

Watervliet Charter Township
Berrien County, Michigan
Ordinance No. 85
Effective: March 26, 2022

MEDICAL AND ADULT USE MARIHUANA ORDINANCE (Ord. No. 85)

An ordinance to provide a title for the ordinance; to define words; to authorize the operation of and provide regulations for adult use marihuana facilities in Watervliet Charter Township, as such regulation is necessary to protect the public health, safety, security and welfare of its citizens, pursuant to the Michigan Medical Marihuana Facility Licensing Act ("MMFLA") and the Michigan Regulation and Taxation of Marihuana Act ("MRTMA"); and 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.

THE TOWNSHIP OF WATERVLIET ORDAINS:

Section 1. Title

This ordinance shall be known as, and may be cited as, the **Watervliet Township Medical and Adult Use Marihuana Ordinance**.

Section 2. Definitions

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

Applicant means an entity or individual seeking a Municipal License.

Department means the Michigan Department of Licensing and Regulatory Affairs.

Marihuana means that term as defined by MRTMA and/or MMFLA.

Marihuana Business includes a marihuana grower, retailer, microbusiness, processor, safety compliance Marihuana Business, and/or secure transporter under the MRTMA and a grower, provisioning center, processor, safety compliance Marihuana Business, and/or secure transporter under the MMFLA.

Marihuana Grower shall mean a person licensed under MRTMA to cultivate marihuana and sell or otherwise transfer marihuana to marihuana facilities.

Marihuana Microbusiness shall mean a person licensed under MRTMA 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 Marihuana Business, but not to other marihuana facilities.

Marihuana Processor shall mean a person licensed under MRTMA to obtain marihuana from marihuana facilities; process and package marihuana; and sell or otherwise transfer marihuana to marihuana facilities.

Marihuana Retailer shall mean a person licensed under MRTMA to obtain marihuana from marihuana facilities and to sell or otherwise transfer marihuana to marihuana facilities and to individuals who are 21 years of age or older.

Marihuana Safety Compliance Marihuana Business shall mean a person licensed under MRTMA to test marihuana, including certification for potency and the presence of contaminants.

Marihuana Secure Transporter shall mean a person licensed under MRTMA to obtain marihuana from marihuana facilities in order to transport marihuana to other marihuana facilities.

Medical Marihuana Grower means a licensee under the MMFLA that is a commercial entity located in the State of Michigan that cultivates, dries, trims, or cures and packages marihuana for sale to a processor, provisioning center, or another grower.

Medical Marihuana Processor means a licensee under the MMFLA that is a commercial entity located in the State of Michigan that purchases marihuana from a grower and extracts resin from the marihuana or creates a marihuana-infused product for the sale and transfer in packaged form to a provisioning center or another processor.

Medical Marihuana Provisioning Center means a licensee under the MMFLA that is a commercial entity located in the State of Michigan 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.

Medical Marihuana Safety Compliance Marihuana Business means a licensee under the MMFLA that is a commercial entity located in the State of Michigan 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.

Medical Marihuana Secure Transporter means a licensee under the MMFLA that is a commercial entity located in the State of Michigan that stores marihuana and transports marihuana between marihuana facilities for a fee.

Municipal License means a license issued by the Watervliet Township Board pursuant to Section 6 of the MRTMA or Section 205 of the MMFLA.

Stakeholder means “Applicant” as defined under the administrative rules promulgated by the agency under the authority of the MMFLA, the Marihuana Tracking Act, the MRTMA, and Executive Reorganization Order No. 2019-2, MCL 333.27001.

Section 3. Authorized Facilities

A. Allowed Facilities.

The following types of marihuana commercial entities shall be permitted in the Township. There shall be no limit to the number of each entity allowed.

1. Marihuana retailer
2. Marihuana safety compliance Marihuana Business
3. Marihuana secure transporter
4. Marihuana processor
5. Marihuana microbusiness
6. Marihuana Grower (any class)

Nothing in this Ordinance shall be construed to prohibit a MRTMA marihuana grower, processor or retailer from operating at a location shared with a MMFLA marihuana grower, processor, or retailer.

Any license holder previously approved pursuant to the rescinded Ordinance No. 85, shall remain licensed pursuant to this ordinance and shall not be required to reapply for the currently held license, but shall be responsible for remaining in compliance with this Ordinance upon the effective date.

B. Special Licenses Prohibited.

Pursuant to MRTMA, Section 6(1), the township elects to prohibit the permitting and operation of special licenses within its boundaries to the extent it is permitted to prohibit them under the Act, which shall specifically prohibit:

1. Designated consumption facility
2. Marihuana event organizers
3. Temporary marihuana events
4. Supplemental applicants

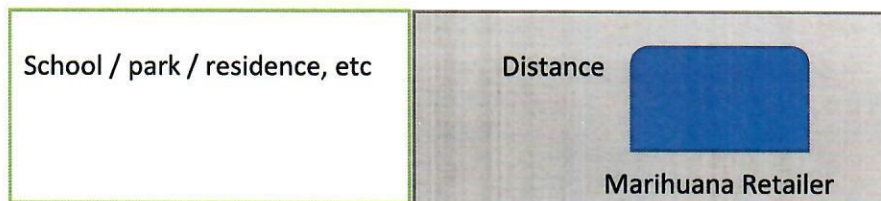
C. Location Requirements.

