

**SEVILLE TOWNSHIP
ORDINANCE NO. 2020-0311B**

**AN ORDINANCE TO AMEND THE TOWNSHIP ZONING ORDINANCE TO
REGULATE CERTAIN MEDICAL MARIHUANA FACILITIES OPERATED IN
ACCORDANCE WITH STATE LAW**

The Township of Seville ordains:

SECTION 1. ADDITION OF SECTION 11.8 TO THE ZONING ORDINANCE

Chapter XI of the Zoning Ordinance is amended to add new section 11.8, which reads as follows in its entirety:

11.8 Medical Marihuana Facilities

a. Definitions.

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

- (1) *Administrative Rules* means the administrative rules for medical marihuana facilities issued by LARA on or about November 27, 2018.
- (2) *Co-location or co-located* means the siting and operation of a combination of multiple facilities or facility types at a single location.
- (3) *LARA* means the Department of Licensing and Regulatory Affairs and any successor department or agency within the department, including the Bureau of Medical Marihuana Regulation, Medical Marihuana Licensing Board, and/or the Marihuana Regulatory Agency.
- (4) *Licensee* means a person holding a state operating license for a medical marihuana facility.
- (5) *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.
- (6) *Medical marihuana facility* means a medical marihuana grower, medical marihuana safety compliance facility, medical marihuana processor, medical marihuana secure

transporter, medical marihuana provisioning center, or any other type of medical marihuana-related business licensed by LARA under the MMFLA.

- (7) *Medical marihuana grower* means a commercial entity located in this state and licensed by LARA that cultivates, dries, trims, or cures and packages marihuana for sale to a processor, provisioning center, or another grower.
- (8) *Marihuana processor* means a commercial entity located in this state and licensed by LARA 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.
- (9) *Medical marihuana provisioning center* means a commercial entity located in this state and licensed by LARA 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 medical marihuana is sold at retail to registered qualifying patients or registered primary caregivers. A noncommercial location used by a registered primary caregiver to assist a qualifying patient connected to the caregiver through LARA's medical marihuana registration process in accordance with the MMMA is not a provisioning center for purposes of this Ordinance.
- (10) *Medical marihuana secure transporter* means a commercial entity located in this state and licensed by LARA that stores marihuana and transports marihuana between marihuana facilities for a fee.
- (11) *Medical marihuana safety compliance facility* means a commercial entity licensed by LARA that takes marihuana from a medical 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 medical marihuana facility.
- (12) *MMMA* means the Michigan Medical Marihuana Act, Initiated Law 1 of 2008, as amended, MCL 333.26424 *et seq.*
- (13) *MMFLA* means the Michigan Medical Marihuana Facilities Licensing Act, 2016 PA 281, as amended, MCL 333.27102 *et seq.*
- (14) *MRTMA* means the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, MCL 333.27951 *et seq.*
- (15) *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.

- (16) *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 a facility.
- (17) *State operating license* or, unless the context requires a different meaning, "license" means a license that is issued by LARA under the MMFLA that allows the licensee to operate a medical marihuana facility.

b. Authorized Facilities.

- (1) *Authorization and special use permit required.* No person shall operate a medical marihuana facility in the Township without 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) *Number of facilities eligible for authorization.* The following numbers of medical marihuana facilities may be authorized to operate in the Township, subject to this Ordinance:
 - A. Not more than two (2) growers operating under Class A licenses;
 - B. Not more than one (1) processor;
 - C. Not more than one (1) secure transporter;
 - D. Not more than one (1) safety compliance facility.

No other medical marihuana facilities (i.e. Class B and C growers or provisioning centers) other than those listed in this subsection are permitted within the Township.

- (3) *Co-location and stacked licenses.* Co-location and stacked grower licenses are prohibited in the Township.
- (4) *Final authorization from Township required.* A proposed facility 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 facility.
- 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 medical marihuana facility will be located;
 - d) The name and address of the current property owner of record of the property on which the proposed medical 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 medical marihuana establishment property.
 - f) The proposed facility 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 facility at any time during normal business hours to ensure compliance with applicable laws and regulations;
- i) A location area map of the proposed marihuana facility and surrounding area that identifies the relative locations and the distances (closest property line to the subject marihuana facility's building) to the closest real property comprising a public or private elementary, vocational, or secondary school;
- j) 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 March 30, 2020 to April 6, 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 facilities of the proposed facility type currently operating within the Township;
- B. The number of pending applications for the desired facility type; and
- C. The process by which an applicant will be selected.

(4) *Conditional authorization and random selection process.* The Clerk will conditionally authorize facilities 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 facility 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 MMFLA 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 adult-use 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 facility.	Twenty (20) points
Area impact, including the proximity of the facility 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
Facility 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 Water Sense 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 MMFLA 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 MMFLA 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 facility type not subject to the competitive process, the Clerk will conditionally authorize facilities in the order in which applications are received.
- E. Once the Clerk has issued conditional authorizations for all of the facilities of a given facility type that would be permitted under subsection (b)(2), the Clerk will place subsequent applications at the end of the waiting list for that facility 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 facility if the applicant:

- A. Submits the paperwork for the facility-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 facility 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 facilities 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 facility of that facility 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.

(7) *Newly available authorizations.*

- A. For facility types for which the maximum number of facilities specified in subsection (b)(2) are operating in the Township, an authorization will become available when:
 - a) The state operating license for an facility with final authorization expires or is revoked by LARA; or
 - b) This Ordinance is amended to authorize additional facilities of that facility 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 Facilities, Transfers of Licenses.

(1) An existing facility 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 facility, the Township Board shall consider the following nonexclusive factors:

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

(2) A license for an existing facility 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 facilities in the Township must provide the Township Clerk upon request 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.* Medical marihuana facilities must be operated in compliance with the MMFLA, MMFLA administrative rules, all conditions of the facility'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 facility. 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 premise 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.* Facilities 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 medical marihuana facilities may be approved pursuant to the generally applicable procedures and standards provided in, with the additional restriction that facility signage may not depict marihuana, marihuana-infused products, or marihuana-related paraphernalia.

(9) Medical marihuana facilities 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.
- G. No odor detected past the property line

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

- A. A facility may not be located within 1,000 feet of a public or private K-12 school or a college or university. A provisioning center may be located within 1,000 feet of a public or private K-12 school or a college or university, subject to subsection (8)(c), and except that a provisioning center may not be located adjacent to 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.

(11) *Grower Specific Regulations*. The following requirements apply to growers:

- A. Cultivation must occur within an enclosed permanent building with exterior facades consisting of opaque materials typical of an industrial or commercial

building. The roof of the building may not be constructed of a rigid transparent or translucent material designed to let in light, such as glass or rigid polycarbonate or fiberglass panels. Films or other non-rigid materials cannot be used to construct any component of the building's exterior structure.

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

(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.

(13) *Safety Compliance Facility Specific Regulations.* The following requirements apply to safety compliance facilities:

- 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 medical marijuana facility is unique and specific to the applicant and does not run with the land. The special use permit may be transferred to another medical marijuana facility 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 a facility 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 facility's state operating license.
- B. Following notice and a public hearing, the Township may revoke the facility'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 2. 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 3. 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 4. EFFECTIVE DATE.

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

Approved this 11 day of March, 2020.

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