

TOWNSHIP OF BENZONIA

COUNTY OF BENZIE, STATE OF MICHIGAN

ORDINANCE NO. 2019-02

ADOPTED: 12/11/2019

EFFECTIVE: 1/24/2020

RECREATIONAL (ADULT USE) MARIHUANA ESTABLISHMENT ORDINANCE

An ordinance to provide a title for the ordinance; to define words; to authorize the operation of and provide regulations for recreational (adult use) marihuana establishments in Benzonia Township pursuant to Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, MCL 333.27951, et seq., as may be amended; to provide for an annual fee; to provide penalties for violation of this ordinance; to provide for severability; to repeal all ordinances or parts of ordinances in conflict therewith and to provide an effective date.

THE TOWNSHIP OF BENZONIA

BENZIE COUNTY, MICHIGAN

ORDAINS:

SECTION I

TITLE

This ordinance shall be known as and may be cited as the Benzonia Township Recreational (Adult Use) Marihuana Establishment Ordinance.

SECTION II

PURPOSE

The purpose of the ordinance is to regulate recreational (adult use) marihuana establishments in the Township in order to protect the public health, safety and general welfare of the Township's residents, to provide reasonable regulations regarding Township licensing of recreational (adult use) marihuana establishments, to provide a method to defray administrative costs of such establishments and to coordinate Township regulations and license approval with laws and regulations enacted by the State of Michigan. It is not the intent of this Ordinance to restrict or abrogate the protections for recreational (adult use) marihuana found in the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, MCL 333.27951, et seq., as may be amended.

SECTION III
DEFINITIONS

Words used herein shall have the definitions as provided for in Initiated Law 1 of 2018, MCL 333.27951, *et seq.*, as may be amended.

SECTION IV
RECREATIONAL (ADULT USE) MARIHUANA ESTABLISHMENTS

The following recreational (adult use) marihuana establishments may be authorized to operate within the Township by the holder of a state operating license, and the Township may issue a Township license for the same, subject to compliance with Initiated Law 1 of 2018, as may be amended, the Rules promulgated thereunder and this ordinance:

1. Not more than nine (9) growers shall be authorized in the Township, which number may include Class A, B or C growers, in any combination. Grower licensees will be allowed to operate within Industrial zoned properties only.
2. Not more than four (4) processors shall be authorized in the Township. Processor licensees will be allowed to operate within Industrial and Commercial zoned properties only.
3. Not more than four (4) retailers shall be authorized in the Township. Three of the four Retailer licenses will be issued to the current MMFLA Provisioning Center licensees. Retailer licensees will be allowed to operate within Commercial zoned properties only with the exception of the current MMFLA Provisioning Center located within the proposed industrial park located at 2448 Benzie Hwy.
4. Not more than two (2) Microbusinesses shall be authorized in the Township. Microbusiness licensees will be allowed to operate within Industrial and Commercial zoned properties only.
5. Not more than two (2) secure transporters shall be authorized in the Township. Secure Transporter licensees will be allowed to operate within Industrial and Commercial zones only.
6. Not more than two (2) safety compliance facilities shall be authorized in the Township. Safety Compliance Facilities will be allowed to operate within Industrial and Commercial zones only.
7. No (zero) special licenses shall be authorized in the Township. A special license shall include a designated consumption establishment license, an excess marihuana

grower license, a marihuana event organizer license and a temporary marihuana event license.

8. No other license types as may be established by the Rules promulgated pursuant Initiated Law 1 of 2018, as amended, shall be authorized in the Township.

SECTION V

RECREATIONAL (ADULT USE) MARIHUANA ESTABLISHMENT LICENSES

1. All applicants for a Township recreational (adult use) marihuana establishment license shall be pre-qualified or have started the pre-qualification process by the State of Michigan Marihuana Regulatory Agency and shall provide proof of such approval from the state prior to or upon applying to the Township for a Township license.
2. On or after January 24th, 2020, the Township shall accept applications for a Township license to operate a recreational (adult use) marihuana establishment within the Township. Application shall be made on a Township form and must be submitted to the Township Clerk and/or other designee of the Township Board (hereinafter referred to as the "Clerk."). Once the Clerk receives a complete application it shall be time and date stamped. All complete applications received on or after January 24th, 2020 shall be considered for conditional authorization and/or Township licensure. In the event that more applications are submitted to the Clerk than the number of recreational (adult use) marihuana establishments authorized for Township licensure by this ordinance, the applications shall be considered by the Township Board pursuant to the evaluation criteria contained in Section VI of this Ordinance. The Township Board shall consider an application for a recreational (adult use) marihuana establishment licensure within 30 days of the date of receipt of a complete application. Once the Township Board has determined which applications will be authorized for Township licensure, per Section VI herein, any additional complete applications shall be held in abeyance for future conditional licensure. Any applicant waiting for future conditional licensure may withdraw their application by written notice to the Clerk at any time.
3. If a conditionally licensed applicant is denied a state operating license, then such conditional license will be canceled by the Clerk and the conditional license shall be available to the next applicant for the specific type of recreational (adult use) marihuana establishment license in order of rankings, per the evaluation criteria in Section VI.
4. A conditionally licensed applicant shall receive a license from the Township to operate the recreational (adult use) marihuana establishment within the Township upon the applicant providing the Clerk proof that the applicant has received a state operating license for the recreational (adult use) marihuana facility in the Township and the applicant has met all other requirements of this ordinance for the operation of a recreational (adult use) marihuana establishment.

