

Village of Cass City, MI Ordinance No. 183

ORDINANCE TO AMEND THE CODE OF THE VILLAGE OF CASS CITY
BY ADOPTING THIS ORDINANCE FOR THE REGULATION AND LICENSING
OF CERTAIN ASPECTS OF
MEDICAL MARIJUANA FACILITIES LICENSING ACT
UNDER MCLA. 333.27101, *et seq.*

The Village of Cass City (hereinafter “Village”) Ordains to adopt an Ordinance to permit and regulate the operation of certain, specified state-licensed medical marijuana facilities within its boundaries pursuant to PA 281 of 2016, the Medical Marijuana Facilities Licensing Act, MCLA 333.27101, *et seq.* (hereinafter “the Act”).

Sec. 1. Purpose.

The Village finds that it is in the public interest to allow the permitting of certain state-licensed medical marijuana facilities, within of Cass City’s Industrial Park, solely for growing and processing operations, pursuant to the Act and to provide for the adoption of reasonable restrictions to protect the public health, safety, and general welfare of the community at large, as well as retain the character of neighborhoods; and mitigate potential impacts on surrounding properties and persons. It is also the intent of this Ordinance to help defray administrative and enforcement costs associated with the operation of a medical marijuana facility in the Village through imposition of an annual, nonrefundable fee of not more than \$5,000.00 on each medical marijuana facility licensee pursuant to the Act.

Sec. 2. Conflict.

Nothing in this ordinance shall be construed in such a manner as to conflict with the existing Village Ordinances except as otherwise stated herein.

Sec. 3. State Licensed Medical Marijuana Facilities

This Ordinance amends Chapter 48 of the Code of Ordinances for the Village as follows:

(a) Purpose and Intent. The purpose of this section is to establish standards for siting specific types of Medical Marijuana Facilities, authorized by the Act and permitted under this Ordinance, in Cass City's Industrial Park. It is the Village's intent to permit the siting specific types of Medical Marijuana Facilities within its boundaries, subject to conditions, to:

- (1.) Promote the safe, regulated manufacturing, production, and sale by state-licensed growing facilities for medical marijuana authorized by this Ordinance, and to ensure the safe access to medical marijuana to the Village's patients;
- (2.) Discourage the sale of unsafe, unauthorized and unlicensed medical marijuana facilities, operations and products;
- (3.) Preserve and protect the health, safety, and welfare of the residents of the Village and the general public by minimizing unsafe, unauthorized and unregulated medical marijuana operation, production and sale;
- (4.) Authorize the operation of state-licensed growing and processing facilities for medical marijuana operations, as defined by the Act, and to prohibit authorizing of any other type of marijuana facility from operating within the Village.
- (5.) Establish standards and procedures, by which the siting, operating, and maintaining of a Medical Marijuana Facility shall be governed.

(b) Relationship to State Law.

- (1.) Except as otherwise provided by the Act and this Ordinance, a permittee and its employees and agents who are operating within the scope of a State Operating License and pursuant to the requirements in this Ordinance are not subject to criminal or civil prosecution under Village ordinances regulating marijuana.
- (2.) Except as otherwise provided by the Act and this Ordinance, a person who owns or leases real property upon which a Medical Marijuana Facility is located and who has no knowledge that the permittee is violating or violated the Act or this Ordinance, is not subject to criminal or civil prosecution under Village ordinances regulating marijuana.

(c) Definitions. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

- (1.) “Applicant” means a person who applies for a license under this article. If an entity applies for a license, the term includes an officer, director, or managerial employee of the entity when appropriate.
- (2.) “Grower” means a licensee that is a commercial entity located in this state that cultivates, dries, trims, or cures and packages marijuana for sale to a Processor or Provisioning Center.
- (3.) “License” means a State Operating License issued pursuant to the Act.
- (4.) “Licensee” means a commercial entity that has obtained a State Operating License for one or more of the medical marijuana facilities authorized under the Act.
- (5.) “Marijuana Facility” means a location at which a license holder is licensed to operate under the Act.
- (6.) “Marijuana-infused product” means a topical formulation, tincture, beverage, edible substance, or similar product containing any usable marijuana that is intended for human consumption in a manner other than smoke inhalation.
- (7.) “Permit” means a permit issued by the Village under this chapter.
- (8.) “Processor” means a licensee that is a commercial entity located in this state that purchases marijuana from a Grower and that extracts resin from the marijuana or creates a marijuana-infused product for sale and transfer in package form to a Provisioning Center.
- (9.) “Provisioning Center” means a licensee that is a commercial entity located in this state that purchases marijuana from a Grower or Processor and sells, supplies, or provides marijuana to registered qualifying patients, directly or through the patients’ registered primary caregivers. Provisioning Center includes any commercial property where marijuana is sold at retail to registered qualifying patients or registered primary caregivers. A noncommercial location used by a primary caregiver to assist a qualifying patient connected to the caregiver through the

