

SEVILLE TOWNSHIP ORDINANCE NO. 2020-1111

AN ORDINANCE TO AMEND THE TOWNSHIP ZONING ORDINANCE TO REGULATE CERTAIN RECREATIONAL MARIHUANA ESTABLISHMENTS OPERATED IN ACCORDANCE WITH STATE LAW

The Township of Seville ordains:

SECTION 1. AMENDMENT OF CHAPTER IX

Chapter IX of the Zoning Ordinance is amended to add a subsection 9.3(g)(19) special land use as follows:

(19) Marihuana establishments authorized under the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, MCL 333.27951 *et seq*, subject to Section 11.9 in Districts C & D only.

SECTION 2. ADDITION OF SECTION 11.9 TO THE ZONING ORDINANCE

Chapter XI of the Zoning Ordinance is amended to add new section 11.9, which reads as follows in its entirety:

11.9 Recreational Marihuana Establishments.

a. Definitions.

The following words and phrases have the meanings ascribed to them when used in this chapter:

- (1) *Co-location or co-located* means the siting and operation of a combination of multiple establishments or establishment types at a single location.
- (2) *Designated consumption establishment* means a commercial space that is licensed by LARA and authorized to permit adults 21 years of age and older to consume marihuana products at the location indicated on the state license.
- (3) *Emergency Rules* means the emergency rules for recreational marihuana establishments issued by LARA on or about July 3, 2019.
- (4) *Excess marihuana grower* means a license issued by LARA to a person holding five class C marihuana grower licenses and licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.
- (5) *LARA* means the Department of Licensing and Regulatory Affairs and any successor department or agency within the department, including the Marihuana Regulatory Agency.
- (6) *Licensee* means a person holding a state operating license for a marihuana establishment.

- (7) *Marihuana* means all parts of the plant genus cannabis, growing or not; the seeds of that plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin. Marihuana does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from those stalks, fiber, oil, or cake, or any sterilized seed of the plant that is incapable of germination. Marihuana does not include industrial hemp.
- (8) *Marihuana establishment* means a marihuana grower, marihuana safety compliance establishment, marihuana processor, marihuana microbusiness, marihuana retailer, marihuana secure transporter, or any other type of marihuana-related business licensed by LARA under the MRTMA.
- (9) *Marihuana event organizer* means a person licensed to apply for a temporary marihuana event license under the Emergency Rules.
- (10) *Marihuana grower* means a person licensed by LARA to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.
- (11) *Marihuana microbusiness* means a person licensed by LARA to cultivate not more than 150 marihuana plants; process and package marihuana; and sell or otherwise transfer marihuana to individuals who are 21 years of age or older or to a marihuana safety compliance establishment, but not to other marihuana establishments.
- (12) *Marihuana processor* means a person licensed by LARA to obtain marihuana from marihuana establishments; process and package marihuana; and sell or otherwise transfer marihuana to marihuana establishments.
- (13) *Marihuana retailer* means a person licensed by LARA to obtain marihuana from marihuana establishments and to sell or otherwise transfer marihuana to marihuana establishments and to individuals who are 21 years of age or older.
- (14) *Marihuana secure transporter* means a person licensed by LARA to obtain marihuana from marihuana establishments in order to transport marihuana to marihuana establishments.
- (15) *Marihuana safety compliance establishment* means a person licensed by LARA to test marihuana, including certification for potency and the presence of contaminants.
- (16) *MMMA* means the Michigan Medical Marihuana Act, Initiated Law 1 of 2008, as amended, MCL 333.26424 *et seq.*
- (17) *MMMFLA* means the Michigan Medical Marihuana Facilities Licensing Act, 2016 PA 281, as amended, MCL 333.27102 *et seq.*
- (18) *MRTMA* means the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, MCL 333.27951 *et seq.*

- (19) *MRTMA rules* means rules, including emergency rules, promulgated by LARA to implement the MRTMA.
- (20) *Prequalification step* or *prequalified* means the portion of the application for a state operating license pertaining to the applicant's financial background and the criminal history of the applicant and other associated persons, as provided by Emergency Rule 6.
- (21) *Stacked grower license* means more than 1 state operating license issued to a single licensee to operate as a grower of class C-1,500 marihuana plants as specified in each license at an establishment.
- (22) *State operating license* or, unless the context requires a different meaning, "*license*" means a license that is issued by LARA under the MRTMA that allows the licensee to operate a marihuana establishment.

b. Authorized Establishments.

