

**Benton Charter Township  
Berrien County, Michigan  
Zoning Ordinance No. 2019-001**

**MEDICAL MARIHUANA FACILITIES ORDINANCE**

An ordinance to provide a title for the ordinance; to define words; to authorize the operation of and provide regulations for medical marihuana facilities in Benton Charter Township, pursuant to Public Act 281 of 2016, as amended; to provide for an annual fee; to provide penalties for violation of this ordinance; to provide for severability; to repeal all ordinances or parts of ordinances in conflict therewith and to provide an effective date.

**Benton Charter Township  
Berrien County, Michigan  
Ordains:**

**Section 18-400. Title**

This ordinance shall be known as, and may be cited as, the **Benton Charter Township Medical Marihuana Facilities Ordinance**.

**Section 18-401. Definitions**

If there is a conflict between the words used herein, the definitions as provided for in PA 281 of 2016 (MMFLA), as amended shall control. Any definitions included in MMFLA but not enumerated below shall be considered a part of this Ordinance by adoption.

***Application*** means an application for a permit pursuant to this ordinance and includes all supplemental documentation attached or required to be attached thereto; the person filing the application shall be known as the “applicant.”

***Board or Township Board*** means the Township Board of Benton Charter Township.

***Department*** means the Michigan State Department of Licensing and Regulatory Affairs or any subsequent entity formed by the State of Michigan to regulate medical marihuana.

***Grower*** means a licensee that is a commercial entity located in this state that cultivates dries, trims, or cures and packages marihuana for sale to a processor or provisioning center.

***License*** means a current and valid license for a commercial medical marihuana facility issued by the State of Michigan.

***Licensee*** means a person holding a state operating license under the MMFLA.

***Marihuana*** means that term as defined in section 7106 of the public health code, 1978 PA 368, MCL 333.7106.

***Medical marihuana facility(ies)*** means any facility, establishment and/or provisioning center that is required to be licensed under the ordinance and the MMFLA, including a grower, processor, safety compliance facility, and secure transporter.

***MMFLA*** means the Medical Marihuana Facilities Licensing Act, MCL 333.2701, et seq. as amended.

***MMMA*** means the Michigan Medical Marihuana Act, MCL 333.26421, et seq. as amended.

***Person*** means an individual, corporation, limited liability company, partnership, limited partnership, limited liability partnership, or any other legal entity.

***Processor*** means a licensee that is a commercial entity located in this state 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 another processor.

***Provisioning center*** means a licensee that is a commercial entity located in this state that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualifying patients, directly or through the patients' registered primary caregivers. Provisioning center includes any commercial property where marihuana is sold at retail to registered qualifying patients or registered primary caregivers. A noncommercial location used by a primary caregiver to assist a qualifying patient connected to the caregiver through the department's marihuana registration process in accordance with the Michigan medical marihuana act is not a provisioning center for purposes of this act.

***Registered primary caregiver*** means a primary caregiver who has been issued a current registry identification card under the Michigan medical marihuana act.

***Registered qualifying patient*** means a qualifying patient who has been issued a current registry identification card under the Michigan medical marihuana act or a visiting qualifying patient as that term is defined in section 3 of the Michigan medical marihuana act, MCL 333.26423.

***Rules*** means rules promulgated under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, by the department in consultation with the board to implement this act.

***Safety compliance facility*** means a licensee that is a commercial entity that takes marihuana from a marihuana facility or receives marihuana from a registered primary caregiver, tests the marihuana for contaminants and for tetrahydrocannabinol and other cannabinoids, returns the test results, and may return the marihuana to the marihuana facility.

***Secure transporter*** means a licensee that is a commercial entity located in this state that stores marihuana and transports marihuana between marihuana facilities for a fee.

**State operating license** or, unless the context requires a different meaning, "license" means a license that is issued under this act that allows the licensee to operate as one of the following, specified in the license:

- (i) A grower
- (ii) A processor
- (iii) A secure transporter
- (iv) A provisioning center
- (v) A safety compliance facility

