

TOWNSHIP OF THREE OAKS, BERRIEN COUNTY, MICHIGAN

ORDINANCE NO. 63

ADOPTED: June 12, 2023

EFFECTIVE: _____

THE TOWNSHIP OF THREE OAKS SO ORDAINS:

SECTION 1. TITLE: Three Oaks Regulation of Marihuana Ordinance

This Ordinance shall be known and may be cited as the “Township of Three Oaks Regulation of Marihuana Ordinance.”

SECTION 2. PURPOSE

The purpose of this Ordinance is to promote the public health, safety, security, and welfare by regulating marihuana facilities, including medical marihuana establishments and adult use marihuana establishments, which include marihuana growers, marihuana safety compliance, marihuana processors, marihuana microbusinesses, marihuana retailers, marihuana secure transporters, and marihuana provisioning centers. The Township finds that these facilities and related activities are significantly connected to the public health, safety, security, and welfare of its citizens and it is therefore necessary to regulate and enforce safety, security, fire, policing, health, and sanitation practices related to such facilities and related activities and also to provide a method to defray administrative costs incurred by such regulation and enforcement. It is not the intent of this Ordinance to diminish, abrogate, or restrict the protections for recreational marihuana use found in the Michigan Medical Marihuana Facility Licensing Act ("MMFLA") or medical marihuana use found in the Michigan Regulation and Taxation of Marihuana Act ("MRTMA").

SECTION 3. DEFINITIONS

Applicant means entity or individual seeking a Municipal Permit under this Ordinance.

Application means a written request upon a form provided by the Township for a Municipal Permit to operate a Marihuana Facility under this Ordinance.

Application Fee means a non-refundable, one-time application fee of Five Thousand Dollars (\$5,000) as set by the Resolution of the Three Oaks Township Board of Trustees and that the Applicant shall submit concurrent with its initial submission of any individual Application under this Ordinance for the processing of an Application.

Conditional Authorization means that the Clerk for the Township of Three Oaks has determined that the submitted application is complete.

Department means the Michigan Department of Licensing and Regulatory Affairs.

Conditional Permit means that the Board for the Township of Three Oaks has approved the Applicant for a Municipal Permit contingent upon the State of Michigan issuing a license for operation under state law.

Grower means a Licensee that is a commercial entity located in the State of Michigan that cultivates, dries, trims, and/or cures and packages marihuana for sale to a processor or provisioning center.

Holder of a Municipal Permit means the person, or entity, who applied for a Municipal Permit and to which the Municipal Permit was approved and issued to that named applicant.

License means current and valid permission from the State of Michigan so issued under the MRTMA or MMFLA.

Licensee is a person or entity holding a state operating License issued under the MRTMA or MMFLA.

Marihuana means that term as defined in the MRTMA and MMFLA.

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

Microbusiness means a person licensed under the MRTMA to cultivate not more than one hundred and fifty (150) marihuana plants; process and package marihuana; and sell or otherwise transfer marihuana to individuals who are twenty-one (21) years of age or older or to a marihuana safety compliance facility, but not to other marihuana establishments.

Municipal Permit, or Permit, means a license of permission as issued by the Board for the Township of Three Oaks under Section 6 of the MRTMA or Section 205 of the MMFLA and subject to this Ordinance.

MMFLA means the Medical Marihuana Facilities Licensing Act.

MRTMA means the Michigan Regulation and Taxation of Marihuana Act.

Person means an individual, corporation, business, entity, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or other legal entity.

Processor means a person licensed under the MRTMA or MMFLA that is a commercial entity located in the State of Michigan that purchases marihuana from a grower and packages the marihuana and/or extracts resin from the marihuana and/or creates a marihuana-infused product for sale and transfers that packaged form to a provisioning center or another processor.

Provisioning Center means a licensee under the MRTMA or 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.

Retailer means a person or entity so licensed under the MRTMA to obtain marihuana from marihuana establishments and to sell or otherwise transfer marihuana to marihuana establishments and to individuals who are twenty-one (21) years of age or older.