- (1) *Prerequisite Authorization and special use permit required.* No person shall operate a recreational marihuana establishment in the Township without also having obtained a medical marihuana establishment license pursuant to Township ordinances and an authorization issued by the Township pursuant to the provisions of this Section and a special use permit pursuant to this Ordinance, including Section 9.3.
- (2) *Authorization and special use permit required.* No person shall operate a marihuana establishment in the Township without first obtaining a recreational marihuana establishment license pursuant to Township ordinances and an authorization issued by the Township pursuant to the provisions of this Section and a special use permit pursuant to this Ordinance, including Section 9.3.
- (3) *Number of establishments eligible for authorization.* The following numbers of recreational marihuana establishments may be authorized to operate in the Township, subject to this Ordinance:
 - A. Not more than one (1) processor;
 - B. Not more than one (1) secure transporter;
 - C. Not more than one (1) testing lab facility.

No other recreational marihuana establishments (i.e. any growers, provisioning centers, safety compliance establishments, microbusiness, retailer) other than those listed in this subsection are permitted within the Township.

- (4) *Co-location and stacked licenses.* Co-location and stacked licenses are prohibited in the Township.
- (5) *Final authorization from Township required.* A proposed establishment is not eligible to operate until the Township final authorization pursuant to subsection (c), a special use permit and all required approvals and licenses from LARA.

c. Application for Authorization.

(1) *Required Application Materials.* An application is not considered complete until all of the following are received by the Township Clerk:

- A. A nonrefundable application fee in an amount established by resolution of the Township Board.
- B. An advance of the annual administrative fee established in subsection (e)(4).
- C. A photocopy of a valid, unexpired driver's license or state issued identification card for all owners, directors, and officers of the proposed establishment.
- D. A signed application (available in the Clerk's office), which must include all of the following information and documents:
 - a) If the applicant is an individual, the applicant's name; date of birth; Social Security number; physical address, including residential and any business address; copy of government-issued photo identification; email address; one or more phone numbers, including administrative contact information;
 - b) If the applicant is not an individual, the names; dates of birth; physical addresses, including residential and any business address; copy of government-issued photo identifications; email address; and one or more phone numbers of each stakeholder of the applicant, including designation of the highest ranking representative as an administrative contact person; contact information for the administrative contact person; articles of incorporation or organization; assumed name registration; Internal Revenue Service EIN confirmation letter; copy of the operating agreement of the applicant, if a limited liability company; copy of the partnership agreement, if a partnership; names and addresses of the beneficiaries, if a trust, or a copy of the bylaws or shareholder agreement, if a corporation;
 - c) The address, tax identification number, and current zoning designations of the property on which the proposed recreational marijuana establishment will be located;

- d) The name and address of the current property owner of record of the property on which the proposed recreational marihuana establishment will be located;
- e) If the current property owner is different than the applicant (e.g. where the applicant has a lease, option, land contract, or other future interest in the property), the property owner's signature is required in addition to the applicant's signature.
 - a. An applicant may submit applications for multiple properties.
 - b. However, only one application shall be submitted per proposed recreational marihuana establishment property.
- f) The proposed establishment type;
- g) A complete list of all marihuana permits and licenses held by the applicant including pre-qualification letter issued by LARA;
- h) Written consent for the Township to inspect the establishment at any time during normal business hours to ensure compliance with applicable laws and regulations;
- i) A location area map of the proposed marihuana establishment and surrounding area that identifies the relative locations and the distances (closest property line to the subject marihuana establishment's building) to the closest real property comprising a public or private elementary, vocational, or secondary school;
- j) Access to all documents, upon request from township, submitted by the applicant to LARA in connection with the application for a state operating license under the MRTMA (including documents submitted for prequalification);
- k) Access to all documents, upon request from township, submitted by the applicant to LARA in connection with the application for a state operating license under the MMFLA, if applicable;
- l) Any other information reasonably requested by the Township relevant to the processing or consideration of the application.

