

SANDS TOWNSHIP
MARQUETTE COUNTY, MICHIGAN

ORDINANCE AUTHORIZING AND PERMITTING
COMMERCIAL MARIHUANA FACILITIES

Number 57

Adopted: December 12, 2017

At a regular meeting of the Township Board of Sands Township, Marquette County, Michigan, held at the Sands Township Hall on December 12, 2017, at 7:00 PM, Township Board Member Darlene Walch moved to adopt the following Ordinance, which motion was seconded by Township Board Member David Kallio.

An ordinance to implement the provisions of the Michigan Medical Marihuana Facilities Licensing Act (MMMFLA), Public Act 281 of 2016, which authorizes the licensing and regulation of Commercial Medical Marihuana Facilities and affords the Township the option whether or not to allow Commercial Medical Marihuana Facilities, to regulate Commercial Medical Marihuana Facilities by requiring a permit and compliance with requirements as provided in this Ordinance, in order to maintain the public health, safety and welfare of the residents and visitors to the Township; and to regulate the cultivation, distribution, and use of Medical Marihuana permitted under the Michigan Medical Marihuana Act, Initiated Law 1 of 2008 in order to maintain the public health, safety and welfare of the residents and visitors to the Township.

1. PURPOSE

- 1.1. It is the intent of this ordinance to authorize the establishment of several types of Commercial Marihuana Facilities in the Township of Sands and provide for the adoption of reasonable restrictions to protect the public health, safety and general welfare of the community at large; retain the character of neighborhoods; and mitigate potential impacts on surrounding properties and persons. It is also the intent of this ordinance to help defray administrative and enforcement costs associated with the operation of marihuana facilities in Sands Township through the imposition of annual, nonrefundable licensing fees of not more than \$5,000.00 on each Commercial Marihuana Facility licensee. Authority for the enactment of these provisions is set forth in the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq.
- 1.2. Nothing in this ordinance is intended to grant immunity from criminal or civil prosecution, penalty or sanction for the cultivation, manufacturing, possession, use sale or distribution of marihuana, in any form, that is not in compliance with the Michigan Medical Marihuana Act, MCL 333.26421 et seq. as amended; the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq.; the Marihuana Tracking Act, MCL 333.27901 et seq. and all other applicable rules promulgated by the State of Michigan.
- 1.3. As of the effective date of this ordinance, marihuana remains classified as a Schedule 1 controlled substance under the Federal Controlled Substances Act, 21 U.S.C. Sec 801 et seq., which makes it unlawful to manufacture, distribute or dispense marihuana. Nothing in this ordinance is intended to grant immunity from any criminal prosecution under federal laws.

2. DEFINITIONS. The following words and phrases shall have the following definitions when used in this Ordinance:

- 2.1. "Application" means an Application for a Permit under 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"
- 2.2. "Clerk" means the Sands Township Clerk or his/her designee.