department's marijuana registration process in accordance with the Michigan Medical Marijuana Act, 2008 IL 1, MCL 33.26421 to 333.26430, is not a Provisioning Center for purposes of the Act or this chapter.

- (10.) "Safety Compliance Facility" means a licensee that is a commercial entity that receives marijuana from a Marijuana Facility or registered primary caregiver, tests it for contaminants and for tetrahydrocannabinol and other cannabinoids, returns the test results, and may return the marijuana to the Marijuana Facility.
- (11.) "Secure Transporter" means a licensee that is a commercial entity located in this state that stores marijuana and transports marijuana between Marijuana Facilities for a fee.
- (12.) "State operating license" means a license that is issued under the Act that allows the licensee to operate as Marijuana Facilities.

All other terms used in this chapter have the same definitions ascribed to them in the Act.

(d) Applicability and Enabling Provision.

- (1.) Pursuant to Section 205(1) of the Act, the Village will authorize Permits exclusively for the following type of Medical Marijuana Facilities:
 - A. Growers.
 - B. Processors
- (2.) The Village shall not authorize Permits for the following types of Medical Marijuana Facilities under Section 205(1) of the Act:
 - A. Provisioning Centers;
 - B. Secure Transporters; or
 - C. Safety Compliance Facilities.
- (3.) This Ordinance shall only apply to marijuana facilities or operations authorized by the Act, and this Ordinance shall not be construed to apply to Permit any recreational marijuana facilities or operations, including but not

limited to any recreational marijuana facilities authorized through the Michigan Regulation and Taxation of Marijuana Act.

(4.) No person or entity that was open or operating any facility purporting to produce, manufacture, test, transfer or transport medical marijuana or marijuana prior to the adoption of this Ordinance by the Village Council shall be considered a lawful use or lawful nonconforming use.

(5.) This section does not apply to, or regulate, any protected patient or caregiver conduct pursuant to the Michigan Medical Marijuana Act of 2008.

(e) Number of Permitted Medical Marijuana Facilities.

(1.) The maximum number of each type of Medical Marijuana Facility authorized above is one growing facility and one processing facility.

(f) Village Liability and Indemnification

(1.) By Accepting a Permit issued under this Ordinance, the permittee waives and releases the Village, its officers, elected officials, and employees from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of Medical Marijuana Facility owners, operators, employees, clients or customers for a violation of state or federal laws, rules or regulations.

(2.) By Accepting a Permit issued under this Ordinance, the permittee agrees to indemnify, defend and hold harmless, the Village, its officers, elected officials, employees and insurers against all liability, claims or demands arising on account of bodily injury, sickness, disease, death, property loss or damage or property loss or damage or any other loss of any kind, including, but not limited to any claim or diminution of property value by a property owner whose property is located in proximity to a permitted Medical Marijuana Facility, arising out of, claimed to have arisen out of, or in any manner connected with the operation of a Medical Marijuana Facility or use of a product cultivated, processed, distributed or sold that is subject to the Permit, or any claim based on an alleged injury to business or property by reason of a claimed violation of the federal Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. Sec. 1964(c).

(3.)By Accepting a Permit issued under this Ordinance, the permittee agrees to indemnify, defend and hold harmless, the Village, its officers, elected officials, employees and insurers against all liability, claims or demands arising on account of any alleged violation of the federal Controlled Substances Act, 21 U.S.C. Sec. 801 et. seq. or Article 7 of the Michigan Public Health Code, MCL 333.7101 et. seq.

(g) Permit Requirement.