(2) *Initial receipt period set by resolution.* The Township shall establish an initial receipt period that will commence on November 27, 2020 and will end on December 4, 2020.

(3) *Clerk action upon receipt.* The Clerk will accept and receive any complete application that includes the information and documents required by subsection (c)(1), unless the Township has already received an application for the same property from another applicant. Upon receiving a complete application, the Clerk will time- and date-stamp the application and inform the applicant of the following:

- A. The number of existing establishments of the proposed establishment type currently operating within the Township;
- B. The number of pending applications for the desired establishment type; and
- C. The process by which an applicant will be selected.

(4) *Conditional authorization and random selection process.* The Clerk will conditionally authorize establishments as follows:

- A. If, after close of business on the end date of the initial receipt period, the Township has received more applications for a given establishment type than would be permitted under subsection (b) (2), the Township will decide among competing applications by a competitive process intended to select applicants who are best suited to operate in compliance with the MRTMA in the Township. The Township will provide applicants with twenty-one (21) calendar days' notice that the applicants must provide supplemental written information and documentation to the Township indicating whether the applicant satisfies each of the following criteria:

Scoring category	Available points
Background of the applicant, including past ownership interest in a business or businesses operating in the State of Michigan; past compliance with business licensing requirements, including marihuana business licenses issued by LARA; current medical marihuana facility and/or recreational marihuana establishment license status in the Township; history of compliance with Township and state regulations associated with existing marihuana facility or establishment licenses held in the Township and residency in the Township, county, or region.	Twenty (20) points
Human resources, including the number of full-time equivalent employees; the percent of such employees that are residents of the Township; and the proposed minimum rate of pay for all employees.	Twenty (20) points
Physical investment, including the applicant's proposed tangible capital investment; the current and proposed condition of the proposed location; and the applicant's ownership stake in the physical location of the establishment.	Twenty (20) points
Area impact, including the proximity of the establishment to properties zoned or used residentially; and plans for litter control, loitering, neighborhood outreach, noise mitigation, odor mitigation, resident safety, and traffic mitigation.	Ten (10) points

Business operations, including a business plan; charitable giving plan; financing plan; marketing and promotion plan, with an emphasis on reducing exposure to minors; and strategic plan.	Ten (10) points
Establishment design, including the provision of glazing, landscaping, and screening above Township minimum requirements; the use of durable building materials; compliance with the Americans with Disabilities Act; and implementation of Crime Prevention Through Environmental Design (CPTED) principles.	Ten (10) points
Energy efficiency, including Energy Star certification; Michigan Energy Code compliance; use of energy from carbon-free sources; and use of WaterSense fixtures.	Five (5) points
Infrastructure impact, including the utilization of green infrastructure or low-impact development design principles to manage stormwater; and the provision of non-motorized transportation infrastructure in excess of Township requirements.	Five (5) points

- B. Upon timely receipt of the supplemental information described in subparagraph (A), the Township Board or its designees shall assign points for the criteria that are satisfied pursuant to the chart in subparagraph (A) and shall, based on the resulting scores, select applicants who are best suited to operate in compliance with the MRTMA in the Township. The Township shall notify the selected applicants that they have been granted conditional authorization. In the event of a tie score, the Township Board or its designee shall select the applicant who, based on the totality of the circumstances, the Township finds is best suited to operate in compliance with the MRTMA the Township.
- C. If an applicant does not timely submit the supplemental information described in subparagraph (A), then the application shall be discarded and shall not be considered under subparagraph (B).
- D. For any establishment type not subject to the competitive process, the Clerk will conditionally authorize establishments in the order in which applications are received.
- E. Once the Clerk has issued conditional authorizations for all of the establishments of a given establishment type that would be permitted under subsection (b)(2), the Clerk will place subsequent applications at the end of the waiting list for that establishment type. Applications shall be included on the waiting list in the order designated by the Township Board or its designees under subparagraph (2).

