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Attorney

Memo

TO: Village of Oxford Council
Village of Oxford Manager
Village of Oxford Clerk
Village of Oxford Planner

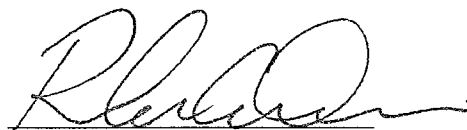
FROM: Robert Charles Davis

RE: Adult Use Ordinance Draft for Discussion at January 26, 2021 Town Hall Meeting

DATE: Monday, January 18, 2021

Attached is a draft Adult Use Ordinance and Application form that can be posted and form the basis of the discussions on January 26, 2021.

Second, I have attached a Fact Sheet that outlines very specific facts that related to this draft.


Robert Charles Davis

RCD/tmj

DRAFT FOR TOWNSHIP HALL MEETING

JANUARY 26, 2021

SECTION 4.1.29 • ADULT USE MARIJUANA FACILITIES

An ordinance to license and regulate adult use marijuana facilities in the Village of Oxford.

Adult use marijuana facilities shall conform and be subject to the provisions of this ordinance.

A. Definitions. As used in this ordinance, the following definitions shall apply to adult use marijuana facilities:

1. **Applicant:** Any individual, organization, entity, or association, including any corporation, partnership, limited liability company, or any other business, that applies for a License under this ordinance.
2. **Department:** The State of Michigan Department of Licensing and Regulatory Affairs.
3. **License:** A license to operate a marijuana facility under this ordinance.
4. **Marijuana:** All parts of the plant of the genus cannabis, growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including marijuana concentrate and marijuana-infused products. For purposes of this act, marijuana does not include:
 - a. the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from those stalks, fiber, oil, or cake, or any sterilized seed of the plant that is incapable of germination;
 - b. Industrial hemp; or
 - c. any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.

For the purposes of this Village of Oxford ordinance, the spelling of the above defined term shall be 'marijuana' and should be deemed to be equivalent to and referencing the term that is spelled 'marihuana' by the Department and within the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, as amended.

5. **Marijuana Accessories:** Any equipment, product, material, or combination of equipment, products, or materials, which is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marijuana into the human body.

6. **Marijuana Designated Consumption Establishment:** A commercial space that is licensed by the Department and authorized to permit adults 21 years of age and older to consume marijuana products at the location indicated on the state license.
7. **Marijuana Facility:** Any type of marijuana-related business licensed by the Department as authorized by the Michigan Regulation and Taxation of Marijuana Act, Initiated Law 1 of 2018, as amended.
8. **Marijuana Grower:** A facility operated by a State Licensee holding less than 5 class C marijuana grower licenses where the cultivation of marijuana takes place. A facility receiving a grower license authorizes the facility to grow not more than the following number of marijuana plants under the indicated license class for each license the grower holds in that class:
 - a) Class A – 500 marijuana plants
 - b) Class B – 1,000 marijuana plants
 - c) Class C – 1,500 marijuana plants
9. **Excess Marijuana Grower:** A facility operated by a person holding 5 class C marijuana grower licenses and licensed to cultivate marijuana and sell or otherwise transfer marijuana to marijuana establishments where the cultivation of marijuana takes place.
10. **Marijuana Microbusiness:** A facility operated by a State Licensee where the cultivation of not more than 150 marijuana plants, the processing and packaging of marijuana, and the sale or otherwise transference of marijuana to individuals who are 21 years of age or older or to a marijuana safety compliance facility takes place.
11. **Marijuana Processor:** A facility operated by a State Licensee where the processing and packaging of marijuana takes place.
12. **Marijuana Retailer:** A facility operated by a State Licensee where the sale or otherwise transference of marijuana, marijuana-infused products or marijuana accessories to individuals who are 21 years of age or older takes place.
13. **Marijuana Safety Compliance Facility:** A facility operated by a State Licensee where the testing of marijuana for the certification of potency and the presence of contaminants takes place.
14. **Marijuana Secure Transporter:** A person licensed to obtain marijuana from marijuana establishments in order to transport marijuana to marijuana establishments.
15. **State Licensee:** Any individual, corporation, limited liability company, partnership of any type, trust or other legal entity that has been issued a license by the Department that

allows for the operation of a marijuana facility at any location, including the permitted locations under this ordinance.