- 2.3. *“Commercial Marihuana Facility”* or *“Facility”* means one of the following:
- 2.3.1. *“Provisioning Center,”* as that term is defined in the MMFLA;
 - 2.3.2. *“Processor,”* as that term is defined in the MMFLA;
 - 2.3.3. *“Secure Transporter,”* as that term is defined in the MMFLA;
 - 2.3.4. *“Grower,”* as that term is defined in the MMFLA;
 - 2.3.5. *“Safety Compliance Facility,”* as that term is defined in the MMFLA.
- 2.4. *“Department”* means the Michigan State Department of Licensing and Regulatory Affairs or any authorized designated Michigan agency authorized to regulate, issue or administer a Michigan License for a Commercial Marihuana Facility.
- 2.5. *“License”* means a current and valid License for a Commercial Marihuana Facility issued by the State of Michigan.
- 2.6. *“Licensee”* means a Person holding a current and valid Michigan License for a Commercial Marihuana Facility.
- 2.7. *“Marihuana”* means that term as defined in Section 7106 of the Michigan Public Health Code, 1978 PA 368, MCL 333.7106.
- 2.8. *“Marihuana”* means that term as defined in MCL 333.26423.
- 2.9. *“Paraphernalia”* means drug paraphernalia as defined in section 7451 of the Michigan Public Health Code, 1978 PA 368, MCL 333.7451, that is or may be used in association with Marihuana.
- 2.10. *“Park”* means an area of public land set aside and maintained for public recreational use.
- 2.11. *“Patient”* means a “registered qualifying patient” or a “visiting qualifying patient” as those terms are defined by MCL 333.26421, et seq.
- 2.12. *“Permit”* means a current and valid Permit for a Commercial Marihuana Facility issued under this Ordinance, which shall be granted to a Permit Holder only for and limited to a specific Permitted Premises and a specific Permitted Property.
- 2.13. *“Permit Holder”* means the Person that holds a current and valid Permit issued under this Ordinance.
- 2.14. *“Permitted Premises”* means that particular building or buildings within which the Permit Holder will be authorized to conduct the Facility’s activities pursuant to the Permit.
- 2.15. *“Permitted Property”* means the real property comprised of a lot, parcel or other designated unit of real property upon which the Permitted Premises is situated.

- 2.16. *“Person”* means a natural person, company, partnership, profit or non-profit corporation, limited liability company, or any joint venture for a common purpose.
- 2.17. *“Primary Caregiver”* means a Person qualified under MCL 333.26423(g), and the rules promulgated thereunder by the Michigan Department of Community Health, R 333.101, et seq., including, but not limited to possession of a valid, unexpired registry identification card, to assist with a Patient’s medical use of Marihuana, and authorized under the Michigan Medical Marihuana Act (“MMMA”) to operate as a Primary Caregiver.
- 2.18. *“Primary Caregiver Operation”* means a location where a Primary Caregiver can lawfully operate as permitted by the MMMA. A Primary Caregiver Operation is not a commercial Marihuana Facility.
- 2.19. *“Public Place”* means any area in which the public is invited or generally permitted in the usual course of business.
- 2.20. *“Registry Identification Card”* means the document issued to a Patient or a Primary Caregiver and defined under MCL 333.26423(i).

3. PERMIT REQUIRED; NUMBER OF PERMITS AVAILABLE; ELIGIBILITY; GENERAL PROVISIONS.

- 3.1. The Township hereby authorizes the operation of the following types of Commercial Marihuana Facilities, subject to the number of available Permits issued in this Section:
 - 3.1.1. Provisioning Centers
 - 3.1.2. Processors
 - 3.1.3. Secure Transporters
 - 3.1.4. Growers: Class A, Class B, and Class C
 - 3.1.5. Safety Compliance Facilities
- 3.2. The number of Commercial Marihuana Facility Permits in effect at any time shall not exceed the following maximums within the Township:
 - 3.2.1. Provisioning Centers: Four (4)
 - 3.2.2. Processors: Two (2)
 - 3.2.3. Secure Transporters: Three (3)
 - 3.2.4. Grower Permits
 - 3.2.4.1.1. Class A: Five (5)
 - 3.2.4.1.2. Class B: Five (5)
 - 3.2.4.1.3. Class C: Five (5)
 - 3.2.5. Safety Compliance Facility Permits: Three (3)
- 3.3. The Township Board may review and amend the number of permits by resolution as it determines to be advisable.