**State** means the State of Michigan.

**Township** means Benton Charter Township, Michigan.

### **Section 18-402. Authorized Medical Marihuana Facilities**

1. Allowed Facilities. The following medical marihuana facilities may be authorized to operate within the Township by the holder of a state operating license, subject to compliance with PA 281 of 2016, as amended, the Rules promulgated thereunder and this ordinance:
  - A. Not more than 10 total grower(s) shall be authorized in the Township, which number shall include all of the Class A, Class B, and Class C growers authorized in the Township.
  - B. Not more than 10 processor(s) shall be authorized in the Township.
  - C. No provisioning center(s) shall be authorized in the Township.
  - D. There shall be no limit on the number of safety compliance facilities authorized in the Township.
  - E. There shall be no limit on the number of secure transporters authorized in the Township.
2. Location Requirements.
  - A. A grow facility and a processor may co-locate at the same location.
  - B. A grower that has been issued a Class C license and has applied to stack licenses at a location shall make separate application to the Township for each license stacked at a location.
  - C. All growers, of whatever Class, shall be located, by application for special use only, within the Industrial Zoning designation of the Township, pursuant to the Benton Charter Township Zoning Ordinances.
  - D. All processors shall be located, by application for special use only, within the Industrial Zoning designation of the Township, pursuant to the Benton Charter Township Zoning Ordinances.
  - E. No provisioning centers shall be located within any zoning designation of the Township, pursuant to the Benton Charter Township Zoning Ordinances.
  - F. All safety compliance facilities shall be located, by application for special use only, within the Commercial Zoning designation of the Township, pursuant to the Benton Charter Township Zoning Ordinances.

- G. All secure transporters shall be located, by application for special use only, within the Light Industrial Zoning designation of the Township, pursuant to the Benton Charter Township Zoning Ordinances.
3. General Operational Requirements. Except as may be prohibited by state law or regulation, the following general requirements shall apply to all medical marijuana facilities.
- A. The facility must obtain township approval and a state license prior to opening for business.
  - B. No person shall reside in or permit any person to reside in the facility or on the permitted property.
  - C. No person under the age of 18 shall be allowed to enter into the facility.
  - D. Outdoor storage is strictly prohibited.
  - E. Discharge of toxic, flammable or hazardous materials into the Township sewer is prohibited.
  - F. All facilities shall maintain an appropriate security system at all times. Such security system must meet the state law requirements and regulations. A description of the security plan shall be submitted with the application for permit. A separate security system must be in place for each facility and must include, at a minimum, the following:
    - i. Security surveillance cameras installed to monitor and record all entrances, along with the interior and exterior of the permitted premises and all areas of the premises where persons may gain or attempt to gain access to marijuana or cash maintained by the medical marijuana facility.
    - ii. Robbery and burglary alarm systems which are professionally monitored and operated 24 hours per day, seven days per week. The security plan submitted to the Township shall identify the company monitoring alarm, including contact information, and must be updated within 72 hours of any change of monitoring company.
    - iii. A locking safe or other secure device (approved by the Township) permanently affixed to the location that shall store any processed marijuana and all cash remaining in the facility overnight. Products that must be kept refrigerated or frozen may be locked in a refrigerated container or freezer, in a manner authorized by the Township, so long as the container is affixed to the building structure.
    - iv. All marijuana, in whatever form stored at the facility, shall be kept in a secure manner and shall not be visible from outside the location, nor shall it be grown, processed, exchanged, displayed, or dispensed outside the location.
    - v. All security recordings and documentation shall be preserved for at least 30 days by the permit holder/licensee and made available to any law enforcement officer upon request for inspection.
  - G. The amount of marijuana at the facility and under the control of the permit holder/licensee, owner, or operator of the facility shall not exceed the amount permitted by the state license or the Township's permit.

