. Exempt from Disclosure. The village shall ensure that any information obtained from an applicant related to licensure is exempt from disclosure under the Freedom of Information Act, 1976 PA 442, and that such information is not released.

Section 19. Notice of Proposed Amendment. It shall be the policy of the village to notify all license holders of proposed amendments to this ordinance or any companion provision enacted by the village to effectuate this ordinance via email and first-class mail at least ten (10) business days in advance of village council's review and/or consideration of the proposed amendment. The notice shall provide the license holders with the contemplated and proposed amendment.

Section 20. Amendment. Should this ordinance be adopted by the village council in lieu of a majority vote by the registered electors, the provisions set forth in this ordinance shall not be amended by the village for a period of two (2) year. Should this ordinance be passed by the electors of Ortonville, the provisions set forth in this ordinance shall not be amended by the village for a period of three (3) years.

Section 21. Municipal Inaction. If the Village of Ortonville fails to effectuate this ordinance within the allotted time as prescribed in section 12 hereof, then an applicant who holds a current and valid adult-use prequalification letter of approval from the Marihuana Regulatory Agency; and who evidences legal ownership interest of a premises within the boundaries of the Village of Ortonville may submit to the village clerk's office the information and documents required by section 3 hereof, and the clerk's office shall accept the documentation, verify that the aforementioned documents are present, and the village clerk shall issue a municipal license on the same day as the documentation was provided to the village, or such establishment shall be eligible for a state establishment license and, upon state licensure, shall be authorized to operate at any location in any zoning district in the municipality that is in accordance with this ordinance and state law, without any municipal permit or license, except a marihuana establishment shall not be located in an area dedicated exclusively for residential use, and in such case the village shall waive the annual fee.

On request of an applicant or state agency the village clerk shall promptly sign before a notary public any attestation of municipal compliance or any other documentation, acknowledging compliance with the local ordinance, and execute and deliver such confirmations requested by an applicant or state agency relating to an application for state licensure or renewal, and provide the applicant or municipal license holder with any requested building permits, inspections, or reports. The village shall not delay issuing of a certificate of occupancy to the license holder.

Any time the Village of Ortonville receives a request from the Marihuana Regulatory Agency requesting confirmation of municipal compliance for an application for state licensure the village shall confirm such compliance and shall under no circumstances notify the Marihuana Regulatory Agency, the Department of Licensing and Regulatory Affairs or any department it oversees, that the proposed marihuana establishment is not in compliance with an ordinance consistent with section 6 of the act and in effect at the time of application, unless for proven misconduct while operating as a licensed establishment.

Section 22. State Law. Nothing in this ordinance shall be construed in such a manner as to conflict with the MMMA, MMFLA, MRTMA, the administrative rules or any other applicable state marihuana laws or rules.

Section 23. Definitions.

Unless otherwise indicated, definitions shall have the same meaning as defined under the Michigan Medical Marihuana Act of 2008 (MMMA), MCL 333.26421 et seq., the Michigan Medical Marihuana Facilities Licensing Act of 2016 (MMFLA), MCL 333.27101 et seq., the Marihuana Tracking Act of 2016, MCL 333.27901 et seq., the Michigan Regulation and Taxation of Marihuana Act of 2018 (MRTMA), MCL 333.27951 et seq., and the State of Michigan's marihuana administrative rules, as amended and future amendments. The following definitions shall apply to this ordinance:

- A. *Acts* shall mean the Michigan Medical Marihuana Act (MMMA), MCL 333.26421 et seq., the Michigan Medical Marihuana Facilities Licensing Act (MMFLA), MCL 333.27101 et seq., the Marihuana Tracking Act, MCL 333.27901 et seq., and the Michigan Regulation and Taxation of Marihuana Act (MRTMA), MCL 333.27951 et seq., as amended and all future amendments.
- B. *Administrative rules* shall mean the rules promulgated by the Marihuana Regulatory Agency, as amended and all future amendments.
- C. *Annual fee* shall mean a non-refundable annual fee established by a resolution of the Ortonville Village Council not to exceed five thousand (\$5,000.00) dollars per license to be assessed to the applicant, to defray application, administrative and enforcement costs.
- D. *Applicant* shall mean and include all named persons and specific individuals and entities as proposed owners of a marihuana establishment in an application submitted to the village for a municipal license.
- E. *Application* shall mean a form provided by the village for an applicant to complete for submission to the village for a municipal license and/or a form provided by the Marihuana Regulatory Agency for an applicant to complete for submission to the MRA for a state operating license.
- F. *Childcare center* shall mean a state licensed facility, other than a private residence receiving one or more preschool or school-aged children for care for periods of less than 24 hours a day, and where the parents or guardians are not immediately available to the child.
- G. *Village* shall mean the Village of Ortonville.
- H. *Computation of time.* In computing a period of days, the first day is excluded and the last day is included. If the last day of any period or a fixed or final day is a Saturday, Sunday or legal holiday, the period or day is extended to include the next day that is not a Saturday, Sunday or legal holiday.
- I. *Conditionally approved or conditional approval* shall mean that the village has reviewed the application and supporting documentation and agrees to issue a municipal license to the applicant following the completion of the conditions set forth in this ordinance.
- J. *Licensed or licensed establishment* shall mean a marihuana establishment where a person holds both a state operating license and a municipal license at a specified location.
- K. *Licensee or license holder* shall mean an individual, corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or other legal entity who has been issued a marihuana license.
- L. *Marihuana or marijuana* shall mean the term as defined in the Public Health Code, MCL 333.7106 et seq. and all future amendments.
- M. *MMFLA* shall mean the Michigan Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq., as amended and all future amendments.
- N. *MMMA* shall mean the Michigan Medical Marihuana Act of 2008 (MMMA), MCL 333.26421 et seq., as amended and all future amendments.
- O. *MRA* shall mean the Marihuana Regulatory Agency, or its successor.
- P. *MRTMA* shall mean the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951 et seq., as amended and all future amendments.
- Q. *Municipal license* shall mean a license issued by the Village of Ortonville that allows a person to operate an adult use marihuana establishment.
- R. *Ordinance* shall mean a law set forth by a government authority.
- S. *Park* shall mean an area of land for the enjoyment of the public, having facilities for rest and/or recreation.
- T. *Person* shall mean an individual, corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or other legal entity.
- U. *Plans of operation* shall mean the applicant's plans for operations, security, community benefits, and site plans as approved by the village for the marihuana establishment.
- V. *Playground* shall mean a park with apparatuses, including but not limited to slides, climbers, seesaws, and swings, designed for the recreational use of children, and that is owned and operated by a local unit of government, school district, or any other governmental entity.
- W. *Preliminary plan* shall mean the conceptual development plans of the premises for the proposed marihuana establishment prior to the village's planning commission review, recommendation, and/or approval of the site plans.
- X. *Premises* shall be applied to real property, including land and structures.
- Y. *Property* shall mean real and personal property.
- Z. *Provide.* The term "provide" includes making adequate preparations for operation of the number of establishments allowed in the municipality by setting regulatory fees, regulations, and application criteria.
- AA. *Religious institution* shall mean a property used for regular organized religious worship and related activities and is recorded as tax exempt by the village assessor.
- BB. *School* shall include a pre-existing public or private school building providing education in kindergarten or any of grades 1 through 12 where students are regularly scheduled to convene at least five (5) days out of the week.
- CC. *Site plan* shall mean all plans showing all salient features of a proposed development as approved by the Village of Ortonville's planning commission and/or village council as ascribed in Article 6, Chapter 6.1 of the village's zoning ordinance.
- DD. *State* shall mean the State of Michigan.
- EE. *Street* shall mean a public thoroughfare which afford the principal of access to abutting property.

FF. *Unreasonably impracticable* shall mean that the measures necessary to comply with the application requirements, the rules, or ordinances adopted pursuant to the act's that subject licensees to unreasonable risk or require such a high investment of money, time, or any other resource or asset that a reasonably prudent businessperson would not operate the marihuana establishment.

Section 24. Severability. Should any provision or section, or portion thereof of this ordinance be held by a court of competent jurisdiction to be invalid, illegal, or unconstitutional, such holding shall not be construed as affecting the validity of this ordinance as a whole or of any remaining portion of such provision or section, it being hereby declared to be the intent of the electors who voted thereon that such unconstitutionality or illegality shall not affect the validity of any other part of this ordinance except that specifically affected by such holding.

Section 25. Effective Date. The effective date of the ordinance shall be ten (10) days following voter approval of the proposal and shall be codified by the village according to the usual practice.