

Three Oaks Township

Berrien County, Michigan

Ordinance No. 62

AN ORDINANCE TO AMEND THE THREE OAKS TOWNSHIP ZONING ORDINANCE; TO AMEND SECTIONS 3.07, 4.03, 9.03, AND 10.03 TO PERMIT ADULT USE MARIHUANA FACILITIES IN THE C-1 "COMMERCIAL" AND I "INDUSTRIAL" DISTRICTS AS SPECIAL LAND USES; TO AMEND ARTICLE 15 TO ADD A NEW SECTION 15.33 RELATED TO ADULT USE MARIHUANA FACILITIES, AND TO AMEND SECTION 22.15 TO INCLUDE NEW DEFINITIONS RELATED TO ADULT USE MARIHUANA ESTABLISHMENTS AND FACILITIES.

THREE OAKS TOWNSHIP HEREBY ORDAINS:

Section 1 - Amendment of Section 3.07. Section 3.07, 1 - Table of Uses of the Three Oaks Township Zoning Ordinance is amended such that the table of uses is amended to include a new row: "Adult Use Marihuana Establishment," "Marihuana Facility," and "Marihuana Grower" which are inserted in alphabetical order as follows:

DISTRICTS

USE	AG-RR	R-1	R-2	R-3	R-4	C-1	I
Adult Use Marihuana Establishment						S	S
Marihuana Facility						S	S
Marihuana Grower	S						S

Section 2 - Amendment of Section 4.03. Section 4.03 of the Three Oaks Township Zoning Ordinance is amended to include "Marihuana Grower" as a special land use in alphabetical order as follows:

SECTION 4.03 - SPECIAL LAND USES
◆ Marihuana Grower

Section 3 - Amendment of Section 9.03. Section 9.03 of the Three Oaks Township Zoning Ordinance is amended to include “Adult Use Marihuana Establishment,” “Marihuana Facility,” and “Marihuana Grower” as a special land use in alphabetical order as follows:

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| <p>SECTION 9.03 - SPECIAL LAND USES</p> <ul style="list-style-type: none">◆ Adult Use Marihuana Establishment◆ Marihuana Facility◆ Marihuana Grower |
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Section 4 - Amendment of Section 10.03. Section 10.03 of the Three Oaks Township Zoning Ordinance is amended to include “Adult Use Marihuana Establishment,” “Marihuana Facility,” and “Marihuana Grower” as a special land use in alphabetical order as follows:

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| <p>SECTION 10.03 - SPECIAL LAND USES</p> <ul style="list-style-type: none">◆ Adult Use Marihuana Establishment◆ Marihuana Facility◆ Marihuana Grower |
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Section 5 - Amendment of Article 15. Article 15 of the Three Oaks Township Zoning Ordinance is amended to include a new Section 15.33, which reads as follows:

SECTION 15.33 – ADULT USE MARIHUANA ESTABLISHMENTS AND FACILITIES

1. **Purpose and Intent.** The purpose of this section is to protect the public health, safety, and welfare, protect neighborhood character, minimize negative community impacts, and enact effective regulatory and enforcement controls through minimum land use requirements for adult use marihuana establishments and facilities in Three Oaks Township. Marihuana establishments, as defined pursuant to Section 3 (h) of the Michigan Regulation and Taxation of Marihuana Act (MRTMA), include a marihuana grower, safety compliance facility, processor, microbusiness, retailer, or a secure transporter, or other establishment types permitted by applicable Rules for Adult Use Marihuana Establishments, as amended, promulgated by the State of Michigan Department of Licensing and Regulatory Affairs (LARA) and the Cannabis Regulatory Agency (CRA) or Marihuana facilities as defined pursuant to the Medical Marihuana Facilities Licensing Act (MMFLA).

2. Establishments Permitted. Adult Use Marihuana Establishments, Marihuana Facilities, and Marihuana Grower may only be permitted as a special land use in accordance with provisions of this Section and only those facilities listed in the table below may be permitted in the zoning districts indicated. Adult Use Marihuana establishments, facilities, and growers not specifically listed in the table below are prohibited in Three Oaks Township.