- H. Smoking or consumption of controlled substances, including marihuana, within the facility is prohibited.
  - I. All activities related to the facility must occur indoors.
  - J. The facility's operation and design shall minimize any impact to adjacent uses so as not to interfere with the reasonable and comfortable use and enjoyment of another's property, including the control of any odor by maintaining and operating an air filtration system so that no odor is detectable outside the location. Whether or not a marihuana odor emission interferes with the reasonable and comfortable use and enjoyment of another's property shall be measured against the objective standards of a reasonable person. No marihuana shall be cultivated, grown, manufactured, or processed in any manner that would emit odors beyond the interior of the premises or which is otherwise discernable to another person. The odor must be prevented by the installation of an operable filtration to ventilation and exhaust equipment. Odors must otherwise be effectively confined to the interior of the location in which the odor is generated. Venting of marihuana odors into the areas surrounding the location is deemed and declared a public nuisance. In the event that any odors, debris, dust, fluids or other substances exit a location, the owner of the location and the permit holder/licensee shall be jointly and severally responsible for immediate full clean-up and correction of such condition.
  - K. Litter and waste shall be properly removed and the operating systems for waste disposal must be maintained in an adequate manner so that they do not constitute a source of contamination in areas where medical marihuana is exposed.
  - L. Floors, walls, and ceilings shall be constructed and maintained in such a manner that they may be adequately cleaned and kept in good repair.
  - M. There shall be no other accessory uses permitted within the same location other than those associated with cultivating, processing or testing medical marihuana. Multi-tenant industrial buildings may permit accessory uses in suites segregated from each facility.
  - N. That portion of the facility where any chemicals such as herbicides, pesticides, fertilizers, etc. are stored shall be subject to the inspection and approval of the Township Fire Department to ensure compliance with the applicable fire code.
  - O. The dispensing of medical marihuana at any facility shall be prohibited. No free samples of medical marihuana shall be distributed from any facility.
  - P. Grow facilities shall not produce products other than useable medical marihuana intended for human consumption.
  - Q. All facilities shall be open for inspection during the stated hours of operation and at such other times as anyone is present at the facility. No person shall refuse entry to, or in any manner interfere with the inspection of any medical marihuana facility.
4. Application. On and after **October 1, 2019 (or January 1, 2010)** beginning at 8:30AM EST, the Township shall accept applications for authorization to operate a medical marihuana facility within the Township. Application shall be made on a Township form and must be submitted to the Township Superintendent and/or other designee of the Township Board (hereinafter referred to as "Superintendent").

The Township desires to provide for an orderly, manageable, organized, effective and efficient method to administer the receipt, review and processing of Applications. Accordingly, once the Superintendent receives a complete application, including the initial annual medical marihuana facility fee, the application shall be time and date stamped. Complete applications shall be considered for authorization by the Township Executive Committee including the Superintendent and Chief Building Official in order of receipt.

The below listed criteria shall be considered by the Township when making a determination to accept or reject the application. The Township may also take into consideration any other circumstance, issues, or conditions that are not listed below based on each individual application.

- Is the applicant prequalified by the State of Michigan
- Has the applicant already applied for prequalification
- The applicant has not applied for prequalification
- Has the applicant applied for a license in the past to either the state the Township, or other municipality and been rejected
- Does the applicant currently hold another medical marijuana facilities license in Michigan
- Does the applicant currently hold another medical marijuana facilities license in another state
- Does the applicant currently own the property where the proposed facility will be located
- Is the property where the facility will be located under a contingent purchase agreement
- The applicant does not own property/or have contract to purchase where facility is proposed
- Has the applicant applied for applicable zoning/site plan approval
- If the applicant has not applied, are they currently in possession of a professional site plan
- Is the applicant currently a local business owner in the Township
- Has the applicant had past ordinance violations in Township
- Does the applicant have any plans for community outreach/education
- Does the applicant have charitable plans and strategies

Criteria based on type of facility

- Square footage of facility
- Number of anticipated employees
- Plans for training and education of employees
- Total Amount of Anticipated Investment

Upon evaluation of the above criteria, if the facility type authorization is available within the number specified above, and the applicant meets all requirements of this ordinance, then the applicant may receive conditional authorization to operate such medical marihuana facility within the Township. Once the limit on the number of authorized facilities is conditionally reached, then any additional complete applications shall be held in consecutive time and date stamped order for future consideration of conditional authorization. Any applicant waiting for future conditional authorization may withdraw their

submission by written notice to the Superintendent at any time and receive a refund of the initial annual medical marijuana fee submitted.

