

## **CHAPTER 13**

### **STATE-LICENSED MARIHUANA FACILITIES**

#### **13.01 Short Title**

This Chapter shall be known and may be cited as the Township Marihuana Facilities Ordinance.

#### **13.02. Definitions.**

As used in this Chapter:

- A. “MMFLA” means the Michigan Medical Marihuana Facilities Licensing Act, Act 281 of the Public Acts of Michigan of 2016, as amended.
- B. “MMMA” means the Michigan Medical Marihuana Act, Initiated Law 1 of 2008.
- C. “MRTMA” means the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, as amended.
- D. “Applicant” means a person who applies or who has applied for a state operating license and a Township marihuana facility permit.
- E. “Grower” means a licensee that is a commercial entity that cultivates, dries, trims or cures and packages marihuana for sale to a processor or provisioning center.
- F. “Licensee” means a person holding a state operating license under the MRTMA, MMFLA, or both.
- G. “Marihuana” means that term as defined in Section 7106 of the Michigan Public Health Code.
- H. “Marihuana Facility” means a licensee’s location and operations under the licensee’s state operating license. For purposes of this ordinance, it includes a “marihuana establishment” as defined by the MRTMA.
- I. “Marihuana Facility Permit” means a permit issued by the Township under this Ordinance.
- J. “Marihuana Retailer” means a person licensed 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.
- K. “Person” means an individual, corporation, limited liability company, partnership, limited partnership, limited liability partnership or other legal entity.
- L. “Processor” means a licensee that is a commercial entity that purchases marihuana from a grower and that extracts resin from the marihuana or creates a marihuana-infused product for sale and transfer in packaged form to a provisioning center or other marihuana establishment.
- M. “Provisioning Center” means a licensee under the MMFLA that is a commercial entity that purchases marihuana from a grower, processor or Registered Primary Caregiver, and sells, supplies or provides marihuana to registered qualifying patients, directly or through the patients’ registered

primary caregivers. Provisioning center includes any location at which marihuana is sold at retail to registered, qualifying patients, registered primary caregivers or any other person. A location used by a registered primary caregiver to assist a qualifying patient is not a provisioning center for purposes of this ordinance.

- N. “Registered Primary Caregiver” means a primary caregiver who has been issued a current registry identification card under the MMMA.
- O. “Registered Qualifying Patient” means a qualifying patient who has been issued a current registry identification card under the MMMA.
- P. “Rules” means the permanent or emergency rules promulgated under the Michigan Administrative Procedures Act, to implement the MMFLA or MRTMA.
- Q. “Safety Compliance Facility” means a licensee that is a commercial entity that receives marihuana from a marihuana facility or registered primary caregiver, and tests it for contaminants and other adverse substances; returns the test results to the party requesting the testing; and may return the tested marihuana to the marihuana facility that submitted the marihuana.
- R. “Secure Transporter” means a licensee that is a commercial entity that stores marihuana and transports marihuana between marihuana facilities for a fee.
- S. “State Operating License” means a license that is issued under the MRTMA or MMFLA that allows the licensee to operate as one of the following, specified in the license: a grower, processor, securer transporter, provisioning center, marihuana retailer, or safety compliance facility.
- T. “Statewide Monitoring System” means the Internet-based, statewide database established and maintained by the State Department of Licensing and Regulatory Affairs under the Michigan Marihuana Tracking Act, Act 282 of the Public Acts of Michigan of 2016, as amended, for the purpose of enabling authorized parties and agencies to confirm or verify relevant information with respect to medical marihuana uses authorized by the MMFLA.

### **13.03 Authorized Marihuana Facilities.**

- A. The following types of marihuana facilities may be established and operated by a licensee in the Township, subject to compliance with the MMFLA and MRTMA, the Rules promulgated thereunder and this ordinance, and only if also permitted under the terms of the Township zoning ordinance:
  - 1) Class A Grower.
  - 2) Processor.
  - 3) Safety compliance facility.
  - 4) Secure transporter.
  - 5) Provisioning center.
  - 6) Marihuana retailer.