- (1.) Any person or entity that wishes to operate as a Medical Marijuana Facility in the Village shall obtain a Permit and a must obtain a State Operating License, as well as comply with all requirements under the Act and this Ordinance prior to opening or operating.
- (2.) No Permit shall be issued under this Ordinance without first satisfying the application procedure and obtaining approval from the Village pursuant to this Ordinance.
- (3.)The application and inspection fee for the Permit required by this section shall be as set from time to time by the Village by resolution.
- (4.) In addition to an annual reapplication and inspection fee, the Village may assess an annual fee of no more to \$5,000.00 to help defray the administrative and enforcement costs associated with the operation of the Marijuana Facilities operating in the Village.
- (5.) No Permit issued under this section shall be transferrable unless first approved by the State Medical Marijuana Licensing Board.
- (6.) All Permits issued under this section shall be renewed annually and subject to annual inspection and renewal fees as set from time to time by the Village by resolution.
- (7.) The Village, within its own discretion, may limit the number of Permits issued under this section, and may revise this limit from time to time within its own discretion.

- (8.) No person or entity that has opened or operated a facility doing business or purporting to do business under this chapter or the Act without first obtaining a Permit shall be eligible for a Permit.
- (9.) A person or entity that receives a Permit under this chapter shall display its Permit and, when issued, its State Medical Marijuana Facility License in plain view clearly visible to Village officials and State Medical Marijuana Licensing Board authorized agents.

(h) Location Requirements.

- (1.) The Applicant medical marijuana facility must be located in the Cass City Industrial Park pursuant to a site plan reviewed and recommended by the Planning Commission and submitted for approval to the Village of Cass City.
- (2.) The Applicant location shall meet all applicable written and duly promulgated standards of the Village and, prior to opening, shall demonstrate to the Village that it meets the rules and regulations promulgated by the State Medical Marijuana Facilities Licensing Board.
- (3.) The Applicant location shall conform to all standards of the zoning district in which it is located.
- (4.) No person shall reside in or permit any person to reside in or on the premises of any Medical Marijuana Facility.

(i) Application Procedure.

- (1.) All Applicants for Permits required by this section shall file an Application and fee with the Village Clerk upon a form provided by the Village. This Application shall be signed by the Applicant if an individual, or by all partners if a partnership, by a managing member if a limited liability company, or by the president if a corporation.
- (2.) All applicants for a Permit to operate a Medical Marijuana Facility shall submit with the application a photocopy of the applicant's valid and current license issued by the State of Michigan in accordance with the Medical Marijuana Facilities Licensing Act, MCL 333.27101 et seq.

- (3.) The Applicant may be requested to provide any information required by the Act and any other information deemed by the Village as needed for approval or Village's Planning Commission to make review and recommendation to the Village as required for the consideration of a Permit.
- (4.) No Permit shall be issued unless both the Application and site plan are approved through the Village Council and submitted to the Village's Planning Commission for review and recommendation.
- (5.) Upon an applicant's completion of the above-referenced form and furnishing of all required information and documentation, the Village Clerk shall accept the application and assign it a sequential application number based on the date and time of acceptance. The Village shall act to approve or deny an application no later than fourteen (14) days from the date the application was accepted. If approved, the Village shall issue the applicant a provisional permit.
- (6.) A provisional permit means only that the applicant has submitted a valid application for a medical marijuana facility Permit, and the applicant shall not locate or operate a medical marijuana facility without obtaining all other permits and approvals required by all other applicable ordinances and regulations of the Village. A provisional permit will lapse and be void if such permits and approvals are not diligently pursued to completion.
- (7.) Within fourteen (14) days from the applicant submitting proof of obtaining all other required permits and approvals and payment of the Application and inspection fees, the Village shall approve or deny the medical marijuana facility Permit. The Village shall issue the Medical Marijuana Facility Permits in order of the sequential application number previously assigned.
- (8.) The Permit shall be approved if the Applicant meets all Village requirements; unless a due diligence investigation discloses tangible evidence that the conduct of the Applicant's business would pose a substantial threat to the public health, safety, or general welfare.