(5) *Final authorization.* The Clerk will grant final authorization for the establishment if the applicant:

- A. Submits the paperwork for the establishment -specific step of the application for a state operating license to LARA within 30 days of receiving conditional authorization;
- B. Submits an application for special use authorization pursuant to the Township Zoning Ordinance within 30 days of receiving conditional authorization; and

- C. Obtains special use authorization within 6 months of receiving conditional authorization.
- D. Receives all required operating licenses and approvals from LARA within 18 months after conditional authorization is granted;

(6) *Expiration of conditional authorization.* If the applicant for a conditionally authorized establishment fails to satisfy any of the deadlines established above, the conditional authorization will expire. The Township Board may extend any of the deadlines upon a showing of good cause.

(7) *Waiting list and refund of administrative fee.* The Clerk will keep and maintain the waiting lists established pursuant to subsection (E) until the maximum number of establishments of the type to which the list pertains are operating in the Township (at which time the Clerk will discard the waiting list). If a conditional authorization for a proposed establishment of that establishment type expires, the Clerk will conditionally authorize the next application on the waiting list. Upon discarding the waiting list, the Clerk will refund the advance of the annual administrative fee to all applicants remaining on the waiting list.

(8) *Newly available authorizations.*

- A. For establishment types for which the maximum number of establishments specified in subsection (b)(2) are operating in the Township, an authorization will become available when:
 - a) The state operating license for an establishment with final authorization expires or is revoked by LARA; or
 - b) This Ordinance is amended to authorize additional establishments of that establishment type.
- B. When an authorization becomes available as described in subsection (A), the Township Clerk will select a date within the next 60 days on which the Township will begin accepting applications from interested persons, and will publish notice of the selected date in a newspaper of general circulation.
- C. On the selected date, the Clerk will begin accepting applications using the same process described above. If multiple applications are received on that date, the Township Board or its designee will request supplemental information and conduct a competitive selection process as outlined above.

d. Relocation of Establishments, Transfers of Licenses.

(1) An existing establishment may be moved to a new location in the Township, subject to applicable zoning district regulations, prior Township Board approval, and approval by LARA. In deciding whether to approve a new location for an existing establishment, the Township Board shall consider the following nonexclusive factors:

- A. The impact of the establishment's new location on traffic, parking, public safety, noise, and aesthetics;
- B. The impact of the establishment's new location on the community as a whole; and
- C. The existing establishment's compliance with Township ordinances and with state law and administrative rules.

(2) A license for an existing establishment may be transferred to a new licensee that intends to continue operating at the same location, subject to approval by the Township Board and LARA.

e. General Regulations.

(1) *Submission of supplementary information to the Township.* Applicants for Township authorization and persons operating existing establishments in the Township must provide the Township Clerk with copies of all documents submitted to LARA in connection with the initial license application, subsequent renewal applications, or investigations conducted by LARA. The documents must be provided to the Township within 7 days of submission to LARA, and may be submitted electronically to the Township unless otherwise requested by the Clerk.

(2) *Compliance with applicable laws and regulations.* Recreational marihuana establishments must be operated in compliance with the MRTMA, MRTMA administrative rules, all conditions of the establishment's state operating licenses, state laws or regulations, and all applicable Township ordinances. Compliance with the foregoing does not create immunity from prosecution by federal authorities or other authorities of competent jurisdiction.

(3) *No consumption on premises.* No smoking, inhalation, or other consumption of marihuana shall take place on or within the premises of any establishment. It shall be a violation of this chapter to engage in such behavior, or for a person to knowingly allow such behavior to occur. Evidence of all of the following gives rise to a rebuttable presumption that a person allowed the consumption of marihuana on or within a premises in violation of this section:

- A. The person had control over the premises or the portion of the premises where the marihuana was consumed;
- B. The person knew or reasonably should have known that the marihuana was consumed; and
- C. The person failed to take corrective action.

(4) *Annual fee.* A licensee must pay a fee of \$5,000, for each license used within the Township in order to help defray administrative and enforcement costs. The initial annual fee(s) must be paid to the Township Clerk when the application for Township approval is submitted. In each subsequent year, fees are due on the date on which the licensee submits an application to LARA for renewal of the state operating license. The amount of the annual fee may be reduced by resolution of Township Board, without an amendment to this Ordinance.