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

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

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 4. AUTHORIZATION AND FEE

- A. The Township hereby authorizes, subject to the issuance of a Township Municipal Permit, or "Permit," by the Township Clerk, the following Marihuana Facilities within the boundaries of the Township, as are authorized pursuant to Section 205(1) of the MMFLA and Section 6.1 of the MRTMA.
- B. The types of Marihuana Facilities and the number authorized pursuant to this Ordinance are:

Type of Facility	Number Authorized
Marihuana Retailer	0 [or] Unlimited / Zoning Dependent
Marihuana Microbusiness	0 [or] Unlimited / Zoning Dependent
Marihuana Processor	0 [or] Unlimited / Zoning Dependent
Marihuana Safety Compliance Facility	0 [or] Unlimited / Zoning Dependent
Marihuana Secure Transporter	0 [or] Unlimited / Zoning Dependent
Marihuana Provisioning Centers	0 [or] Unlimited / Zoning Dependent
Marihuana Event Organizers	0 [or] Unlimited
Grower-Class A (500 Marihuana Plants)	Unlimited / Zoning Dependent
Grower-Class B (1000 Marihuana Plants)	Unlimited / Zoning Dependent
Grower-Class C (1500 Marihuana Plants)	Unlimited / Zoning Dependent

- C. Nothing in this Ordinance shall be construed to prohibit an MRTMA licensed marihuana grower, processor, or retailer from operating at a location shared with a MMFLA licensed marihuana grower, processor, or retailer.
- D. No other license types, permit types, or other types of Marihuana Facilities, as may otherwise be established by the Rules promulgated pursuant to the MMFLA and/or the MRTMA, shall be authorized in the Township.
- E. A nonrefundable Municipal Permit Application Fee in the amount of \$5,000.00 shall be paid by each Marihuana Facility applying for a Municipal Permit under this Ordinance. The Municipal Permit Application Fee is in addition to any other fees required, including, but not limited to, zoning fees.
- F. An issued Municipal Permit is valid for one-year and needs to be renewed or it will expire (See Section 8).
- G. A nonrefundable Annual Renewal Fee in the amount of \$5,000.00 shall be paid to renew a Municipal Permit (See Section 8).

SECTION 5. MUNICIPAL PERMIT APPLICATION REQUIREMENTS AND PROCEDURE

- A. No person shall operate a Marihuana Facility in the Township without a valid Municipal Permit issued by the Township pursuant to the provisions of this Ordinance.
- B. No person shall be issued a Municipal Permit by the Township without first having obtained a Special Land Use Permit authorizing the operation of the Marihuana Facility pursuant to the Township of Three Oaks Zoning Ordinance.

1. All marihuana facilities under this ordinance must receive site plan approval and/or a Special Land Use Permit from the Township's Planning Commission by a majority vote of those members present.
 2. The Planning Commission determines the appropriateness of the location of the marihuana facilities subject to location requirements and restrictions set forth in the Township's Zoning Ordinance.
 3. The Planning Commission determines the appropriateness for using an existing building for a marihuana facilities, and any applicable Certificate of Occupancy, per the Township's Zoning Ordinance and any required site plans and building plans submitted so required under the Zoning Ordinance and/or Special Land Use Permitting application process.
- 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 shall have an interest, directly or indirectly, in a Marihuana Facility.
- D. Every Applicant for a Municipal Permit to operate a Marihuana Facility shall file an application in the Township Clerk's office upon a form provided by the Township.
- E. The application shall include:
1. The appropriate nonrefundable Municipal Permit Application Fee in the amount determined by this Ordinance;
 2. 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 emergency contact information, and signature on the application denoting that the information in the application is accurate and truthful;
 3. 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 emergency contact person; contact information for the emergency 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, and the signature on the application of a duly appointment agent of the entity that serves to denote that the information in the application is accurate and truthful;