1. Marihuana retailers, safety compliance facilities, and secure transporters shall be located, by application for special use only, within the Commercial Zoning

designation of the township, pursuant to Watervliet Township Ordinance No. 77, Sec. 506.

2. Marihuana processors, Marihuana microbusinesses and all growers of whatever Class or kind, shall be located, by application for special use only, within the Industrial Zoning designation of the Township, pursuant to Watervliet Township Ordinance No. 77, Sec. 507 and Sec. 508
3. A Marihuana retailer must be located a minimum of 100 feet from the following:
 - residential zoning or an actual current residence
4. A Marihuana retailer must be located a minimum of 500 feet from the following:
 - school
 - playground/park
 - licensed childcare center
 - place of worship/religious assembly
5. The measurement requirements shall be measured as follows:

The distance shall be measured from the exterior wall of the Marihuana retailer closest to the area in question in a straight line to the nearest point of the adjacent property line.



Section 4. General Operational Requirements

Except as may be prohibited by state law or regulation, the following general requirements shall apply to all Marihuana Businesses.

- A. A Marihuana Business must obtain a township permit and a state license prior to opening for business.
- B. Marihuana Businesses shall comply at all times and in all circumstances with the MRTMA, applicable Michigan law, and the general rules of the Department, as they may be amended from time to time. It shall be the responsibility of the owner to be aware of changes in the MRTMA.

- C. No person shall reside in or permit any person to reside in permitted Marihuana Business or on the permitted property.
- D. No person under the age of 21 shall be allowed to enter into the Marihuana Business without a parent or legal guardian.
- E. The Marihuana Business must post a sign, in a position viewable to all persons who enter the Marihuana Business, which states the following:
 - 1. The possession, use, or distribution of marihuana is a violation of federal law.
 - 2. It is illegal under state law to drive a motor vehicle or to operate machinery when under the influence of, or impaired by, marihuana.
 - 3. No person under the age of 21 years is permitted on this premises without a parent or legal guardian.
- F. Outdoor storage is strictly prohibited.
- G. Discharge of toxic, flammable or hazardous materials into the Township sewer is prohibited.
- H. All Marihuana Businesses 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 Marihuana Business and must include, at a minimum, the following:
 - 1. 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 marihuana or cash maintained by the Marihuana Business.
 - 2. 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.
 - 3. A locking safe or other secure device (approved by the Township) permanently affixed to the location that shall store any processed marihuana and all cash remaining in the Marihuana Business 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.
 - 4. All marihuana, in whatever form stored at the Marihuana Business, 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.

5. 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.
- I. The amount of marihuana at the Marihuana Business and under the control of the permit holder/licensee, owner, or operator of the Marihuana Business shall not exceed the amount permitted by the state license or the Township's permit.
- J. Smoking or consumption of controlled substances, including marihuana, within the Marihuana Business is prohibited.
- K. All activities related to the Marihuana Business must occur indoors.
- L. The Marihuana Business'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 or 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.
- M. 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 marihuana is exposed.
- N. Floors, walls, and ceilings shall be constructed and maintained in such a manner that they may be adequately cleaned and kept in good repair.
- O. There shall be no other accessory uses permitted within the same location other than those associated with cultivating, processing or testing marihuana. Multi-tenant industrial buildings may permit accessory uses in suites segregated from each Marihuana Business.
- P. That portion of the Marihuana Business 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.

- Q. The dispensing of marihuana at any Marihuana Business other than a provisioning center shall be prohibited. No free samples of marihuana shall be distributed from any Marihuana Business.
- R. Grow facilities shall not produce products other than useable marihuana intended for human consumption.
- S. All facilities shall be open for inspection during the stated hours of operation and at such other times as anyone is present at the Marihuana Business. No person shall refuse entry to, or in any manner interfere with the inspection of any marihuana facility.

Section 5. Municipal License Application Requirements and Procedure

- A. No person shall operate a Marihuana Business in Watervliet Township without a valid Municipal License issue by the Township pursuant to the provisions of this Ordinance.
- B. No person shall be issued a Municipal License by the Township without first having obtained a Special Land Use Permit authorizing the operation of the Marihuana Business pursuant to the Township Zoning Ordinance.
- C. No person who is, or within the preceding 24 months was, employed by the Township, acts as a consultant for the Township, or acts as an advisor to the Township, and is involved in the implementation, administration or enforcement of this Ordinance or the Zoning Ordinance shall have an interest, directly or indirectly, in a Marihuana Business located within the Township.
- D. Every Applicant for a Municipal License to operate a Marihuana Business in the Township shall file an application with the Township Clerk's office upon a form provided by the Township. The application shall include:
 - 1. The appropriate nonrefundable Municipal License application fee in the amount determined by the Township.
 - 2. If the Applicant is an individual, the Applicant's name, date of birth, social security number, physical address – including residential and business address, copy of a government-issued photo identification, email address, phone number and emergency contact information.
 - 3. If the Applicant is a business entity, the names, dates of birth, physical address – including residential and business address, copy of a government-issued photo identification, email address and phone numbers of each Stakeholder of the Applicant, to include designation of the highest-ranking representative as an emergency contact. Also, the articles of incorporation or organization, assumed name registration, Internal Revenue EIN confirmation letter, operating agreement or partnership agreement, names and