Establishment / Facility Type	Zoning Districts Permitted
Marihuana Retailer	C-1 Commercial I Industrial (Subject to Chapter 380, 380-10.03 and 380-15.24)
Marihuana Provisioning Center	N/A
Marihuana Microbusiness (any class)	C-1 Commercial
Marihuana Processor	C-1 Commercial or I Industrial
Marihuana Safety Compliance Facility	I Industrial
Marihuana Secure Transporter	I Industrial
Marihuana Grower (any class)	I Industrial or AG-RR Rural Residential Agriculture

3. License Required.
- A. In addition to the special land use permit required by this section, a municipal permit issued by Three Oaks Township pursuant to Ordinance 63 shall be required prior to operating any Adult Use Marihuana Establishment or facility in Three Oaks Township, along with any other licenses or permits required by any other federal, state, or local agency having jurisdiction. It shall be unlawful for any person to operate an Adult Use Marihuana Establishment or facility in the Township without obtaining both a municipal permit and a special land use permit pursuant to the requirements of this section.
 - B. The issuance of a special land use permit pursuant to this section does not create an exception, defense, or immunity to any person regarding any potential civil or criminal liability.
 - C. A separate special land use permit shall be required for each geographic location.
 - D. The Planning Commission may approve a special land use permit for multiple marihuana establishments or facilities at the same geographic location and/or in one building, provided that all appropriate licenses are obtained from LARA and the Three Oaks Township.

4. Application Requirements. An application for an Adult Use Marihuana Establishment or facility special land use shall be accompanied by a site plan pursuant to Article 16, along with any additional information necessary to describe the proposed establishment or facility. At a minimum, the following materials shall be submitted as part of an application for an Adult Use Marihuana Establishment or facility:
 - A. Verification. A signed statement by the applicant indicating the proposed establishment type or facility type, including any requested special licenses, provided that such special licenses are authorized by Three Oaks Township and by applicable Rules for Adult Use Marihuana Establishments or facilities, as amended, promulgated by LARA.
 - B. Consent. A notarized statement by the property owner that acknowledges the use of the property for a marihuana establishment or facility and an agreement to indemnify, defend, and hold harmless the Township, its officers, elected officials, agents, employees, and insurers, against all liability, claims, or demands arising out of, or in connection with, the operation of a marihuana establishment. Written consent shall also include approval of the owner and operator for the Township to inspect the establishment at any time during normal business hours to ensure compliance with applicable laws and regulations.
 - C. State License Required. A copy of a prequalification letter issued by the State of Michigan indicating that the applicant has successfully completed the application for a state operating license and has obtained prequalification status.
 - D. Municipal Permit Required. A copy of the complete application for a municipal permit pursuant to Ordinance 63. When a municipal permit from the Township has not yet been obtained prior to applying for a special land use, the Planning Commission shall require a municipal permit from Three Oaks Township as a condition of special land use approval.
 - E. Performance Guarantee Required. If a new building is being constructed, the applicant shall provide a performance guarantee in a form acceptable to the Township to ensure completion of the project in conformance with Township requirements.
5. Site Plan Requirements. In addition to compliance with all license and application requirements, including but limited to Section 16.04, the following information shall also be submitted:
 - A. A map, drawn to scale, containing all K-12 public or private schools, preschools, and child care centers near the proposed marihuana establishment location and a 1,000-foot isolation radius drawn around the proposed location to show an appropriate setback distance, measured from the property lines, in accordance with subsection 6(B) below.
 - B. A narrative describing how the enclosed areas with marihuana have been secured and how permitted individuals will be given access.
 - C. A detailed security plan that addresses all security measures of the marihuana establishment or facility in compliance with all applicable Rules for Adult Use Marihuana Establishments, as amended, promulgated by LARA.

