

VILLAGE OF PENTWATER
COUNTY OF OCEANA, STATE OF MICHIGAN

ORDINANCE NO. 03 - 2021

ADOPTED: July 12, 2021 EFFECTIVE: August 11, 2021

MEDICAL MARIJUANA AND MARIJUANA ESTABLISHMENTS ORDINANCE

AN ORDINANCE TO PROVIDE A TITLE; DEFINITIONS; TO AUTHORIZE THE OPERATION OF AND PROVIDE REGULATIONS FOR MEDICAL MARIJUANA FACILITIES IN THE VILLAGE OF PENTWATER PURSUANT TO THE MEDICAL MARIHUANA FACILITIES LICENSES ACT, ACT 281 OF 2016; TO AUTHORIZE THE OPERATION OF AND PROVIDE REGULATIONS FOR RECREATIONAL MARIJUANA ESTABLISHMENTS PURSUANT TO THE MICHIGAN REGULATION AND TAXATION OF MARIHUANA ACT, INITIATED LAW 1 OF 2018; TO PROVIDE PENALTIES FOR VIOLATIONS OF THIS ORDINANCE; TO PROVIDE FOR SEVERABILITY; AND TO PROVIDE AN EFFECTIVE DATE.

THE VILLAGE OF PENTWATER ORDAINS:

Section 1. That Chapter 115 of the Village of Pentwater, Michigan, Code of Ordinances, be amended in its entirety to read as follows:

Chapter 115 - Medical Marijuana Facilities and Marijuana Establishments

§ 115.01. Legislative Intent. The Village intends to issue permits for and regulate marijuana facilities and marijuana establishments to the extent they are permitted under the Michigan Medical Marihuana Facilities Licensing Act, Act 281 of 2016, MCL 333.27101 *et seq.*, the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, MCL 333.27951 *et seq.*, and the ordinances and regulations of the Village. The Village does not intend that permitting and regulation under this chapter be construed as a finding that such facilities comply with any law, including federal law. By requiring a permit and compliance with the requirements of this chapter, the Village intends to protect the public health, safety and welfare of the citizens and residents.

§ 115.02. Definitions.

(A) Words and phrases contained in the Michigan Medical Marihuana Facilities Licensing Act, MCL 33327101 *et seq.* (“MMFLA”), the Medical Marihuana Act, MCL 333.26421 *et seq.* (“MMA”), the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951 *et seq.* (“MRTMA”), and the rules or emergency rules promulgated pursuant to any of these acts, shall have the same meanings in this Chapter.

(B) For purposes of the requirements for obtaining a permit under this Chapter, the terms “facility” and “marijuana facility” are intended to include both a “marijuana facility” as defined in the MMFLA and a “marijuana establishment” as defined in the MRTMA.

(C) Additionally, the following words as used in this Chapter setting forth the requirements for obtaining a city permit have the following meanings:

(1) “Applicant” means a person who applies for a Village permit.

(2) “Authorized person” means:

(i) An owner of a facility;

(ii) The directors, officers, members, partners, trustees, and individuals of a facility that is a corporation, limited liability company, partnership, trust, or sole proprietorship;

(iii) Any person who exercises managerial authority of a facility during business hours.

(3) “Department” means the Michigan Department of Licensing and Regulatory Affairs or its successor.

(4) “Designated consumption establishment” means a commercial space licensed by the state to permit adults 21 years of age and older to consume marijuana products at the location indicated in the license.

(5) “Facility” means a “marijuana facility” as defined in the MMFLA and a “marijuana establishment” as defined in the MRTMA.

(6) “Grower” means a person who cultivates and sells marijuana to other facilities, as permitted by the MMFLA and the MRTMA, which includes all of the following:

(i) “Class A grower”, which is a maximum of 500 plants under the MMFLA and 100 plants under the MRTMA;

(ii) “Class B grower”, which is a maximum of 1,000 plants under the MMFLA and 500 plants under the MRTMA;

(iii) “Class C grower”, which is a maximum of 1,500 plants under the MMFLA and 2,000 plants under the MRTMA;

(iv) “Excess marijuana grower”, which is a person to whom the state has

issued 5 class C marihuana grower licenses under the MRTMA (2,000 plants each).

(7) “Marijuana” means "marihuana" as defined in the MMFLA and as defined in the MRTMA.

(8) “Marijuana event organizer” means a person licensed to apply for a temporary marihuana event license under these rules.