(5) *Screening*. Establishments shall be sufficiently screened or buffered with a fence, wall, or landscape screen to minimize light spillage, odor, and noise (including noise associated with truck traffic or other machinery), affecting adjacent properties.

(6) *Disposal*. Special use applicants must provide a plan for the storage and disposal of marihuana or chemicals associated with marihuana cultivation, so as to minimize the risk of theft or harm resulting from chemical exposure.

(7) *Storage*. No marihuana may be stored overnight outside of an enclosed building. By way of example and without limitation, it is unlawful to store marihuana overnight in an outdoor waste bin or a secure transport vehicle parked outdoors.

(8) *Signage*. Signage for marihuana establishments may be approved pursuant to the generally applicable procedures and standards provided in, with the additional restriction that establishment signage may not depict marihuana, marihuana-infused products, or marihuana-related paraphernalia.

(9) Marihuana establishments must control and eliminate odor as follows:

- A. The building must be equipped with an activated air scrubbing and carbon filtration system for odor control to ensure that air leaving the building through an exhaust vent first passes through an activated carbon filter and air scrubbing system.
- B. The filtration system must consist of one or more fans, activated carbon filters and be capable of scrubbing the air prior to leaving any building. At a minimum, the fan(s) must be sized for cubic feet per minute (CFM) equivalent to the volume of the building (length multiplied by width multiplied by height) divided by three. The filter(s) shall be rated for the applicable CFM.
- C. The air scrubbing and filtration system must be maintained in working order and must be in use at all times. The filters must be changed per manufacturers' recommendation to ensure optimal performance.
- D. Negative air pressure must be maintained inside the building.
- E. Doors and windows must remain closed, except for the minimum time length needed to allow people to ingress or egress the building.
- F. An alternative odor control system is permitted if the special use applicant submits a report by a mechanical engineer licensed in the state of Michigan sufficiently demonstrating that the alternative system will eliminate odor as well or better than the air scrubbing and carbon filtration system otherwise required.

(10) *Spacing*. The following minimum-distancing regulations apply:

- A. An establishment may not be located within 1,000 feet of a public or private K-12 school or a college or university.
- B. A grower facility, processor center, or safety compliance lab may not be located within 50 ft from the adjacent property line unless a signed waiver from the adjacent property owner is in place.

(12) *Processor Specific Regulations.* The following requirements apply to processors:

- A. Cultivation must be conducted in a manner to minimize adverse impacts on sanitary sewer systems.

(14) *Special Use Permit Specific to Applicant.*

- A. Any special use permit granted for a marihuana establishment is unique and specific to the applicant and does not run with the land. The special use permit may be transferred to another recreational marihuana establishment only with Township approval and subject to subsection (d).

f. Violations; Remedies; Revocation.

Notwithstanding any other provision in this Zoning Ordinance to the contrary, penalties for violations of this subsection shall be as follows:

(1) If at any time an establishment violates the Zoning Ordinance, any condition imposed through a special use permit, or any other applicable Township ordinance or state law or regulation, the Township may take any or all of the following actions:

- A. The Township may request that LARA revoke or refrain from renewing the establishment’s state operating license.
- B. Following notice and a public hearing, the Township may revoke the establishment’s special use permit.
- C. The Township may treat the violation as a municipal civil infraction, for which each day the violation continues will be a separate offense, and impose the following fines:

First violation = \$500

Second offense = \$2,500

Each subsequent offense = \$5,000

- D. The Township may seek other appropriate and proper remedies, including actions in law or equity.

SECTION 3. VALIDITY AND SEVERABILITY.

Should any portion of this Ordinance be found invalid for any reason, such holding shall not be construed as affecting the validity of the remaining portions of this Ordinance.

SECTION 4. REPEALER.

All other ordinances inconsistent with the provisions of this Ordinance are hereby repealed but only to the extent necessary to give this Ordinance full force and effect.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall be published and take effect seven days after publication as provided by law.

Approved this 11th day of November, 2020.

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