- D. A lighting plan showing the lighting outside of the marihuana establishment for security purposes and compliance with section 12.12 and any other applicable requirements.
 - E. Existing and proposed building elevations, including building materials, descriptions of glass to be used, and other pertinent information that describes building construction or structural alterations.
 - F. A floor plan of the marihuana establishment detailing the locations of the following:
 - 1) All entrances and exits to the establishment or facility;
 - 2) The location of any windows, skylights, and roof hatches;
 - 3) The location of all cameras, and their field of view;
 - 4) The location of all alarm inputs (door contacts, motion detectors, duress/hold up devices) and alarm sirens;
 - 5) The location of the digital video recorder and alarm control panel, including the location of the off-site storage or network service provider for storage of the required copies of surveillance recordings; and
 - 6) Restricted and public areas.
 - G. The applicant's procedures for accepting delivery of marihuana at the establishment or facility, including procedures for how and where it is received, where it is stored, and how the transaction is recorded.
 - H. An odor control plan demonstrating compliance with subsection 6(C) hereof.
 - I. A complete landscape plan pursuant to Section 12.11 of this Ordinance meeting the requirements of Section 6(D) below.
 - J. A utility plan for the provision of water service to the site and wastewater disposal, along with proposed pretreatment methods.
 - K. Any site plan for a marihuana establishment in Industrial Zoning that includes a plan for Retail is subject to, and must comply with, Special Land Use requirements set forth in Chapter 380, Article X, including Sections 380-10.03 and 380-15.24.
6. General Requirements: All Adult Use Marihuana Establishments or facilities shall be subject to the following additional requirements:
- A. Security. The marihuana establishment shall comply with all applicable security requirements contained in applicable Rules for Adult Use Marihuana Establishments, as amended, promulgated by LARA.
 - 1) All marihuana and marihuana accessories shall be located within an enclosed, locked area, inaccessible on all sides, and equipped with locks that permit access only by the licensed operator or their employees, agents of LARA, law enforcement officers, emergency personnel, and other authorized individuals designated by the Township.
 - 2) Adult use marihuana establishments or facilities subject to the provisions of this section shall not grow marihuana outdoors.

- 3) Marihuana establishments and facilities shall use commercial-grade, nonresidential door locks on all points of entry and exit to the permitted premises.
 - 4) Security cameras are required to be installed and operated in marihuana establishments and facilities 24 hours per day, 365 days per year, and shall be directed to record only the subject property. Required security cameras may not be directed to public rights-of-way as applicable, except as required to comply with applicable Rules for Adult Use Marihuana Establishments, as amended, promulgated by LARA.
- B. Separation distances. The distances described in this subsection shall be computed by measuring a straight line from the nearest property line of the land used for the purposes stated in this subsection to the nearest property line of the parcel used as a marihuana establishment or facility. A marihuana establishment or facility shall not be located within:
- 1) 1,000 feet of a preschool or child care center, whether or not it is within Three Oaks Township; or
 - 2) 1,000 feet of a public or private K-12 school, whether or not it is within the Three Oaks Township.
- C. Odors. The marihuana establishment or facility shall be designed to provide sufficient odor-absorbing ventilation and exhaust systems so that any odor generated inside the establishment or facility is not detectable outside the building in which it operates, on adjacent public rights-of-way, private road easements, or within other units located within the same building as the establishment or facility if it occupies only a portion of the building.
- D. Required Landscaping.
- 1) Where a rear or side yard of a property used for an Adult Use Marihuana Establishment district abuts a property used for residential purposes or within a residential zoning district, an obscuring wall not less than six (6) feet or more than eight (8) feet in height shall be provided in such a manner to buffer the residential use from the Adult Use Marihuana Establishment. The obscuring wall shall meet the following requirements:
 - a. The wall shall be constructed along the property line.
 - b. The wall shall be continuous, unless an opening is required by the building inspector or department of public safety.
 - c. The wall shall be constructed of privacy fence, split face block, brick, stone, or a similarly opaque material with the finished side facing adjacent property.
 - 2) In addition, any yard of an Adult Use Marihuana Establishment or facility facing a public or private street shall contain a landscaped area at least ten (10) feet in depth. This area shall contain at least one (1) deciduous tree and three (3) shrubs at least three (3) feet in height for each thirty lineal feet of frontage.
 - 3) Parking lot landscaping shall be provided pursuant to Section 13.04 of this Ordinance.