(9) “Medical Marihuana Facilities Licensing Act” or “MMFLA” means the Michigan Medical Marihuana Facilities Licensing Act, MCL 333.27101 *et seq.*, and the rules or emergency rules promulgated pursuant to the MMFLA.

(10) “Michigan Medical Marihuana Act” or “MMMA” means the Michigan Medical Marihuana Act, MCL 333.26421 *et seq.*, and the rules or emergency rules promulgated pursuant to the MMMA.

(11) “Michigan Regulation and Taxation of Marihuana Act” or “MRTMA” means the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951 *et seq.*, and the rules or emergency rules promulgated pursuant to the MRTMA.

(12) “Marijuana Microbusiness” means a business that cultivates not more than 150 plants; processes and packages it; and sells it to individuals who are 21 years of age or older or to a safety compliance facility but not to other businesses.

(13) “Permittee” means a person holding a Village permit under this chapter.

(14) “Person” means any individual, copartnership, corporation, association, club, joint adventure, estate, trust, and any other group or combination acting as a unit, and the individuals constituting such group or unit, in addition to the entities included in the definition of “person” in the MMFLA and the MRTMA.

(15) “Processor” means a person who operates as a “processor” as defined in the MMFLA or a “marihuana processor” as defined in the MRTMA or as both at the same location under common ownership.

(16) “Provisioning Center/Retailer” means a person who operates as a “provisioning center” as defined in the MMFLA or as a “marihuana retailer” as defined in the MRTMA or as both at the same location under common ownership.

(17) “Safety compliance facility” means a a person who operates as a “safety compliance facility” as defined in the MMFLA or a “marihuana safety compliance facility” as defined in the MRTMA or as both at the same location under common

ownership.

(18) “Secure transporter” means a person who operates as a “secure transporter” as defined in the MMFLA or a “marihuana secure transporter” as defined in the MRTMA or as both at the same location under common ownership.

(19) “State license” means a valid state operating license issued under the MMFLA or a valid state license issued under the MRTMA or both.

(20) “Village permit” or “permit”, unless the context requires a different meaning, means a valid permit that is issued under this Chapter.

§ 115.03 Marijuana facilities authorized. Pursuant to the MMFLA and the MRTMA, the Village of Pentwater authorizes the operation in the Village of the following facilities, provided they possess a state license or licenses and they comply with the additional requirements of this chapter, the Village of Pentwater Zoning Ordinance, as amended, and all other applicable laws, regulations, and ordinances:

(A) Provisioning center/retailer.

§ 115.04 Village permit required, number of permits available.

(A) No person shall operate a facility for which an annual permit as provided for in this chapter has not been issued. The maximum number of permits available for each type of facility is as follows:

(1) Grower permits - zero.

(2) Processor permits - zero.

(3) Secure transporter permits - zero.

(4) Provisioning center/retailer - **unlimited**.

(5) Safety compliance facility permits - zero.

(6) Marijuana microbusiness permits - zero.

(7) Designated consumption establishment permits - zero.

(B) The permit requirement in this chapter applies to all facilities whether operated for profit or not for profit.

(C) The permit requirement in this chapter shall be in addition to any other requirements imposed by any other state or local law, including but not limited to state or local laws applicable to commercial entities performing functions similar to the functions performed by marijuana facilities.

(D) The issuance of any permit pursuant to this chapter does not create an exception, defense or immunity to any person with regard to any potential criminal or civil liability the person may have under any federal or state law or Village ordinance.

(E) A permit issued under this chapter shall be valid for 1 year after the date of issuance. To renew an existing permit, the permittee shall submit an application in the same manner as is required to apply for a new permit no sooner than 90 days before the expiration date and no later than 60 days before the expiration date.

§ 115.05 General provisions and regulations.

(A) A permit issued under this chapter is valid only for the location of the facility and type of facility that is listed on the permit application and is valid only for the operation of the facility at that location by the permit applicant.

(B) A permit issued under this chapter is valid only if the permit holder also holds a valid current state license and a copy of the valid current state license has been provided to the Village Clerk by the state license holder and is in compliance with all other requirements in this chapter.

(C) The revocation of, suspension of, and placement of restrictions by the state on a state license apply equally to a permit issued by the Village.

(D) The expiration date of the state license that corresponds to a permit issued under this chapter constitutes the expiration date of the permit, however, operation of the facility under the expired permit is permitted to the extent that operation under the expired state license is permitted under the MMFLA.