- B. On-premise consumption as a Designated Consumption Establishment or for a Temporary Marihuana Event pursuant to the rules of the MRTMA are prohibited anywhere within the Township.
- C. Not more than a combined total of 2 provisioning centers and/or marihuana retailers (not 2 of each) are permitted in that portion of the existing C-2 district abutting M-120, and not more than a combined total of 2 provisioning centers and/or marihuana retailers (not 2 of each) are permitted in the existing C-2 district abutting Whitehall Road. A provisioning center and marihuana retailer operating in the same building shall be treated as one facility or establishment. The permitted locations shall be allocated on a first come, first served basis to facilities or establishments which have and maintain the appropriate State licensing and any Township license, and which have received a land use permit and site plan review, if applicable, and any other Township zoning approval required. Land use approval may be given contingent upon receipt of a State and Township license. Priority for the number of permitted locations shall, if necessary, be based upon the issue date of the State license. Otherwise, there is no limit on the number of Safety Compliance Facilities, Processors, Class A Growers or Secure Transporters permitted within the Township if located within those areas permitted by zoning for those facilities.
- D. A marihuana facility shall be established and operated only by a person who has been issued a state operating license. The facility shall be operated only so long as the state operating license remains in effect and only in accordance with the terms of the license.
- E. A marihuana facility shall be established only by a person who has been issued a Township permit under the terms of this ordinance. The facility shall be operated only so long as the Township permit remains in effect and only in accordance with the terms of the permit.
- F. A marihuana facility shall be established and operated only in a zone or overlay zone district that permits that type of marihuana facility specifically by name as defined herein under the terms of the Township zoning ordinance. A marihuana facility may not be operated at a location pursuant to any use variance or as a lawful non-conforming use.
- G. A marihuana facility shall comply with the applicable provisions of the Township construction codes. Permits under such codes shall be secured if required.
- H. A marihuana facility shall not be a home occupation under the terms of the zoning ordinance.

#### **13.04 Township Marihuana Facility Permit.**

- A. A marihuana facility shall operate in the Township only upon obtaining a state operating license and a marihuana facility permit from the Township.
- B. A Township marihuana facility permit shall be valid only so long as the facility's state operating license is in effect.
- C. A facility shall operate only so long as the Township permit is in effect and only in accordance with the terms of the permits and this ordinance.

- D. A facility shall operate only in a zone or overlay zone district which permits that marihuana facility specifically by that name.
- E. A facility shall operate only on property and at the address specified in the licensee's permit.
- F. A facility shall operate in accordance with the MRTMA, the MMFLA, the rules, and any applicable provisions of the Township zoning ordinance or conditions on zoning approval.

### **13.05 Zoning Ordinance Provisions.**

- A. The Township zoning ordinance shall specify the zone districts or overlay district or portion thereof in which a marihuana facility may be located and operated by making specific reference to the name of the facility as defined in this ordinance. A marihuana facility shall not be established or operated in any zone district which does not permit it by making specific reference to the name of the facility as defined in this ordinance.
- B. The zoning ordinance shall include provisions on all relevant land use aspects of each type of marihuana facility. A marihuana facility, licensee and permit holder shall comply with all such applicable provisions.

### **13.06 Township Marihuana Facility Permits.**

- A. A marihuana facility shall be established and operated in the Township only if permitted under the terms of this ordinance.
- B. A person shall apply for a marihuana facility permit on a Township application form and shall pay any application fee prescribed by resolution from time to time, and shall make any required escrow deposit, toward payment of Township expenses in the matter, at the time of application.
- C. The application shall include the following information and other submittals, and such other information as the Township may require in order to verify compliance with the MMFLA, MRTMA, the Rules and this ordinance:
  - 1) The applicant's name, home and business address, e-mail address (if any), and telephone number(s).
  - 2) The address, legal description and permanent parcel number of the property on which the marihuana facility is proposed to be located.
  - 3) The name and address of the owner of record of the property on which the marihuana facility is to be located, if not owned by the applicant, and a signed copy of the lease or other legal instrument whereby the owner has permitted the applicant to establish and operate the proposed marihuana facility on the property.
  - 4) The type of marihuana facility which the applicant proposes.
  - 5) A copy of the applicant's current state operating license.
  - 6) A land use permit, which may have been conditioned on issuance of a State or Township license.