- 4) All parking, loading, maneuvering, and delivery areas shall be surfaced with asphalt or concrete.
 - E. The Township may require pretreatment of stormwater or wastewater serving a marihuana establishment, which shall be reviewed by the Township Engineer.
 - F. The marihuana establishment or facility shall be operated and maintained at all times so that any by-products or waste of any kind shall be properly and lawfully kept and disposed of so as to preclude any risk of harm to the public health, safety, or welfare.
 - G. The marihuana establishment or facility shall not be operated out of a residence or any building used wholly or partially for residential purposes.
 - H. A marihuana establishment shall not be operated within a business that also sells alcoholic beverages or tobacco products.
 - I. Any portion of the structure where energy usage and heat exceed typical residential use, such as a grow room, and the storage of any chemicals such as herbicides, pesticides, and fertilizers shall be subject to inspection and approval by the Fire Department to insure compliance with applicable fire codes. Any fuel, fertilizer, pesticide, fungicide, rodenticide, herbicide, or other substance toxic to wildlife, children, or pets shall be stored in a secured and locked area and be in compliance with State pesticide laws and regulations.
 - J. All necessary building, electrical, plumbing, and mechanical permits shall be obtained for any portion of the structure which contains electrical wiring, lighting, and/or watering devices that support the cultivation, growing, and/or harvesting of marihuana.
 - K. The marihuana establishment or facility shall comply at all times and in all circumstances with the MMFLA and/or MRTMA, and the Rules for Adult Use Marihuana Establishments, as amended, promulgated by LARA.
 - L. In the event of any conflict, the terms of this ordinance are preempted and the controlling authority shall be the statutory regulations set forth by the MMFLA and/or MRTMA or the adopted Rules for Adult Use Marihuana Establishments, as amended, promulgated by LARA.
7. Effect of Permit.
- A. A special land use permit for a marihuana establishment or facility is valid only for the location identified on the license and cannot be transferred to another location within the Township without a new special land use permit.
 - B. A special land use permit does not prohibit prosecution by the federal government of its laws or prosecution by state authorities for violations of the act or other violations not protected by the MMFLA and/or MRTMA.
 - C. Compliance with all Township ordinances and state statutes is a condition of maintenance of a special land use permit.
 - D. Nothing contained herein is intended to limit the Township's ability to prosecute code violations that may have been the cause of the suspension or any other code violations not protected by MMFLA and/or MRTMA.

8. Violations. Failure to comply with the requirements of this section shall be considered a violation of the zoning ordinance.
 - A. Request for revocation of state operating license. If at any time an authorized establishment or facility violates this section or any other applicable Township ordinance, the Township may request that LARA revoke or refrain from renewing the establishment or facility's state operating license.
 - B. Any approval granted for an Adult Use Marihuana Establishment may be revoked or suspended automatically for either of the following reasons:
 - 1) Revocation or suspension of the licensee's authorization to operate by LARA.
 - 2) A finding by LARA that a rule or regulation has been violated by the licensee. After an automatic revocation of a special land use approval, a new special land use application shall be required for an establishment or facility to commence operation at the same location.
 - C. Other violations of the zoning ordinance, special land use permit, or conditions imposed thereon by the Planning Commission.

Section 6. Amendment of Section 22.15. Section 22.15 of the Three Oaks Township Zoning Ordinance is amended to include the following definitions, which are included in alphabetical order:

MARIHUANA ESTABLISHMENT, FACILITY, or ADULT USE MARIHUANA ESTABLISHMENT: A marihuana retailer, marihuana microbusiness, marihuana processor, marihuana grower, marihuana safety compliance facility, marihuana secure transporter, marihuana event organizer, or any other type of marihuana-related business licensed by Three Oaks Township pursuant to Ordinance No. 6, as amended.

MARIHUANA GROWER: An adult use or medical marihuana establishment that involves the cultivation or growing of marihuana and licensed by Three Oaks Township pursuant to Ordinance No. 6, as amended.

Section 7. Severability and Captions. This Ordinance and the various parts, sections, subsections, sentences, phrases, and clauses thereof are hereby declared severable. If any part, section, subsection, sentence, phrase, or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby. The captions included at the beginning of each Section are for convenience only and shall not be considered a part of this Ordinance.

Section 8. Repeal. Any existing ordinance or resolution that is inconsistent or conflicts with this Ordinance is hereby repealed to the extent of any such conflict or inconsistency.

Section 9. Effective Date. This Ordinance is ordered to take effect forty (40) days following publication of adoption in the *Harbor Country News*, a newspaper having general circulation in the Township, under the provisions of 2006 Public Act 110, except as may be extended under the provisions of such Act.

[Signatures/Date on Page 9 of 9]

Motion by Gordon supported by Mitchell:

ROLL CALL VOTE:

YES: ZABEL, GORDON, MANGOLD, MITCHELL, OSBURN

NO: NONE

ABSENT/ABSTAIN: NONE

Declared adopted on: June 12, 2023

THREE OAKS TOWNSHIP

Date: JUNE 12, 2023

By: 
George Mangold, Supervisor

Date: JUNE 12, 2023

By: 
Elizabeth Zabel, Clerk

Published Date: _____, 2023

Effective Date: _____, 2023