16. **Temporary Marijuana Event:** Any event held by a marijuana event organizer licensee where the onsite sale or consumption of marijuana products, or both, are authorized at the location indicated on the state license during the dates indicated on the state license.

B. Permitted and Prohibited Facilities.

1. **Conflicts of Law.** As of the effective date of this ordinance, marijuana is classified as a Schedule 1 controlled substance under the Federal Controlled Substances Act, 21 USC §801, et. seq. which makes it unlawful to manufacture, distribute or dispense marijuana. Nothing in this ordinance creates or grants immunity to any person or entity from criminal prosecution under any applicable federal law.
2. **Permitted Facilities.** Only the following listed marijuana facilities shall be allowed to be located within the Village of Oxford under this ordinance:
 - a. Marijuana Grower
 - b. Marijuana Microbusiness
 - c. Marijuana Processor
 - d. Marijuana Retailer
 - e. Marijuana Safety Compliance Facility
 - f. Marijuana Secure Transporter

No person or entity shall establish or operate any adult use marijuana facility in the Village of Oxford without first complying with this ordinance and any and all applicable state laws and regulations, including all amendments to such ordinances, laws and regulations.

3. **Permitted Shared Facilities.** Any licensed marijuana facility under this ordinance may be allowed to operate in the same building housing another licensed marijuana facility provided it is constructed and operated in compliance with all State and Village of Oxford requirements for the shared use of marijuana facilities. Marijuana facilities may be allowed to occupy more than one building on the same lot provided the facility and buildings are operated in compliance with all State and Village of Oxford requirements, including all Village of Oxford zoning ordinances.
4. **Prohibited Facilities.**

- a. **Mixed-Use Prohibited.** No other principal use, special land use or accessory use shall be permitted or continue to operate on the same lot, parcel or unit upon which a marijuana facility is located and operated upon under this ordinance.
- b. **Home Occupations and Accessory Use Prohibited.** A marijuana facility, or activities associated with the marijuana facility, shall not be permitted as a home occupation or an accessory use.
- c. **Other Marijuana Facilities Prohibited.** Any marijuana facility or event not specifically listed as a permitted facility or event herein shall be prohibited within the Village of Oxford.

C. Location. Marijuana facilities are permitted to be located, as a permitted use subject to the terms of this ordinance and all applicable State laws and regulations, within the Village of Oxford as set forth below and shall adhere to the following permitted location requirements:

1. **Child Care Facilities, Schools, and Similar Facilities Buffer.** Except for marijuana facilities qualifying as secure transporters or safety compliance facilities, all lots containing a marijuana facility must be located at least 500 feet from the nearest lot line of any child care center or licensed day care facility licensed by the State of Michigan Department of Licensing and Regulatory Affairs and 500 feet from the nearest preschool program center, primary, intermediate or secondary school, or like facility, established pursuant to and in accordance with the Revised School Code, P.A. 451 of 1976, being M.C.L.A. §§ 380.1 through 380.1853, as amended, and/or the State School Aid Act of 1979, P.A. 94 of 1979, being M.C.L.A. §§ 388.1601 through 388.1772, as amended.
2. **Public Parks Buffer.** Except for marijuana facilities qualifying as secure transporters or safety compliance facilities, all Lots containing a marijuana retailer facility must be located at least ____ feet from a public park measured from the nearest lot line of the marijuana facility to the common entrance nearest lot line of the public park.
3. **Permitted Districts.**
 - a. **I-1 Industrial District:** All marijuana facilities allowed under this ordinance shall be allowed as a permitted use only on parcels in the Village of Oxford that are otherwise fully located in the I-1 Industrial zoning district.