4. The percentage ownership of each Stakeholder;
 5. The name and address of the proposed Marihuana Facility;
 6. A copy of the Special Land Use Permit issued by the Township of Three Oaks Planning Commission;
 7. A location area map of the Marihuana Facility and surrounding area that identifies the relative locations and the distances (closest property line to the subject Marihuana Facility's building) reflecting the Applicant's compliance with any applicable separation distance requirements (and subject to prior approval per Section 5(B));
 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 of Michigan and federal laws, rules and regulations, and that the approval or granting of a Permit hereunder does not provide immunity, 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 laws, rules, and regulations; and
 9. Signed acknowledgments in a form approved by the Township verifying that the Applicant and any associated Stakeholder(s) are not in default to the Township; verifying that the Applicant and any associated Stakeholders are authorized to submit the application; and verifying whether the Applicant or operator has had a business license revoked or suspended, and if revoked or suspended, then the reason(s) for such revocation or suspension.
 10. Any other or additional information that may be requested by the Township Clerk.
- F. An initial application period following the effective date of this Ordinance shall be set by the Township Board by a Resolution. The Township shall begin accepting applications on the first day of the initial application period and shall cease accepting applications at close of business of the last day of the initial application period as so specified in the Resolution. Following the close of the initial application period, the

Township Board shall review each Application once it has received Conditional Authorization. The Township Board may, upon its own discretion, and after the approval of a related Resolution, allow additional specified application periods after the expiration of the first initial period.

- G. Upon receipt of an application, including application fee and other documents referenced herein, the Township Clerk Office, with assistance of the Zoning Administrator and/or the Building Inspector, shall review the application within fourteen (14) days to determine whether the application is complete. Complete applications shall receive Conditional Authorization. Incomplete applications will be denied. The Township Clerk shall notify the Applicant of the grant or denial of the Conditional Authorization by first-class mail. In the event of a denial, the Applicant shall have fourteen (14) days from the mailing date of the denial to correct deficiencies. Should the Applicant timely correct all deficiencies, the Township Clerk shall issue a Conditional Authorization. Following the issuance of the Conditional Authorization, the application fee shall be nonrefundable. If the Applicant does not correct the deficiencies then the Application is deemed withdrawn and the application fee is forfeited to the Township. A denial, or withdrawal, of an application does not prohibit the applicant from submitting subsequent applications subject to applicable fees.
- H. The Township Board shall review conditionally authorized applications as provided herein to determine whether such Applicants will receive a Conditional Permit subject to this ordinance.
- I. The Township Board shall review all conditionally authorized applications at a public meeting and the Township Board may require the Applicant and one or more Stakeholder to be present at the public meeting.
- J. All Conditional Permits issued are contingent upon the State of Michigan issuing a license for operation under state law.
- K. Within thirty (30) days from the Applicant submitting proof of obtaining a state operating license and completing all other required permits and approvals required by the Township, the Township shall issue a Municipal Permit.
- L. If a conditionally permitted Applicant fails to obtain a Municipal Permit from the Township within one (1) year from the date of the Conditional License, then such Conditional License shall be canceled by the Township Supervisor unless the Township Supervisor extends such Conditional License for good cause shown, where good cause means a reasonable excuse not solely based on the delay of the Applicant.
- M. Should the Township grant a Municipal Permit, the application fee shall be considered as the fee imposed for the first year the Municipal Permit issued. This initial Municipal

Permit will expire after one year unless renewed subject to Section 8.

SECTION 6. MINIMUM OPERATIONAL STANDARDS FOR ALL MARIHUANA FACILITIES WITHIN THE TOWNSHIP OF THREE OAKS

The following minimum standards shall apply to all Marihuana Facilities within the Township:

- A. A Marihuana Facility must obtain a Municipal Permit and a State License prior to opening for business.
- B. Marihuana Facilities shall comply at all times and in all circumstances with the MRTMA and MMFLA, applicable Michigan laws, and the general rules of the Department, as they may be amended from time to time. It is the responsibility of the Owner(s) and/or Stakeholder(s) of a Marihuana Facility and/or Holder of a Municipal Permit to be aware of changes in the MRTMA and MMFLA. The Township bears no responsibility for failure of the Owner(s) and/or Stakeholder(s) of a Marihuana Facility and/or Holder of a Municipal Permit to be aware of, and comply with, changes in the MRTMA and MMFLA.
- C. Consumption and/or use of marihuana shall be prohibited at a Marihuana Facility.
- D. All activity related to a Marihuana Facility shall be conducted indoors.
- E. All Marihuana Facilities shall be contained within buildings that are locked and secured, in accordance with the MMFLA and MRTMA.
- F. Outdoor storage of marihuana in any form or at any phase in processing is prohibited.
- G. No person under the age of 21 shall be allowed to enter into the Marihuana Facility without a parent or legal guardian.
- H. The Marihuana Facility must post a sign, in a position viewable to all persons who enter the Marihuana Facility, which states the following:
 - 1. It is illegal under state law to drive a motor vehicle or to operate machinery when under the influence of, or impaired by, marihuana.
 - 2. No person under the age of 21 years is permitted on this premises without a parent or legal guardian.
- I. All Marihuana Facilities shall maintain an appropriate security system at all times and such security system must meet the state law requirements and regulations.
- J. A Marihuana Facility must fully comply with all Township Ordinances (including but not limited to blight, disposal of waste, discharge of waste water, etc.) as well as in compliance with local building codes, local fire codes, and the Michigan Fire