- 3.4. No person shall operate a Commercial Marihuana Facility at any time at any location within the Township unless a then currently-effective Permit for that person at that location has been issued under this Ordinance.
- 3.5. Commercial Marihuana Facilities shall operate only as allowed under this Ordinance.
- 3.6. The requirements set forth in this Ordinance shall be in addition to, and not in lieu of, any other licensing or permitting requirements imposed by applicable federal, state or local laws, regulations, codes or ordinances.
- 3.7. At the time of Application, each Applicant shall pay Application fees, annual fees, renewal fees and inspection fees for Permits to the Township to defray the costs incurred by the Township for inspection, administration and enforcement of the local regulations regarding Commercial Marihuana Facilities. The application fee shall be \$3,000. The Township Board shall by resolution set all remaining fees in an amount not to exceed any limitations imposed by Michigan law.
- 3.8. A Permit or Renewal Permit shall not confer any vested rights or reasonable expectation of subsequent renewal on the Applicant or Permit Holder, and shall remain valid only until June 1 immediately following its approval. A completed Application or Renewal Application must be received by the Township Clerk no later than March 31 of each year in order to grant or renew the Permit effective on June 1 of that year. All applications will be forwarded to the Township's Planning Commission for review and recommendation to the Township Board.
- 3.9. Each year, any pending Applications for renewal or amendment of existing Permits shall be reviewed and granted or denied before Applications for new Permits are considered.
- 3.10. It is the sole and exclusive responsibility of each Permit Holder or Person applying to be a Permit Holder at all times during the Application period and during its operation to immediately provide the Township with all material changes in any information submitted on an Application and any other changes that may materially affect any state License or its Township Permit.
- 3.11. No Permit issued under this Ordinance may be assigned or transferred to any Person unless the assignee or transferee has submitted an Application and all required fees under this Ordinance and has been granted a Permit by the Township Board. No Permit issued under this Ordinance is transferrable to any other location except for the Permitted Premises on the Permitted Property.
- 3.12. The original Permit issued under this Ordinance shall be prominently displayed at the Permitted Premises in a location where it can be easily viewed by the public, law enforcement and administrative authorities.
- 3.13. Acceptance by the Permit Holder of a Permit constitutes consent by the Permit Holder and its owners, officers, managers, agents and employees for any state, federal or local fire, emergency, or law enforcement personnel to conduct random and unannounced examinations

of the Facility and all articles of property in that Facility at any time to ensure compliance with this Ordinance, any other local regulations, and with the Permit.

- 3.14. A Permit Holder may not engage in any other Commercial Marihuana Facility in the Permitted Premises or on the Permitted Property, or in its name at any other location within the Township, without first obtaining a separate Permit.
- 3.15. No Permit shall be granted or renewed for a Commercial Marihuana Facility in a residence, building or area not specifically zoned for that purpose.

4. **SECTION 4. OTHER LAWS AND ORDINANCES.** In addition to the terms of this Ordinance, any Commercial Marihuana Facility shall comply with all Township Ordinances, including without limitation the Township Zoning Ordinance, and with all other applicable state and local ordinances, laws, codes and regulations. To the extent that the terms of this Ordinance are in conflict with the terms of any other applicable state or local ordinances, laws, codes or regulations, the terms of the most restrictive ordinance, law, code or regulation shall control.

5. **SECTION 5. APPLICATION FOR AND RENEWAL OF PERMITS.**

5.1. **Application.** An Application for a Permit for a Facility shall be submitted to the Clerk, who shall forward the application to the Township Planning Commission for review and recommendation to the Township Board, and shall contain the following information:

5.1.1. The name, address, phone number and e-mail address of the proposed Permit Holder and the proposed Commercial Marihuana Facility;

5.1.2. The names, home addresses and personal phone numbers for all owners, directors, officers and managers of the Permit Holder and the Commercial Marihuana Facility;

5.1.3. One (1) copy of all the following:

5.1.3.1. All documentation showing the proposed Permit Holder’s valid tenancy, ownership or other legal interest in the proposed Permitted Property and Permitted Premises. If the Applicant is not the owner of the proposed Permitted Property and Permitted Premises, a notarized statement from the owner of such property authorizing the use of the property for a Commercial Marihuana Facility.

5.1.3.2. If the proposed Permit Holder is a corporation, non-profit organization, limited liability company or any other entity other than a natural person, attach a copy of all entity formation documents (including amendments), proof of registration with the State of Michigan, and a certificate of good standing.

5.1.3.3. A valid, unexpired driver’s license or state issued ID for all owners, directors, officers and managers of the proposed Facility.