D. General Use Requirements For All Marijuana Facilities.

1. **Hours of Operation.** All marijuana facilities must provide the Village of Oxford administration and Chief of Police with the hours of operation of the facility, must provide revised hours if adjusted within 48 hours of a change and must provide such information if requested by the Village of Oxford. Marijuana retailers and the retail operations of a Marijuana Microbusiness shall only be open from 9:00 a.m. to 9:00 p.m. with no modifications allowed.

2. **Odor Control.** All marijuana facilities must be equipped with an operable filtration, ventilation, and exhaust system that, at all times, effectively confines odors to the interior of the building from which the odor is generated.

No marijuana shall be cultivated, grown, manufactured or processed in any manner that would emit odors beyond the interior of the premises or which is otherwise discernable to another person. The odor must be prevented by the installation of an operable filtration to ventilation and exhaust system. Odors must otherwise be effectively confined to the interior of the location in which the odor is generated.

Venting of marijuana odors into the areas surrounding the location is deemed and declared to be a public nuisance for all legal purposes.

3. **Waste Water.** All marijuana facilities shall be designed and operated so as to minimize the amount of pesticides, fertilizers, nutrients, marijuana, and any other potential contaminants discharged into the public wastewater and/or stormwater systems as shall be determined by the Village Engineer.
4. **Security Requirements.** All marijuana facilities must have an adequate security plan to prevent access to marijuana by non-authorized personnel, including unauthorized removal of any marijuana. All rooms that contain marijuana, in any form, must be individually locked and accessible only to authorized personnel. The building(s) housing the marijuana facility shall all be equipped with security cameras approved by the Chief of Police, maintained in operational order, and installed in such a way as to monitor the entire perimeter of the building(s) including all parking lots and areas accessible by individuals and capable of recording and storing both on and off site a minimum of 120 continuous hours of the perimeter monitoring. The security cameras shall be in operation 24 hours a day, seven days a week, and shall be set to maintain the record of the prior 120 hours of continuous operation. The Chief of Police may require review and recommendation of a proposed security plan by an independent consultant with credentialed expertise in the field of site/facility security measures. The cost of an independent review by an independent security consultant shall be paid by the applicant. The security plan shall describe how cash will be handled and deposited, including a plan to minimize the cash on hand at the marijuana facilities and to provide for a method of secure pick up and transportation of cash.
5. **Indoor Activity Only.** All marijuana facility activities including, but not limited to, operations, cultivation, processing, storage, and transactions, shall be conducted within an enclosed structure. All outdoor storage is prohibited.
6. **Inspections.** A marijuana facility shall be subject to inspections to ensure compliance with all applicable Village of Oxford codes and ordinances and all applicable State laws.
7. **Prohibited Activities.** No smoking, inhalation, or consumption of marijuana shall take place on the premises of any marijuana facility.

8. **Unlawful Activities.** Any uses or activities found by the State of Michigan or a court of competent jurisdiction to be unconstitutional or otherwise unlawful by State law shall not be permitted by the Village of Oxford.
9. **No Temporary Certificate of Occupancy.** No marijuana facility under this ordinance may operate under a temporary certificate of occupancy. Each licensed facility must be in full and complete compliance in order to operate.
10. A Marijuana facility license issue under this ordinance is not transferable or assignable.

E. Application Submittal Requirements for a License.

The following items shall be required at the time an applicant makes an application for a license under this ordinance. If any item is not included at the time of the application, the entire application shall not be accepted for review by the Village of Oxford. Any subsequent revisions to an application previously reviewed by the Village of Oxford shall submit all of the following items at the time of application.