(E) A permit issued by the Village under this chapter, shall be conspicuously posted in the facility where it is easily open to public view.

(F) Acceptance of a permit from the Village under this chapter constitutes consent by the permittee, owners, managers and employees to permit the Village Manager, Chief of Police, Zoning Administrator, or their designee to conduct inspections of the facility to ensure compliance with this chapter.

(G) A facility shall comply with all provisions the Village of Pentwater Zoning Ordinance, as amended. The Village may revoke a permit issued under this chapter for any violations

of the Village of Pentwater Zoning Ordinance.

(H) It is hereby expressly declared that nothing in this chapter shall be held or construed to give or grant to any person, facility, or establishment a vested right, license, privilege, or permit to continued authorization from the Village for operations within the Village.

(I) The Village expressly reserves the right to amend or repeal this ordinance in any way, including, but not limited to, complete elimination of or reduction in the type and/or the number of facilities or permits authorized to operate within the Village.

(J) No person, authorized person, applicant, or permittee shall be issued or hold a permit under this chapter if such person, authorized person, applicant, or permittee has:

(i) Ever been convicted of a felony involving controlled substances as defined under the Michigan Public Health Code, MCL 333.1101 *et seq.*, the federal law, or the law of any other state; or

(ii) Ever been convicted of any other type of felony under the law of Michigan, the United States, or another state.

(K) A facility shall not be located within:

(i) An area zoned exclusively for residential use;

(ii) 500 feet of a school, as measured from the respective parcel lines of the school and the facility; or

(iii) 250 feet of a religious institution, as measured from the respective parcel lines of the religious institution and the facility.

§ 115.06 Application requirements for and issuance of Village permit.

(A) Application for new annual permit. An application for a new annual permit for a marijuana facility shall be submitted to the Village Clerk on a form provided by the Village, which shall fulfill all of the requirements indicated on the form, including but not limited to:

(1) The name and address of the facility and any other contact information requested on the application form.

(2) The name and address of all owners of the real property where the facility is located.

(3) Name and address of all business managers of the facility.

(4) A statement with respect to each person named on the application whether the person has:

(i) Ever been convicted of a felony involving controlled substances as defined under the Michigan Public Health Code, MCL 333.1101 *et seq.*, the federal law, or the law of any other state and, if so, the date of the conviction and the law under which the person was convicted; or

(ii) Ever been convicted of any other type of felony under the law of Michigan, the United States, or another state, and, if so, the date of the conviction and the law under which the person was convicted.

(5) Each person named on the application shall execute a release authorizing the Chief of Police or their designee to conduct a criminal background investigation with respect to such person.

(6) Proof of applicant's ownership or legal possession of the premises.

(7) A zoning permit.

(8) A certificate of occupancy or temporary certificate of occupancy.

(9) The type of facility for which a permit is requested at the location specified in the application. For purposes of obtaining a Village permit, only one permit application is required for each type of facility listed above at one location, regardless of whether the applicant intends to apply for or has applied for a state license under the MMFLA, the MRTMA or both, at the same location under common ownership. For purposes of this chapter, a permit issued for a facility at the location indicated in the application form authorizes the operation of the facility in compliance with the MMFLA, the MRTMA or both, as applicable.

(10) Payment of a non-refundable application fee, which shall be determined by resolution of the Village Council.

(11) Any other requirements as determined by resolution of the Village Council.

(B) Renewal, amendment, or transfer of existing permits.

(1) The same procedures that apply to applying for a new permit shall apply to the renewal, transfer, or amendment of existing permits.

(2) An application for renewal of an existing permit shall be submitted no sooner than 90 days before the existing permit expires.

(3) An amended application shall be submitted under both of the following circumstances:

(i) When there is a change in any information the permit applicant was required to provide in the most recent application on file with the Village; and,

(ii) When there is a change in any information the permit applicant was required to provide in the most recent application for a state license on file with the state of Michigan.

(4) An application to amend an existing permit to change the location of the facility shall be submitted no later than 90 days before the existing permit expires. An application to amend an existing permit to change any other information on the most recent application on file with the Village may be submitted at any time.

(5) Applications for renewal or amendment of existing permits shall be reviewed and granted or denied before applications for new permits are considered.

(6) Applications for renewal or amendment of existing permits may only be made by the current holder of the permit. Permits are not transferable without the consent of the Village. Applications for the transfer of a permit may be made in connection with the sale of a facility by a permittee.