- D. The application shall be submitted to the Township clerk. It shall be subject to the clerk's approval, consistent with this ordinance, the MMFLA, MRTMA and the Rules.
- E. Upon receiving an application, the clerk shall review it to determine whether it is complete under the terms hereof and the MMFLA or MRTMA (as applicable) and the Rules. If it is not complete, the clerk shall return the application, the application fee and any escrow deposit to the applicant. An incomplete application that is returned by the clerk shall not be deemed submitted and shall not have precedence of consideration over any other application.
  - 1) If an application is deemed complete, the Clerk shall accept the application and assign it a sequential application number by facility type, based on the date and time of acceptance. The clerk shall act to approve or deny an application not later than fourteen (14) days from the date the application was accepted.
  - 2) The clerk shall issue marijuana facility licenses in order of the sequential application number assigned.
- F. The clerk shall approve an application, deny it, or approve it with conditions in the permit necessary to verify or assure compliance with this ordinance and the Act. In considering issuance of a permit, the clerk shall apply the following standards:
  - 1) The marijuana facility shall comply with the MRTMA, MMFLA, other applicable state laws and the Rules, and have a valid, current state operating license.
  - 2) The marijuana facility shall comply with this ordinance.
  - 3) The location of the marijuana facility shall comply with applicable provisions of the Township zoning ordinance and shall have obtained a land use permit.
- G. If the application is approved, the clerk shall issue a marijuana facility permit to the applicant on a Township permit form for such purpose, after the applicant has paid a marijuana facility fee established by resolution of the Township Board from time to time for the one-year duration of the permit. If the applicant has not paid the facility fee within 10 days after written notice that the application has been approved, the application shall no longer be approved, and the applicant shall be notified in writing accordingly. The permit shall include terms and conditions consistent with this ordinance, any conditions imposed by the clerk, and such other provisions as are relevant to the type of marijuana facility, the location thereof and anticipated operations.
  - 1) If the application is denied, the clerk shall so inform the applicant by letter, which shall include the reasons for the denial.

- 2) An applicant shall have the right to appeal a permit denial to the Township Board as follows:
  - (a) The appeal shall be submitted in writing and shall state the grounds for appeal and other relevant information the applicant may include. The written appeal shall be submitted not later than 10 days after the date of the clerk's written denial of the application; if the written appeal is not received by the clerk by that time, the right of appeal shall have lapsed and be of no further effect.
  - (b) The applicant's appeal and any supporting materials shall be submitted to the clerk, who shall forward the same to the Township Board, together with copies of the denied application, the letter stating the grounds for denial of the application and other relevant materials in the Township's file on the matter. The clerk may include a memorandum to the Township Board stating the clerk's response to the stated grounds for the appeal.
  - (c) The applicant's appeal shall be scheduled to be heard at a Township Board meeting. The applicant shall be given at least 10 days' written notice of the date, time and place for the hearing of the appeal. At the appointed time, the applicant may address the Board concerning the appeal. The Township Board shall render its decision on the appeal by adopting a motion or resolution affirming or reversing, in whole or in part, the decision of the clerk. The written decision on the appeal, whether by motion or resolution, shall be forwarded to the applicant.

H. The permit shall be for a period not longer than one year.

I. The permit shall be renewable annually. A permit holder desiring renewal shall apply for the same by completing a Township form for such purpose, shall pay any required renewal fee in the amount of the annual marihuana facility fee, or in an amount otherwise established by resolution of the Township Board, and shall make any required escrow deposit for reimbursement of Township expenses in the matter.

- 1) With the renewal application, the applicant shall submit either a revised site plan, if any of the elements of the previously submitted site plan have changed, or otherwise the applicant shall submit a statement that the previous site plan remains accurate as to the matters depicted therein.
- 2) The clerk shall consider the renewal application in the same manner and under the same requirements as for an original application, except that in considering the renewal, the clerk may consider any violations on the part of the applicant during the previous period of the permit.

- 3) The clerk shall approve the renewal application, reject it or approve it with conditions. If approved, a new permit, for a period of one year, shall be issued to the applicant. If rejected, the clerk shall state the grounds thereof in a letter to the applicant. Any such rejection shall be appealable to the Township Board.
  - 4) Upon receiving a renewed permit, the applicant shall pay to the Township the annual marihuana facility fee. The renewed permit shall not be valid until the fee is paid.
- J. By accepting a permit, the applicant shall consent to inspection of the applicant's marihuana facility by Township officials and/or by the Muskegon County Sheriff's Department, upon reasonable notice, to verify compliance with this ordinance and the MMFLA or MRTMA (as applicable) and the Rules.