1. **Application Form.** A signed and dated application form to be provided by the Village of Oxford. If the applicant does not own the property, a signed and notarized statement granting permission to another individual to submit an application shall be included with the application.
2. **Preliminary State License Approval.** A letter from the Marijuana Regulatory Agency of the State of Michigan, or its' designated successor, granting preliminary state license approval for the applicant to operate a marijuana facility that the applicant is requesting for approval within the Village of Oxford.
3. **Site Plan.** A site plan including all information required in the Village of Oxford zoning ordinance and all general use requirements set forth herein. The site plan shall be reviewed and approved consistent with the Village of Oxford Zoning Ordinance.
4. **Use Statement.** A written statement by the applicant identifying all activities, operations, products and services to be provided by the marijuana facility, including retail sales of food and/or beverages, if any.
5. **Hours of Operation.** A written statement identifying the marijuana facilities' hours of operation.
6. **Odor Control Plan.** An odor control plan consistent with the requirements herein.
7. **Waste Water Control Plan.** A waste water control plan consistent with the requirements herein.
8. **Security Plan.** A security plan consistent with the requirements herein.

9. **Liability Release and Insurance Documentation.** An executed release of liability, indemnification and hold harmless agreement in the form provided by the Village of Oxford's application form and proof of insurance providing general liability coverage for loss, liability and damage claims arising out of injury to persons or property in an amount to be set by resolution of the Village of Oxford Council.
10. **Notarized Acknowledgement of Operational Requirements.** As part of the application form, the applicant shall submit a signed and notarized statement by all individuals receiving pre-approval to operate the marijuana facility that applicant(s) are aware of the terms of this ordinance.

F. Application Consideration.

A completed application for a license shall be reviewed and considered to be consistent with this ordinance. There shall be no other review policy or guideline.

1. **Application Fee.** The applicant, with the application, shall pay a fee of \$5,000.00 per license type to defray the administrative and enforcement costs associated with the operation of marijuana facility.
2. **Renewals.** Each license issued under this ordinance must be renewed annually with a renewal fee of \$5,000.00 per license on a renewal form to be provided by the Village of Oxford. This fee is to help defray administrative and enforcement costs.
3. **No Property Right.** A Village license for a marijuana facility is a revocable privilege granted by the Village of Oxford and is not a property right. Granting a license under this ordinance does not create or vest any right, title, franchise, or other property interest. No licensee or any other person shall lease, pledge, or borrow or loan money against a license.
4. **Inspection Fee.** Each marijuana facility established under this ordinance may, at the sole discretion of the Village of Oxford be inspected by the Village of Oxford at any time to ensure compliance. The Village reserves the right, if allowed by law, to establish any appropriate inspection fee in accordance with the Village of Oxford schedule of fees process.

G. Adverse License Actions.

The Village of Oxford Village Manager may suspend, revoke, or place in non-renewal status any License granted under this ordinance based on the following:

1. Any fraud or misrepresentation contained in the license application or renewal process.
2. Any violation of this ordinance or State Marijuana Law.

3. The marijuana business operates in an unlawful manner or in such a way as to constitute a public nuisance or to adversely affect the health, safety, or general welfare of the public.
4. The revocation, suspension, nonrenewal, and placement of restrictions by the agency on a state license applies equally to the corresponding license issued by the Village of Oxford.

If a license is not renewed or is suspended or revoked, the licensee must immediately cease all operations at the marijuana facility.

Nothing in this section prohibits the Village from imposing other penalties authorized in the Village of Oxford Codes and Ordinances, including filing a public nuisance action or any other legal action in a court of competent jurisdiction.

H. Due Process. For a violation that impacts health or safety of customers, employees, or the public, the Village of Oxford Village Manager may temporarily suspend a license without a hearing but only until such time as a hearing can be held.

The Village of Oxford shall send notice to the licensee listing the reason for the adverse license proceeding. The notice shall list a proposed action and proposed conditions for reinstatement, if applicable.

The licensee shall have 10 business days from the date the notice was sent to respond in writing and request a hearing. If the licensee does not reply within the 10-day period, then the proposed adverse action and any proposed conditions will be considered the recommendation of the Village of Oxford Village Manager. The licensee may appeal a recommended adverse action issued under this subsection to the Village of Oxford Planning Commission. The Planning Commission's review shall be limited to the information possessed by the Village of Oxford Village Manager at the time the recommendation was issued.