5. Denial of Application. The Superintendent shall reject any application that does not meet the requirements of MMFLA, MMMA, or this ordinance, or any pertinent provision of any State of Michigan or Benton Township laws, rules or regulations. An applicant is ineligible to receive a license under this ordinance if any of the following circumstances exist regarding a true party of interest of the applicant.
  - A. Conviction of or release from incarceration for a felony under the laws of the State of Michigan, or any other state or the United States within the past ten years or conviction of a controlled substance related to felony within the past ten years.
  - B. Within the past five years, conviction of a misdemeanor involving a controlled substance, theft, dishonesty, or fraud in any state or been found responsible for violating a local ordinance in any state involving a controlled substance, dishonesty, theft, or fraud that substantially corresponds to a misdemeanor in that state.
  - C. The applicant has knowingly submitted an application for a license that contains false, misleading, or fraudulent information, or who has intentionally omitted pertinent information for the application for a license.
  - D. The applicant is a member of the board.
  - E. The applicant fails to provide and maintain adequate premises liability and casualty insurance for its proposed medical marijuana facility.
  - F. The applicant holds an elective office of a governmental unit of this state, another state, or the federal government; is a member of or employed by a regulatory body of a governmental unit in this state, another state, or the federal government; or is employed by a governmental unit of this state. This subdivision does not apply to an elected officer of or employee of a federally recognized Indian tribe or to an elected precinct delegate.
  - G. The applicant fails to meet other criteria established by state-issued rule.
6. Denial of Application by Superintendent; Due Process. Any applicant whose application is denied due to missing, incomplete, erroneous, false, misleading, or negligent information or because of a lack of submission of full fees due, does not have a right to appeal the decision.

Those applicants denied a license based on qualifications, may appeal the decision.

- A. The applicant must submit a written request for appeal that includes detailed information and all supporting documentation for all points they wish to have the Township Executive Committee, including the Superintendent, to consider. The Township Executive Committee shall hear and decide questions or requests for due process that arise and make a decision upon the claim in writing.

- B. Should the applicant request a further appeal, the applicant may file an appeal with the Township Board as set out in Section 18-405 of this ordinance, within 15 days of the decision of the Township Executive Committee.
7. State Application. Prior to receiving conditional authorization of the Township, the applicant must submit proof to the Superintendent that the applicant has applied for prequalification from the state for a state operating license or has submitted full application for such license. If the applicant fails to submit such proof, then such conditional authorization shall not be granted by the Superintendent.
8. Denial by State. If a conditionally authorized applicant is denied prequalification for a state operating license or is denied on full application for a state operating license, then such conditional authorization will be canceled by the Superintendent and the conditional authorization shall be available to the next qualified applicant as provided herein.
9. Full Authorization. A conditionally authorized applicant shall receive full authorization from the Township to operate the medical marihuana facility within the Township upon the applicant providing to the Superintendent proof that the applicant has received a state operating license for the medical marihuana facility in the Township and if the applicant has met all other requirements of this ordinance for operation including but not limited to any zoning approval for the location of the facility within the Township.
10. Deadline to Obtain Authorization. If a conditionally authorized applicant fails to obtain full authorization from the Township within one year from the date of conditional authorization, then such conditional authorization shall be canceled by the Superintendent and the conditional authorization shall be available to the next qualified applicant as provided herein. The Superintendent shall have authority to extend the deadline to obtain full authorization for up to an additional six months on written request of the applicant within thirty days prior to cancellation, upon the reasonable discretion of the Superintendent finding good cause for the extension.

**Section 18-403. General Regulations Regarding Authorized Medical Marihuana Facilities**

1. An authorized medical marihuana facility shall only be operated within the Township by the holder of a state operating license issued pursuant to PA 281 of 2016, as amended, and the Rules promulgated thereunder. The facility shall only be operated as long as the state operating license remains in effect.
2. Prior to operating an authorized medical marihuana facility within the Township pursuant to a state operating license, the facility must comply with all Township zoning regulations. The facility shall only be operated as long as it remains in compliance with all Township zoning ordinance regulations. A facility in violation of any Township regulations or ordinances may not operate in the Township, regardless of the state operating license then in effect.



3. Prior to operating an authorized medical marihuana facility within the Township pursuant to a state operating license, the facility must comply with all Township construction and building ordinances, all other Township ordinances specifically regulating medical marihuana facilities, and generally applicable Township police power ordinances. The facility shall 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.
4. An authorized medical marihuana facility shall consent to inspection of the facility by Township officials, the Benton Township Police Department and/or by the Berrien County Sheriff's Department, upon reasonable notice, to verify compliance with this ordinance.
5. If at any time an authorized medical marihuana facility violates this ordinance, the Township Board may request that the state revoke or refrain from renewing the facility's state operating license. Once such state operating license is revoked or fails to be renewed, the Superintendent shall cancel the Township authorization and the authorization shall be available to the next applicant in consecutive time and date stamped order as provided herein.
6. It is hereby expressly declared that nothing in this ordinance be held or construed to give or grant to any authorized medical marihuana facility a vested right, license, privilege, or permit to continue authorization from the Township for operations within the Township.
7. 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 and/or number of authorized medical marihuana facilities authorized to operate within the Township.
8. It is the responsibility of the license holder to update the Township regarding any change of contact information for that licensee. Failure to provide such information in a timely manner may lead to the revocation of the license.