5.1.3.4. Evidence of a valid sales tax license for the Business if such a license is required by state law or local regulations.

5.1.3.5. Application for Sign Permit, if any sign is proposed.

5.1.3.6. Non-refundable Application fee.

5.1.3.7. Business and Operations Plan, showing in detail the Commercial Marihuana Facility's proposed plan of operation, including without limitation, the following:

5.1.3.7.1. A Description of the type of Facility proposed and the anticipated or actual number of employees.

5.1.3.7.2. A security plan meeting the requirements of Section 6 of this Ordinance, which shall include a general description of the security system(s), current centrally alarmed and monitored security system service agreement for the proposed Permitted Premises, and confirmation that those systems will meet State requirements and be approved by the State prior to commencing operations.

5.1.3.7.3. A description by category of all products to be sold.

5.1.3.7.4. A list of Material Safety Data Sheets for all nutrients, pesticides, and other chemicals proposed for use in the Commercial Marihuana Facility.

5.1.3.7.5. A description and plan of all equipment and methods that will be employed to stop any impact to adjacent uses, including enforceable assurances that no odor will be detectable from outside of the Permitted Premises.

5.1.3.7.6. A plan for the disposal of Marihuana and related byproducts that will be used at the Facility.

5.1.3.7.7. An identification of any business that is directly or indirectly involved in the growing, processing, testing, transporting or sale of Marihuana for the Facility.

5.1.3.7.8. Whether any Applicant has ever applied for or has been granted any commercial license or certificate issued by a licensing authority in Michigan or any other jurisdiction that has been denied, restricted, suspended, revoked, or not renewed and a statement describing the facts and circumstances concerning the application, denial, restriction, suspension, revocation, or nonrenewal, including the licensing authority, the date each action was taken, and the reason for each action.

5.1.3.7.9. Signed and sealed (by Michigan registered architect, surveyor or professional engineer) site plan and interior floor plan of the Permitted Premises and the improvements on the Permitted Property.

5.1.3.7.10. Information regarding any other Commercial Marihuana Facility that the Licensee is authorized to operate in any other jurisdiction within the State, or another State, and the Applicant's involvement in each Facility.

5.1.3.8. Any other information reasonably requested by the Township to be relevant to the processing or consideration of the Application

5.1.3.9. Information obtained from the Applicant or proposed Permit Holder is exempt from public disclosure under state law.

5.2. **Renewal Application.** The same requirements that apply to all new Applications for a Permit apply to all Renewal Applications. Renewal Applications shall be submitted to and received by the Clerk not less than ninety (90) days prior to the expiration of the annual Permit, except that an Application requesting a change in location of the Permitted Premises shall be submitted and received not less than one hundred twenty (120) days prior to the expiration of the Permit. A Permit Holder whose Permit expires and for which a complete Renewal Application has not been received by the expiration date shall be deemed to have forfeited the Permit under this Ordinance. The Township will not accept Renewal Applications except as provided herein. Once received by the Clerk, all applications will be forwarded to the Township Planning Commission for review and recommendation to the Township Board.

5.3. **Approval, Issuance, Denial and Appeal.** All inspections, review and processing of the Application shall be completed within ninety (90) days of receipt of a complete Application and all required fees. The Township Board shall approve or deny the Permit within one hundred twenty (120) days of receipt of the completed Application and fees, or within one hundred fifty (150) days if the location of the Permitted Premises is proposed to be amended. The processing time may be extended upon written notice by the Township for good cause, and any failure to meet the required processing time shall not result in the automatic grant of the Permit. Any denial must be in writing and must state the reason(s) for denial. Any final denial of a Permit may be appealed to a court of competent jurisdiction; provided that, the pendency of an appeal shall not stay or extend the expiration of any Permit. The Township has no obligation to process or approve any incomplete Application, and any times provided under this Ordinance shall not begin to run until the Township received a complete Application, as determined by the Township Board. A determination of a complete Application shall not prohibit the Township from requiring supplemental information.