addresses of beneficiaries if the entity is a trust, a copy of the bylaws or shareholder agreement if a corporation.

4. The percentage of ownership of each Stakeholder.
 5. The name and address of the proposed Marihuana Business.
 6. A copy of the Special Land Use Permit issued by Watervliet Township.
 7. A location area map of the Marihuana Business and surrounding area that identifies the relative locations and the distances reflecting the Applicant's compliance with the distance requirements provided in Section 3(C).
 8. A signed acknowledgment that the Applicant is aware and understands that all matters related to marihuana growing, cultivation, possession, testing, safety compliance and transporting are currently subject to state and federal laws, rules and regulations, and that the approval or granting of a license hereunder does not exonerate or exculpate the Applicant from abiding by the provisions and requirements and penalties associated with those laws, rules, and regulations, or exposure to any penalties associated therewith; and further, the Applicant waives and forever releases any claim, demand, action, legal redress, or recourse against the Township, its elected and appointed officials and its employees and agents for any claims, damages, liabilities, causes of action or attorney fees that the Applicant may incur as a result of the violation by the Applicant, its Stakeholders and its agents of those law, rules, and regulations.
 9. Signed acknowledgments in a form approved by the Township verifying that the Applicant and the Stakeholder(s) are not in default to the Township, verifying that the Applicant and the Stakeholder(s) are authorized to submit the application and verifying whether the Applicant or operator has had a business license revoked or suspended, and if so, the reason for such revocation or suspension.
- E. Upon receipt of an application, including the application fee and other documents referenced herein, the Township Clerk or the Clerk's designee shall review the application within fourteen days to determine whether the application is complete. Complete applications shall receive a Municipal License. Incomplete applications will be denied. The Township Clerk shall notify the Applicant regarding granting of a Municipal License or denial by first class mail and electronic mail. In the event of a denial, the Applicant shall have fourteen days from the mailing date of the denial to correct deficiencies. Should the Applicant timely correct all deficiencies, the Township Clerk shall issue a Municipal License. If the Applicant fails to timely correct the deficiencies, or does not correct them adequately, the Township Clerk shall deny the application. Following the issuance of the Municipal License, the application fee shall be nonrefundable.
- F. Should the Township grant a Municipal License, the application fee shall be conserved as the fee imposed for the first year of the Municipal License issued.

Section 6. Annual Fee

- A. There is hereby established an annual nonrefundable Municipal License fee in the amount of \$5,000 for each authorized marihuana establishment within the Township to help defray

administrative and enforcement costs associated therewith. An initial annual marihuana Municipal License fee of \$5,000 shall be payable at the time of application and thereafter the same amount shall be payable each year. Such payment shall be made certified check or other verified payment.

- B. The Township shall provide written notice of the annual Municipal License 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 fee shall result in a revocation of the Municipal License by the Township. Any such revocation will be made by the Clerk in writing. The Municipal License holder will then have 60 days to appeal the revocation to the Township Board as set out below.
- C. The \$5,000 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 7. Appeal to the Township Board

- A. All requests for appeal shall be in writing and must include detailed information and supporting documentation for any and all points the applicant wishes the Township Board to consider. Any incomplete request for appeal will be rejected by the Township Board.
- B. 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.
- C. The Applicant must appear at the designated Board meeting or forfeit their right to due process.
- D. 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 Supervisor and/or Clerk.
- E. A majority vote of the members of the Township Board shall be necessary to reverse an order, requirement, decision or determination by the Township Clerk, Zoning Official, Building Official or any other Township administrative official in the interpretation of this Ordinance.
- F. The decision of the Township Board shall be final.

Section 8. Violations and Penalties

- A. 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.

- B. A violation of this ordinance is a municipal civil infraction, for which the fines shall not be less than \$500 for the first offense; not less than \$1,000 for the second offense; and not less than \$1500 for each subsequent offense. 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.
- C. Each day during which any violation continues shall be deemed a separate offense.
- D. 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.
- E. 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 9. 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 recreational / adult use marihuana establishments pursuant to MMFLA.

Section 10. Repeal

All ordinances or parts of ordinances in conflict herewith are hereby repealed. Ordinance No. 85, Effective June 17, 2019 shall be repealed and replaced upon the effective date of this Ordinance.

Section 11. Effective Date

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