**Section 18-404. Annual Medical Marihuana Facility Fee**

1. There is hereby established an annual nonrefundable Township medical marihuana facility licensing fee in the amount of \$5,000 for each authorized medical marihuana facility within the Township to help defray administrative and enforcement costs associated therewith. An initial annual medical marihuana facility fee of \$5,000 shall be payable at the time of application for Township authorization and thereafter the same amount shall be payable each year on or before the anniversary date of full Township authorization to operate the medical marihuana facility. Such payment shall be made certified check or other verified payment.
2. The Township shall provide written notice of the annual medical marihuana facility fee to each license holder no less than 60 days prior to the due date. The fee shall be considered late if

it is not paid within 10 business days of the date when due. Failure to pay the annual medical marihuana facility fee shall result in a loss of authorization by the Township. The authorization will be canceled by the Superintendent in writing. The license holder will then have 60 days to appeal the loss of authorization to the Township Board as set out below.

3. The \$5,000 licensing fee shall be in addition to, and not in lieu of, any other licensing and/or permitting requirements imposed by any other federal, state, or Township ordinance; including but not limited to any applicable zoning or building permits.

#### **Section 18-405. Appeal to the Township Board**

1. All requests for appeal shall be in writing and must include detailed information and supporting documentation for any and all points the applicant wished the Township Board to consider, as well as accurate contact information for the applicant. Any incomplete request for appeal will be rejected by the Township Board.
2. The Township Board shall set the matter for consideration within 30 calendar days of the date of appeal and shall provide the applicant with a minimum of 5 days written notice of the date/time of such meeting. Such written notice may be by e-mail.
3. The applicant must appear at the designated Board meeting or forfeit their right to due process.
4. The Township Board may consider the matter at either a regular meeting of the Board, or at a special meeting of the Board at the discretion of the Township Executive Committee and/or Superintendent.
5. A majority vote of the members of the Township Board shall be necessary to reverse an order, requirement, decision or determination by the Township Superintendent, Executive Committee, Building Official or any other Township administrative official in the interpretation of this Ordinance.
6. The decision of the Township Board shall be final.

#### **Section 18-406. Violations and Penalties**

1. Any person who disobeys, neglects, or refuses to comply with any provision of this ordinance or who causes, allows, or consents to any of the same shall be deemed to be responsible for the violation of this ordinance. A violation of this ordinance is deemed to be a nuisance per se.
2. A violation of this ordinance is a municipal civil infraction, for which the fines shall not be less than \$100 nor more than \$500 for the first offense; and not less than \$250 nor more than \$1,000 for each subsequent offense, at the discretion of the Court. For purposes of this section, "subsequent offenses" means a violation of the provisions of this ordinance committed by the same person within 12 months of a previous violation of the same provision of this ordinance for which said person admitted responsibility or was adjudicated to be responsible. The foregoing sanctions shall be in addition to the rights of the Township to

- proceed at law or equity with other appropriate and proper remedies. Additionally, the violator shall pay costs which may include all expenses, direct, and indirect, which the Township incurs in connection with the municipal civil infraction.
3. Each day during which any violation continues shall be deemed a separate offense.
  4. 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.
  5. This ordinance shall be administered and enforced by the Ordinance Enforcement Officer of the Township or by such other person(s) as designated by the Township Board from time to time.

**Section 18-407. Severability**

The provisions of this ordinance are hereby declared to be severable. If any clause, sentence, word, section, or provision is hereafter declared void or unenforceable for any reason by a court of competent jurisdiction, it shall not affect the remainder of such ordinance which shall continue in full force and effect. The provisions herein shall be construed as not interfering or conflicting with the statutory regulations for licensing medical marijuana facilities pursuant to PA 281 of 2016, as amended.

**Section 1-408. Repeal**

All ordinance or parts of ordinances in conflict herewith are hereby repealed.

**Section 18-409. Effective Date**

This ordinance shall take effect thirty days after publication upon adoption.

Carolyn Phillips – Township Clerk

**2<sup>nd</sup> Reading & Adoption – July 2, 2019**

**Advertise: 7/14/2019**

**Publication: Herald Palladium/Legal Ad**

**Effective Date: 8/14/2019**