5.4. **Duty to Supplement.**

5.4.1. If, at any time before or after a Permit is issued pursuant to this Ordinance, any information required in the Permit Application, the MMFLA, or any rule or regulation

promulgated thereunder, changes in any way from that which is stated in the Application, the Applicant or Licensee shall supplement such information in writing within fifteen (15) business days from the date upon which such change occurs.

5.4.2. An Applicant or Permit Holder has a duty to notify the Township Board in writing of any pending criminal charge, and any criminal conviction of a felony or other offense involving a crime of moral turpitude by the Applicant, any owner, principal officer, director, manager, or employee within ten (10) calendar days of the event.

5.4.3. An Applicant or Permit Holder has a duty to notify the Township Board in writing of any pending criminal charge, and any criminal conviction, whether a felony, misdemeanor, petty offense, or any violation of a local law related to the cultivation, processing, manufacture, storage, sale, distribution, testing or consumption of any form of marihuana the MMMA, the MMFLA, any building, fire, health or zoning statute, code or ordinance related to the cultivation, processing, manufacture, storage, sale, distribution, testing, or consumption of any form of marihuana by the Applicant, any owner, principal officer, director, manager, or employee within ten (10) calendar days of the event.

6. SECTION 6. OPERATIONAL REQUIREMENTS – COMMERCIAL MARIHUANA FACILITIES. A Commercial Marihuana Facility issued a Permit under this Ordinance and operating in the Township shall at all times comply with the following operational requirements, which the Township Board may review and amend from time to time as it determines reasonable.

6.1. *Scope of Operation.* Commercial Marihuana Facilities shall comply with all respective applicable codes of the local zoning, building, and health departments. The Facility must hold a valid local Permit and State Commercial Marihuana Facility License for the type of Commercial Marihuana Facility intended to be carried out on the Permitted Property. The Facility operator, owner or Licensee must have documentation available that local and State sales tax requirements, including holding any licenses, if applicable, are satisfied.

6.2. *Required Documentation.* Each Commercial Marihuana Facility shall be operated from the Permitted Premises on the Permitted Property. No Commercial Marihuana Facility shall be permitted to operate from a moveable, mobile or transitory location, except for a Permitted and Licensed Secure Transporter when engaged in the lawful transport of Marihuana. No person under the age of eighteen (18) shall be allowed to enter into the Permitted Premises without a parent or legal guardian.

6.3. *Security.* Permit Holders shall at all times maintain a security system that meets State law requirements, and shall also include the following:

6.3.1. Security surveillance cameras installed to monitor all entrances, along with the interior and exterior of the Permitted Premises;

6.3.2. Robbery and burglary alarm systems which are professionally monitored and operated 24 hours a day, 7 days a week;

6.3.2.1. A locking safe permanently affixed to the Permitted Premises that shall store all usable marihuana and cash remaining in the Facility overnight;

6.3.2.2. All Marihuana in whatever form stored at the Permitted Premises shall be kept in a secure manner and shall not be visible from outside the Permitted Premises, nor shall it be grown, processed, exchanged, displayed or dispensed outside the Permitted Premises; and

6.3.2.3. All security recordings and documentation shall be preserved for at least 48 hours by the Permit Holder and made available to any law enforcement agency upon request for inspection.

6.4. *Required Spacing.* No Commercial Marihuana Facility shall be located within five-hundred (500) feet from any educational institution or school, college or university, church, house of worship or other religious facility, or public or private park, with the minimum distance between uses measured horizontally between nearest property lines.

6.5. *Amount of Marihuana.* The amount of Marihuana on the Permitted Property and under the control of the Permit Holder, owner or operator of the Facility shall not exceed that amount permitted by the state License or the Township's Permit.

6.6. *Sale of Marihuana.* The Marihuana offered for sale and distribution must be packaged and labeled in accordance with state law. The Facility is prohibited from selling, soliciting or receiving orders for Marihuana or Marihuana Products over the internet.