Protection Code at all times.

SECTION 7. DENIAL AND REVOCATION

- A. A Municipal Permit issued under this Ordinance may be revoked by the Township Board at a public meeting at which it is determined that grounds for revocation under this Ordinance exists. Notice of the time and place of the hearing and the grounds for revocation must be given to the holder of a Municipal Permit at least five (5) days prior to the date of the hearing by first class mail to the address given on the permit application. A Holder of a Municipal Permit whose Permit is the subject of such hearing may present evidence and/or call witnesses at the hearing.
- B. A Municipal Permit applied for or issued under this ordinance may be denied or revoked on any of the following grounds:
1. A violation of this Ordinance;
 2. Any conviction related to the delivery of a controlled substance to a minor;
 3. Township finding of fraud, misrepresentation, or the making of a false statement by the Applicant, or any Stakeholder of the Applicant, while engaging in any activity for which this Ordinance requires a Municipal Permit or in connection with the application for a Municipal Permit or request to renew a Municipal Permit;
 4. Sufficient evidence that the applicant or Holder of a Municipal Permit lacks, or has failed to demonstrate, the requisite professionalism and/or business experience required to assure strict adherence to this Ordinance, and the rules and regulations governing the MRTMA and MMFLA;
 5. The Holder of the Municipal Permit , Owner(s), or any of Stakeholder(s) is in default to the Township personally or in connection with any business in which they hold an ownership interest for failure to pay property taxes, special assessments, fines, fees or any other financial obligation;
 6. The Marihuana Facility is in violation of other Three Oaks Township Ordinances related to public safety, blight, trash/debris, neglect of property, or any other Ordinance(s) related to public health and/or public safety issue;
 7. The Township has determined that the Marihuana Facility is a public nuisance;
 8. The Holder of the Municipal Permit has allowed the Marihuana Facility's State of Michigan operating license to expire; and/or

9. The Department has denied, revoked, or suspended the Applicant's State of Michigan operating license.

SECTION 8. PERMIT RENEWAL

- A. A Municipal Permit is only valid for one (1) year from the date of issuance, unless revoked as provided by law, including this Ordinance.
- B. A valid Municipal Permit may be renewed on an annual basis by submitting a renewal application upon a form provided by the Township with payment of the nonrefundable \$5,000.00 annual permit fee.
- C. Applications to renew a Municipal Permit shall be filed with the Township Clerk at least thirty (30) days prior to the date the current permit's expiration.
- D. Upon receipt of an Application to renew a Municipal Permit, the Township Clerk or other authorized Township official shall review the application within fourteen (14) days to determine whether the application is complete.
- E. As long as no changes to the Municipal Permit have occurred, there are no pending requests to revoke or suspend the Municipal Permit or State of Michigan operating license, and the applicant paid the permit renewal fee, the Township Clerk shall renew the Municipal Permit for another one-year period.
- F. The Township Clerk shall notify the Applicant of the grant or denial of the renewal by first-class mail.
- G. In the event of a denial, the Applicant shall have fourteen (14) days from the mailing date of the denial to correct any stated deficiencies. Should the Applicant timely correct all deficiencies, the Township Clerk shall renew the Municipal Permit for another year. If deficiencies are not corrected, or cannot be corrected, then the application for renewal shall be denied and the current permit expires in its due course.

SECTION 9. UNLAWFUL PRACTICES

Any action, inaction, or act that is a violation of the MRTMA, including but not limited to MCL 333.27954, or any amendment thereto, shall also be considered a violation of this Ordinance. It shall be unlawful to consume marihuana in a public place in the Township of Three Oaks, except in a location as may be designated by the MRTMA, MMFLA, or the Township Board.