5. If a conditionally licensed applicant fails to obtain a license from the Township within one year from the date of conditional license, then such conditional license shall be canceled by the Clerk and the conditional license shall be available to the next applicant for the specific type of recreational (adult use) marihuana establishment license in order of rankings, per the evaluation criteria in Section VI. The Township Board shall have the authority to extend the deadline to obtain a Township license for up to an additional six months on written request of the applicant, within thirty days prior to cancellation, upon the reasonable discretion of the Township Board making a finding of good cause for the extension.

6. A licensee shall not operate a recreational (adult use) marihuana establishment at any location in the Township other than the address provided in the application to the Township.

SECTION VI **LICENSE EVALUATION CRITERIA**

In the event that the Township receives more applications for recreational (adult use) marihuana establishment licenses than are authorized by this ordinance, the Township Board shall review all applications to determine which of the applications are best suited to operate such establishment in the Township in compliance with Initiated Law 1 of 2018, as amended. In making such analysis, the Township Board shall consider the following criteria:

1. The applicant's experience in operating other licensed marihuana businesses in Benzonia Township.
2. The applicant's experience in operating other licensed marihuana businesses in Michigan or elsewhere in the United States.
3. If the applicant is a resident of Benzonia Township.
4. If the applicant is a resident of Benzie County, Michigan.
5. The applicant's general business management experience.
6. The applicant's financial ability and/or means to operate or maintain a marihuana establishment.
7. Whether the applicant has been delinquent in paying taxes to Benzonia Township, Benzie County and/or any other public entity in the past 10 years.
8. Whether the applicant has a history of non-compliance with any regulatory requirements in Benzonia Township, Benzie County or elsewhere within the State of Michigan.

SECTION VII
GENERAL REGULATIONS REGARDING
AUTHORIZED RECREATIONAL (ADULT USE) MARIHUANA ESTABLISHMENTS

1. A licensed recreational (adult use) marihuana establishment shall only be operated within the Township by the holder of a state operating license issued pursuant to Initiated Law 1 of 2018, as may be amended and the Rules promulgated thereunder. The facility shall only be operated as long as the state operating license and Township license both remain in effect.
2. Prior to operating a licensed recreational (adult use) marihuana establishment within the Township pursuant to a state operating license, the facility must comply with all applicable regulations.
3. Prior to operating an authorized recreational (adult use) marihuana establishment within the Township pursuant to a state operating license, the establishment must comply with all County construction and building codes, all other Township ordinances specifically regulating recreational (adult use) marihuana establishments and generally applicable Township police power ordinances. The establishment shall only be operated as long as it remains in compliance with all such ordinances now in force or which hereinafter may be established or amended.
4. If at any time a licensed recreational (adult use) marihuana establishment violates this ordinance the Township Board may request that the state revoke or refrain from renewing the establishment's state operating license. Once such state operating license is revoked or fails to be renewed, the Clerk shall cancel the Township license and the license shall be available to the next applicant for the specific type of recreational (adult use) marihuana establishment license in order of rankings, per the evaluation criteria in Section VI.
5. A recreational (adult use) marihuana establishment shall not be located within 1,000 feet of an existing public or private school providing education in kindergarten or any grades 1 – 12.
6. Except for a retailer, a recreational (adult use) marihuana establishment shall not be located within 500 feet of dwelling unit zoned for and used for residential purposes.
7. A recreational (adult use) marihuana establishment shall prevent smoke, odors, debris, dust, noise, lights, glare, heat, other emissions or discharge from interfering with the reasonable and comfortable use and enjoyment of another's property. Whether smoke, odors, debris, dust, noise, lights, glare, heat, other emissions or discharge interfere with the reasonable and comfortable use and enjoyment of property shall be measured against the objective standards of a reasonable person of normal sensitivity.

8. A marihuana retailer establishment shall only be open to the public between the hours of 8:00 a.m. and 9:00 p.m.
9. A microbusiness retailer component shall only be open to the public between the hours of 8:00 a.m. and 9:00 p.m.
10. All signage and advertising shall comply with Benzonia Township regulations.
11. A licensed recreational (adult use) marihuana establishment shall consent to inspection of the facility by Township officials and/or by the County Sheriff's Department, upon reasonable notice, to verify compliance with this ordinance.
12. The Township 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 number of licenses for recreational (adult use) marihuana establishments authorized to operate within the Township.