(7) A permittee shall be entitled to renewal of a permit if the permittee meets all of the following conditions:

(i) The facility subject to the permit has committed no violations of state or local laws, ordinances, or regulations during the year prior to the application for renewal;

(ii) The permittee has paid the annual permit fee for the renewal period;

(iii) There have been no changes in ownership or the authorized persons of the facility;

(iv) The permittee has received the renewal of its State license for the renewal period.

(C) Order of processing applications. Complete permit applications shall be processed in the order that they are received.

(D). Exempt from disclosure. To the extent permissible, all information submitted in

conjunction with an application for a new permit, permit transfer, or permit renewal required by this Ordinance is confidential and exempt from disclosure under the Michigan Freedom of Information Act, Act 442 of 1976, MCL 15.231 *et seq.*

§ 115.07 Permit Application Evaluation.

(A) If the permit applicant has successfully demonstrated compliance with all requirements for issuance of a permit under this chapter, the Village Manager shall issue a new permit to the permit applicant if a permit is available or grant renewal of an existing permit.

(B) An applicant who has been denied a permit may appeal the decision of the Village Manager to the Village Council. The applicant shall give written notice of the appeal to the Village Clerk within 10 days of the Village Manager's decision. The Village Council may overturn the decision of the Village Manager by a majority vote of the entire Village Council.

(C) The issuance of a permit under this chapter authorizes operation of the facility only after the following additional requirements are met:

(1) The applicant has provided the Village Clerk with a copy of the applicant's state license.

(2) The applicant has installed the following security measures on the premises:

(i) Security cameras to monitor all areas of the premises where persons may gain or attempt to gain access to marijuana or cash. Recordings from security cameras shall be maintained for a minimum of 72 hours. The Village Chief of Police may adopt regulations implementing this requirement, including but not limited to regulations on the design, location, maintenance, and access to the cameras and recordings. Those regulations shall take effect 30 days after being filed with the Village Clerk unless modified or disapproved by the Village Council.

(ii) A monitored alarm system.

(iii) A storage room for overnight storage of any marijuana product and cash on the premises. The storage room shall have only 1 door for entry and no other potential means of entry, lawful or unlawful, such as a window or crawl space. The door shall be equipped with a locking mechanism that is different from other locks on any door within the facility.

§ 115.08 Conduct of business at a facility.

(A) A facility shall operate and conduct business in compliance with the MMFLA, the

MRTMA, the MMMA, the rules promulgated pursuant to any of these acts, and all other laws, rules, and regulations of the State of Michigan and the Village of Pentwater.

(B) All marijuana in any form kept at the location of the marijuana facility shall be kept within an enclosed, secured building and shall not be visible from any location outside of the building.

(C) Marijuana facilities shall be closed for business, and no sale or other distribution of marijuana in any form shall occur upon the premises or be delivered to or from the premises, between the hours of 9:00 p.m. and 7:00 a.m.

(D) All marijuana in any form on the premises of a marijuana facility shall be marijuana cultivated, manufactured, and packaged in the State of Michigan.

§ 115.09 Prohibited Acts. It shall be unlawful for any person to:

(A) Violate any provision of this chapter or any condition of any permit granted pursuant to this chapter.

(B) Produce, distribute or possess more marijuana than allowed by any applicable state or local law.

(C) Produce, distribute or possess marijuana in violation of this chapter or any other applicable state or local law.

(D) Make any changes or allow any changes to be made in the operation of the facility as represented in the permit application, without first notifying the Village by amending its application.

§ 115.10 Permit revocation and suspension.

(A) A permit issued under this chapter may be revoked or suspended after an administrative hearing at which the Village Council by a majority vote of the members present determines that any grounds for revocation under this chapter exist. Notice of the time and place of the hearing and the grounds for revocation must be given to the holder of the permit at least 10 days prior to the date of the hearing. Notice of the hearing shall be given by first-class mail to the address on the permit application. A permittee whose permit is the subject of such a hearing may have a reasonable opportunity to present evidence and/or call witnesses at the hearing.