Nothing in the Ordinance shall be construed to allow or condone individuals under the age of twenty-one (21) years to permissibly use, possess, purchase, sell, or distribute marijuana.

Nothing in this ordinance is intended to grant immunity from criminal or civil prosecution, penalty, or sanction for the cultivation, manufacture, possession, use, sale, or distribution of marihuana, in any form, that is not in full compliance with the Michigan Medical Marihuana Facility Licensing Act, the Michigan Regulation and Taxation of Marihuana Act, the Marihuana Tracking Act, and all other applicable rules and criminal laws promulgated by the State of Michigan.

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, or possess, use, or intend to manufacture or sell marihuana. Nothing in this ordinance is intended to grant immunity from any criminal prosecution under federal law.

SECTION 10. APPEAL TO THE TOWNSHIP BOARD

- A. All requests for appeal of any decision subject to this ordinance shall be made in writing and issued to the Township Clerk. The word “appeal” must be stated in the writing and the decision appealed must be specified in writing. The writing must also include detailed information and supporting documentation for any and all points the person appealing wishes the Township Board to consider or reconsider. Any vague or incomplete request for appeal will be rejected by the Township Board.
- B. The Township Board shall set the matter for consideration within thirty-one (31) calendar days of the date of appeal and shall provide the appealing person with a minimum of five (5) days written notice of the date/time of the Board meeting for consideration.
- C. 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 Township Clerk.
- D. The appealing person must appear at the designated Board meeting or they will have forfeited their right to due process.
- E. A majority vote of the members of a quorum of the Township Board shall be necessary to reverse a decision, order, denial of application, revocation of municipal permit, fine, or other determination made by the Township Board, Township Clerk, Zoning Official, Building Official, or any other Township administrative official in their interpretation of this Ordinance and any act, or inaction, made subject to this Ordinance.
- F. The Township Board’s decision as to the appeal shall be final.

SECTION 11. APPLICABILITY

The provisions of this Ordinance shall be applicable to all persons, facilities, applicants, and businesses described herein, including if the operations or activities are associated with a

Marihuana Facility and were established without authorization before the effective date of this Ordinance.

SECTION 12. PENALTIES AND ENFORCEMENT

- A. Any person who violates any of the provisions of this Ordinance shall be responsible for a municipal civil infraction and subject to the payment of a civil fine of \$500.00, plus costs, except that a violation of Section 9 by consuming marihuana in a public place is a civil infraction and subject to the payment of a civil fine of up to \$100 for a first offense, \$200 for a second offense, and \$300 for each offense thereafter. Each day a violation of this Ordinance continues to exist constitutes a separate violation. A violator of this Ordinance shall also be subject to such additional sanctions, remedies and judicial orders as are authorized under Michigan law.
- B. A violation of this Ordinance is deemed to be a nuisance per se. In addition to any other remedy available at law, the Township may bring an action for an injunction or other process against a Licensee to restrain, prevent, or abate any violation of this Ordinance.
- C. Any person who operates a marihuana business without a license or otherwise not in compliance with this Ordinance shall be deemed a nuisance per se and may be abated as provided by law.
- D. This Ordinance may be enforced and administered by the Township Clerk, any Township of Three Oaks Police Officer, Township Supervisor or such other Township official as may be designated from time to time by resolution of the Township Board.
- E. Violations of this Ordinance by a Holder of a Municipal Permit may have the permit revoked subject to Section 7 of this Ordinance.

SECTION 13. SEVERABILITY

In the event that any one or more sections, provisions, phrases or words of this Ordinance shall be found to be invalid by a court of competent jurisdiction, such holding shall not affect the validity or the enforceability of the remaining sections, provisions, phrases or words of this Ordinance.

SECTION 14. EFFECTIVE DATE

This Ordinance shall take effect 40 days after its adoption and publication as prescribed by law.

The foregoing Ordinance was duly adopted at a Regular Board meeting of the Three Oaks Township Board at which a quorum was present on June 12, 2023.

S:/
Township Clerk
Township of Three Oakes, Michigan