The Village of Oxford Planning Commission shall, as soon as practicable, conduct a public hearing where the licensee and the Village of Oxford Village Manager will each have the opportunity to give testimony, present evidence, and show cause as to why the license should or should not be placed in non-renewal status or suspended or revoked and as to any conditions for reinstatement or renewal.

I. Appeal to Village of Oxford. A recommendation of the Planning Commission may be appealed through a written request to the Village Clerk within 10 business days from the date the Planning Commission issued its decision. The Village Clerk shall place the appeal on the agenda for the next regular meeting of the Village Council. A written appeal shall be limited to 20 pages plus up to 10 pages of exhibits.

The Village Council shall be limited to reviewing the record of the hearing at the Planning Commission.

If the Planning Commission's recommendation is determined to be supported by the record, then the Planning Commission's recommendation shall be adopted by the Village Council.

It shall be the burden of the licensee to show by clear and convincing evidence that the Planning Commission's recommendation was not supported by the record.

The Village Council may adopt the Planning Commission's recommendation in whole or in part or may issue an entirely new decision. The decision of the Village Council shall be final.

J. Severability.

The provisions of this ordinance are hereby declared, for all legal purposes, to be severable. If any clause, sentence, word, section, or provision is hereafter declared to be void or unenforceable for any reason by a court of competent jurisdiction, it shall not affect the remainder of this ordinance which continue in full force and effect.

K. Violations and Penalties.

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 for all legal purposes.

A violation of this ordinance shall be a misdemeanor, for which the punishment for a first violation shall be a fine of not less than \$100.00 and not more than \$500.00, or imprisonment not to exceed ninety (90) days, or both, in the discretion of the court. The punishment for a second or subsequent violation shall be a fine of not less than \$250.00 and not more than \$500.00, or imprisonment not to exceed ninety (90) days, or both, in the discretion of the court. For purposes of this section "second or subsequent violation" means a violation of the provisions of this ordinance committed by the same person within twelve (12) calendar months of a previous violation of the same provision of this ordinance for which said person pled or was adjudicated guilty. The foregoing penalties shall be in addition to the rights of the Village to proceed at law or equity with other appropriate and proper remedies.

Each day during which any violation continues shall be deemed a separate offense.

The Village may seek injunctive relief against persons alleged to be in violation of this ordinance, and such other relief as may be provided by law.

ADULT USE ORDINANCE FACT SHEET

1. This Ordinance addresses Adult/Recreational Facilities only.
2. The Village already opted out of allowing medical marijuana facilities.
3. The Village can opt out of Adult/Recreational Facilities by enacting an affirmative ordinance to do so.
4. This Ordinance is a License based ordinance. The License is applicant specific with no rights to assign or transfer. The License does not run with the land.
5. This Ordinance designates a zoning category where a facility is a permitted use if it meets the License requirements.
6. This Ordinance does not identify or limited the number of facilities. Any parcel in the I-1 zoning category that otherwise meets the licensing requirements may qualify for the use.
7. The Ordinance is allowed to regulate the time, place and the manner for these facilities.
8. Each License will have a \$5,000.00 initial application fee and each shall require a \$5,000.00 annual renewal fee per license.
9. The Ordinance provides a process to take action against an issued License that meets the due process requirements.
10. As designed, the Ordinance does not place the Village in the position of selecting winners and losers for a defined number of Licenses. Instead, the process is a function of being located in the approved zoning category for this use.
11. The application requires details and site plan approval by the Planning Commission to ensure each requirement is met.
12. Nothing in this Ordinance protects any licensed facility from federal law issues relating to marijuana as a regulated narcotic.
13. The law expressly allows the Village to regulate signage, time, place and manner for operations (Section 6 (2)).
14. The Ordinance requires every License Applicant to comply with all State requirements and approvals.
15. The State law expressly allows a certain buffer for certain schools unless the Village adopts an ordinance to the contrary (Section 9(3)). All other buffers are optional and must be considered carefully.
16. If the Village limits the actual number facilities, then the Village must develop a competitive process to judge applicants (Section 9(4)). The Village does not have the resources for this process. This is why the Ordinance is driven by a permitted parcel process.