(B) A permit issued under this chapter may be suspended or revoked for any of the following violations:

- (1) Any person whose name is on or is required to be on the permit application is convicted of or found responsible for violating any provision of this chapter;
- (2) A permit application contains any misrepresentation or omission of any material fact, or false or misleading information, or the applicant has provided the Village with any other false or misleading information related to the facility;
- (3) Any person whose name is on or is required to be on the permit application is convicted of a crime which, if it had occurred prior to submittal of the application, could have been cause for denial of the permit application;
- (4) Marijuana is dispensed on the business premises in violation of this chapter or any other applicable state or local law, rule or regulation;
- (5) The facility is operated or is operating in violation of the specifications of the permit application, any conditions of approval by the Village or any other applicable state or local law, rule or regulation;
- (6) The Village, the county, or any other governmental entity with jurisdiction, has closed the facility temporarily or permanently or has issued any sanction for failure to comply with health and safety provisions of this chapter or other applicable state or local laws related to public health and safety;
- (7) The facility is determined by the Village Council to have become a public nuisance;
- (8) The facility's state license has been suspended or revoked.

(C) The Village may take immediate action to temporarily suspend a permit issued under this chapter for a period of up to 48 hours if there is probable cause to believe that a violation of Village ordinance or state law has occurred at the facility and the alleged violation constitutes a severe and imminent threat to the public health, safety, or welfare. The temporary suspension of a permit under this subsection requires the affirmative consent of both the Village Chief of Police and Village Manager. The temporary suspension may be extended beyond the 48-hour period by the affirmative vote of the Village Council at a regular, special, or emergency session/meeting. Notice of such meeting/session shall be provided as required by the Michigan Open Meetings Act, Act 267 of 1976, as amended. Additionally, notice shall be given to the permittee by posting at the address of the facility.

§ 115.11 Revocation not exclusive penalty. Nothing in this chapter shall be deemed to prohibit the Village Manager, Chief of Police, Village Attorney, Zoning Administrator, or their designee from imposing other penalties authorized by the Village Code, Village of Pentwater Zoning Ordinance, or other ordinance or to file a public nuisance lawsuit or to take any other legal action authorized by

law.

§ 115.12 Penalties.

(A) Violations as Municipal Civil Infractions. Any person who violates any provision of this Ordinance shall be responsible for a municipal civil infraction, for which the fines shall not be less than \$100.00 nor more than \$500 for the first offense and not less than \$250.00 nor more than \$1,000.00 for subsequent offenses, in the discretion of the Court. Each day that a violation occurs constitutes a separate offense.

(B) Nuisance. A violation of this chapter is hereby declared to be a public nuisance *per se* and is hereby further declared to be offensive to the public health, safety, and welfare. All violations of this chapter shall be abated by a court of competent jurisdiction. Any activity that a permittee is authorized to perform pursuant to this ordinance that was conducted either prior to the enactment of this ordinance, or that is conducted after the enactment of this ordinance but without obtaining the required licensing provided for in this ordinance, shall be deemed to be an unauthorized and illegal use and therefore not entitled to legal nonconforming use status under any applicable provisions of the Village's ordinance.

(C) Civil Action. In addition to enforcing this chapter through the use of a municipal civil infraction proceeding, the Village may initiate proceedings in the 27th Circuit Court for the County of Oceana to abate or eliminate the nuisance *per se* or any other violation of this chapter. Any person determined by the Circuit Court to have violated this chapter shall be responsible for all costs, including actual reasonable attorney fees, incurred by the Village in the enforcement of this chapter. Such costs of enforcement shall constitute a lien against the parcel upon which the facility is located, and the Village Treasurer shall certify the costs of enforcement to the Tax Assessor or other responsible official, who shall place the same on the next tax roll. The costs of enforcement so assessed shall be collected in the same manner as general Village taxes.

Section 2. Severability. If any section, clause, or provision of this Ordinance is declared unconstitutional or otherwise invalid by a court of competent jurisdiction, said declaration shall not affect the remainder of the Ordinance, which shall be given effect without the invalid portion or application.

Section 3. Effective Date. This Ordinance shall become effective twenty (20) days after notice of adoption is published in a newspaper of general circulation within the Village.

AYES: Members: Angell-Powell, Griffis, Nugent, Palmer and Hodges.

NAYS: Members: Ressel-Hodan.

ABSENT: Members:None

. ORDINANCE DECLARED ADOPTED.

Jeffrey Hodges, Village President
Village of Pentwater

Rande S. Listerman, Village Clerk
Village of Pentwater

STATE OF MICHIGAN)
) ss.
COUNTY OF OCEANA)

I hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the Village Council of the Village of Pentwater at a regular meeting held on July 12, 2021, and I further certify that public notice of such meeting was given as provided by law.

Rande S. Listerman, Village Clerk
Village of Pentwater