SECTION VII
ANNUAL RECREATIONAL (ADULT USE) MARIHUANA ESTABLISHMENT FEE

There is hereby established an annual nonrefundable Township recreational (adult use) marihuana establishment fee in the amount of \$5,000, for each licensed recreational (adult use) marihuana establishment within the Township, to help defray administrative and enforcement costs associated therewith. An initial annual recreational (adult use) marihuana establishment fee of \$5,000 shall be payable at the time of application processing for Township authorization and thereafter the same amount shall be payable each year by the anniversary of the date of Township licensure to operate the recreational (adult use) marihuana establishment.

SECTION VIII
NONRENEWAL, SUSPENSION, REVOCATION, APPEALS

1. It is hereby expressly declared that nothing in this ordinance be held or construed to give or grant to any authorized recreational (adult use) marihuana establishment a vested right, privilege or permit to continued licensure from the Township for operations within the Township.
2. Each license is exclusive to the licensee and a licensee or any other person must apply to and receive Township Board approval before a license is transferred, sold or purchased. The attempted transfer, sale or other conveyance of an interest in a license without prior approval of the Township Board is grounds for suspension or revocation of the license or for other appropriate sanction.

3. The Township Board, after notice and hearing, may suspend, revoke or refuse to renew a license for any of the following reasons:

- a. The applicant or licensee, or his/her agent, manager or employee, has violated, does not meet or has failed to comply with any of the terms, requirements, conditions or provisions of this ordinance or with any applicable state or local law or regulation;
- b. The recreational (adult use) marijuana establishment has operated in a manner that adversely affects the public health, safety and welfare.

4. Evidence to support a finding for nonrenewal, suspension or revocation of a license may include, without limitation, a continuing pattern of criminal complaints within the premises of the recreational (adult use) marijuana establishment or in the immediate surrounding area or an ongoing nuisance condition emanating from or caused by a recreational (adult use) marijuana establishment.

5. An applicant may appeal any Township decision regarding licensure, nonrenewal, suspension or revocation of a license to the full Township Board, upon written request. An applicant requesting such appeal shall submit the request in writing to the Township Clerk, which request shall include reasons for the appeal. The Township Board shall, within a reasonable time thereafter, provide notice to the applicant of the time and date of the Township Board meeting at which the appeal will be heard. At such Township Board meeting, the applicant will have the opportunity to present his/her case supporting their appeal request.

SECTION IX **VIOLATIONS AND PENALTIES**

1. Any person who disobeys neglects or refuses to comply with any provision of this ordinance or who causes allows or consents to any of the same shall be deemed to be responsible for the violation of this ordinance. A violation of this ordinance is deemed to be a nuisance per se.

2. A violation of this ordinance is a municipal civil infraction, for which the fines shall not be less than \$100 nor more than \$500 for the first offense and not less than \$250 nor more than \$500 for subsequent offenses, in the discretion of the Court. For purposes of this section, "subsequent offenses" means a violation of the provisions of this ordinance committed by the same person within 12 months of a previous violation of the same provision of this ordinance for which said person admitted responsibility or was adjudicated to be responsible. The foregoing sanctions shall be in addition to the rights of the Township to proceed at law or equity with other appropriate and proper remedies. Additionally, the violator shall pay costs which may include all expenses, direct and indirect, which the Township incurs in connection with the municipal civil infraction. This section is not intended to conflict with the penalty provisions in the Michigan Regulation and Taxation of Marijuana Act, Initiated Law 1 of 2018, MCL 333.27951, *et seq.*, as may be amended

3. Each day during which any violation continues shall be deemed a separate offense.
4. In addition, the Township may seek injunctive relief against persons alleged to be in violation of this ordinance, and such other relief as may be provided by law.
5. This ordinance shall be administered and enforced by the Ordinance Enforcement Officer of the Township or by such other person(s) as designated by the Township Board from time to time.

SECTION X
SEVERABILITY

The provisions of this ordinance are hereby declared to be severable. If any clause, sentence, word, section or provision is hereafter declared void or unenforceable for any reason by a court of competent jurisdiction, it shall not affect the remainder of such ordinance which shall continue in full force and effect. The provisions herein shall be construed as not interfering or conflicting with the statutory regulations for licensing recreational (adult use) marijuana establishments pursuant to Initiated Law 1 of 2018, as amended.

SECTION XI
REPEAL

All ordinance or parts of ordinances in conflict herewith are hereby repealed.

SECTION XII
EFFECTIVE DATE

This ordinance shall take effect on January 24th, 2020.

Jason Barnard
Designee of Township Clerk/Township Board
Benzonia Township