6.7. *Use of Marihuana.* The sale, consumption or use of alcohol or tobacco products on the Permitted Premises is prohibited. Smoking or consumption of controlled substances, including marihuana, on the Permitted Premises is prohibited.

6.8. *Indoor Operation.* All activities of Commercial Marihuana Facilities, including without limitation, distribution, growth, cultivation, or the sale of Marihuana, and all other related activity permitted under the Permit Holder's License or Permit must occur indoors. The Facility's operation and design shall minimize any impact to adjacent uses, including the control of any odor by maintaining and operating an air filtration system so that no odor is detectable outside the Permitted Premises.

6.9. *Unpermitted Growing.* A Patient may not grow his or her own Marihuana at a Commercial Marihuana Facility.

6.10. *Distribution.* No person operating a Facility shall provide or otherwise make available Marihuana to any person who is not legally authorized to receive Marihuana under state law.

6.11. *Permits.* All necessary building, electrical, plumbing, and mechanical permits must be obtained for any part of the Permitted Premises in which electrical, wiring, lighting, or watering devices that support the cultivation, growing, harvesting or testing of Marihuana are located.

6.12. *Waste Disposal.* The permit holder, owner and operator of the Facility shall use lawful methods in controlling waste or by-products from any activities allowed under the License or Permit.

6.13. *Transportation.* Marihuana may be transported by a Secure Transporter as per state law.

6.14. *Additional Conditions.* The Township Board may impose such reasonable terms and conditions on a Commercial Marihuana Facility special use as may be necessary to protect the public health, safety and welfare, and to obtain compliance with the requirements of this Ordinance and applicable law.

7. **SECTION 7. ENFORCEMENT, PENALTIES AND CONSEQUENCES FOR VIOLATION.** In addition to any other penalties or legal consequences provided under applicable federal, state and local law, regulations, codes and ordinances:

7.1. This Ordinance shall be enforced by the Sands Township Ordinance Enforcement Officer, Sands Township Supervisor, local law enforcement, and/or any other such person the Township Board may designate.

7.2. Violations of the provisions of this Ordinance or failure to comply with any of the requirements of this Ordinance shall constitute a misdemeanor. Any person who violates this Ordinance or fails to comply with any of the requirements of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than \$500.00, or imprisoned for not more than 90 days, or both, and, in addition, shall pay all costs and expenses involved. Each day such violation continues shall be considered a separate offense.

7.3. Violations of the provisions of this Ordinance or failure to comply with any of the requirements of this Ordinance shall be subject to and found responsible for a municipal civil infraction. The forfeiture for any municipal civil infraction shall be five hundred dollars (\$500.00) plus court costs, attorney fees and abatement costs of each violation, together with all other remedies pursuant to MCL 600.8701, et seq. Each day a violation continues shall be deemed a separate municipal civil infraction.

7.4. The owner of record or tenant of any building, structure or premises, or part thereof, and any architect, builder, contractor, agent or person who commits, participates in, assists in or maintains such violation may each be found guilty or responsible of a separate offense and suffer the penalties and forfeitures provided in subsections (1) and (2) of this section, except as excluded from responsibility by state law.

- 7.5. In addition to any other remedies, the Township may institute proceedings for injunction, mandamus, abatement or other appropriate remedies to prevent, enjoin, abate or remove any violations of this Ordinance. The rights and remedies provided herein are both civil and criminal in nature. The imposition of any fine, jail sentence or forfeiture shall not exempt the violator from compliance with the provisions of this Ordinance.
8. **SECTION 8. SEVERABILITY.** The provisions of this Ordinance are hereby declared severable. If any part of this Ordinance is declared invalid for any reason by a court of competent jurisdiction, that declaration does not affect or impair the validity of all other provisions that are not subject to that declaration.
9. **SECTION 9. EFFECTIVE DATE.** This Ordinance shall take effect five (5) days following publication or posting after final adoption by the Township Board.