### **13.07 Violations and Penalties.**

- A. A violation of this ordinance is a municipal civil infraction, for which the fines shall be not less than \$250 for the first violation and not less than \$500 for a subsequent violation, and in addition to all other costs and expenses provided by law. For purposes of this Section, a subsequent offense means a violation of the provisions of this ordinance committed by the same person within six months of a previous violation of the same provision for which the person admitted responsibility or was determined to be responsible.
- B. Each day during which any violation continues shall be deemed a separate offense.
- C. In addition, the Township may seek injunctive relief against persons alleged to be in violation of this ordinance, and such other relief as may be provided by law.
- D. The Township Supervisor and designated ordinance enforcement officer are authorized to issue municipal civil infraction citations for any violation of a provision of this ordinance if the officer has reasonable cause to believe that an infraction has occurred, based upon personal observation or on the report of a person who has allegedly witnessed the infraction.
- E. If a citation is based solely on the complaint of a person who allegedly witnessed the violation, and not upon the personal observation of the enforcement officer, then the citation shall be approved in writing by the Township attorney.
- F. Citations shall be numbered consecutively and shall be in a form approved by the State Court Administrator's Office.
- G. Citations shall be served on the alleged violator as provided by law.
- H. Citations shall require an appearance at the district court within a reasonable time after the citation has been issued.
- I. The procedures for the admission or denial of responsibility, request for informal or formal hearings and all other matters relating to processing of citations for civil infractions shall be as provided by law.

### **13.08 Revocation of Permit.**

- A. A marihuana facility permit may be revoked by the clerk for noncompliance with the MMFLA, MRTMA, other applicable state laws, the Rules, this ordinance, the zoning ordinance or any conditions of zoning approval, or

other applicable Township ordinances. Such revocation shall be in addition to the available remedies under Section 8.

- B. It is the intention of the Township's provisions for marihuana retailers and provisioning centers in this ordinance and the zoning ordinance, that no person shall obtain a license and land use approval for a location and not operate at that location, thus preventing its use not only for marihuana facilities, but for other types of commercial businesses within the Township's limited commercial areas. Accordingly, a Township license for a provisioning center or marihuana retailer shall be subject to revocation by the Township if the facility is not operational as such a facility within 90 days after issuance of a State license at a location which has an existing building, or 180 days if a new building is under active construction, or thereafter if the facility is closed for a continuous period of 30 days.
- C. The clerk shall give written notice to the permit holder of the clerk's intent to revoke the permit. The notice shall state the reasons for the proposed revocation. The notice shall state that the applicant may attend a hearing before the clerk, and may be heard, as to the revocation. At least 10 days' notice of the hearing shall be given; the notice shall state the date, time and place of the hearing. At or prior to the hearing, the applicant may submit written comments with respect to the proposed revocation.
- D. Following the hearing, the clerk may, in writing, revoke the permit, elect not to revoke the permit or may impose additional terms and conditions in the permit for the purpose of gaining compliance as to the matters for which revocation was considered.
- E. The revocation of a permit shall not entitle the permit holder to any refund of the annual marihuana facility fee or other fees or charges paid under the terms of this ordinance; any unused escrow deposit amounts shall be returned.
- F. A permit holder may appeal the revocation of a permit to the Township Board, by filing a written appeal with the clerk within 10 days after the clerk has issued the written revocation, but there shall be no appeal after such period of time. The hearing of the appeal and the notice thereof shall be carried out under the same procedures and with the same notice as is provided in this ordinance for an appeal of a denial of a marihuana facility application.

### **13.09 Severability.**

In the event that any provision of this ordinance is held to be invalid, such holding shall not affect the validity or enforceability of any of the remaining provisions of this ordinance.

### **13.10 Repeal.**

All resolutions or ordinances, and parts thereof, which are in conflict, in whole or in part, with any of the revisions of this ordinance are hereby repealed.

### **13.11 Codification.**

This ordinance may be incorporated into the Dalton Township Code of Ordinances, and in so doing, the various sections and subsections of this ordinance may be altered so as to appropriately merge within the format and numbering scheme of the Dalton Township Code of Ordinances.

Publication/Effective Date. A summary of this ordinance shall be published in a newspaper of general circulation in the Township, within 30 days after adoption. This ordinance shall take effect March 23, 2021.