(j) Medical Marijuana Facility Standards

(1.) In accordance with the provisions of state law, Medical marijuana growers and processors authorized to operate in the Cass City Industrial Park through the issuance of a Permit provided that:

- A. Any uses or activities found by the state of Michigan or a court with jurisdiction to be unconstitutional or otherwise not permitted by state law may not be permitted by the Village. In the event that a court with jurisdiction declares some or all of this article invalid, then the Village may suspend the acceptance of applications for permits pending the resolution of the legal issue in question.
- B. At the time of application for a permit the medical marijuana facility must be licensed by the state of Michigan and then must be at all times in compliance with the laws of the state of Michigan including but not limited to the Michigan Medical Marijuana Act, MCL 333.26421 et seq.; the Medical Marijuana Facilities Licensing Act, MCL 333.27101 et seq.; and the Marijuana Tracking Act, MCL 333.27901 et seq.; and all other applicable rules promulgated by the state of Michigan.
- C. The use or facility must be at all times in compliance with this Ordinance and all other applicable laws and ordinances of the Village.
- D. The Village may suspend or revoke a permit based on a finding that the provisions of the standards in this section, all other applicable provisions of this zoning ordinance, or the terms of the permit are not met.
- E. A Medical Marijuana Facility, may not be permitted as a home business or accessory use nor may they include accessory uses except as otherwise provided in this ordinance.
- F. Signage requirements for Medical Marijuana Facilities, unless otherwise specified, are as provided in the zoning Chapter for the Village's Code of Ordinances.

(2.) Permitted Medical Marijuana facilities shall be subject to the following standards:

- A. Indoor Production and Processing. In the Cass City Industrial Park, medical marijuana production shall be located entirely within one or more completely enclosed buildings. In the Cass City Industrial Park, marijuana processing shall be located entirely within a fully enclosed, secure, indoor facility or greenhouse with rigid walls, a roof, and doors.
- B. Lighting. Lighting shall be regulated as follows:
- i. Light cast by light fixtures inside any building used for marijuana production or marijuana processing shall not be visible outside the building from 7:00 p.m. to 7:00 a.m. the following day.
 - ii. Outdoor marijuana grow lights shall not be illuminated from 7:00 p.m. to 7:00 a.m. the following day.
- C. Odor. As used in this subsection, building means the building, or portion thereof, used for marijuana production or marijuana processing.
- i. The building shall be equipped with an activated carbon filtration system for odor control to ensure that air leaving the building through an exhaust vent first passes through an activated carbon filter.
 - ii. The filtration system shall consist of one or more fans and activated carbon filters. At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the volume of the building (length multiplied by width multiplied by height) divided by three. The filter(s) shall be rated for the applicable CFM.
 - iii. The filtration system shall be maintained in working order and shall be in use. The filters shall be changed a minimum of once every 365 days.
 - iv. Negative air pressure shall be maintained inside the building.

- v. Doors and windows shall remain closed, except for the minimum length of time needed to allow people to ingress or egress the building.
- vi. An alternative odor control system is permitted if the permit applicant submits and the municipality accepts a report by a mechanical engineer licensed in the state of Michigan demonstrating that the alternative system will control odor as well or better than the activated carbon filtration system otherwise required. The municipality may hire an outside expert to review the alternative system design and advise as to its comparability and whether in the opinion of the expert it should be accepted.

D. Security Cameras. If used, security cameras shall be directed to record only the subject property and may not be directed to public rights-of-way as applicable, except as required to comply with licensing requirements of the state of Michigan.

E. Water. The Medical Marijuana Facility shall be a customer of the Village Municipal Water Supply, and use the Village Municipal water supply for all operations, and in compliance with the limitations on discharge into the Village waste water system.

(k) Revocation and Review.

- (1.) A Permit granted under this section may be revoked for any of the following reasons:
 - A. Any fraud or misrepresentation contained in the Permit application;
 - B. Any knowing violation of this Ordinance;
 - C. Loss, expiration or revocation of the Applicant's State Medical Marijuana Facility License;
 - D. Failure of the Applicant to obtain a State Medical Marijuana Facility License within a reasonable time after obtaining a Permit under this section; or

- E. Conducting business in violation of this Ordinance, the Act, the Medical Marihuana Act, MCL 333.26421 et seq., or the Marihuana Tracking Act, MCL 333.27901 et seq.; as well as conducting business in an unlawful manner or in such a way as to constitute a menace to the health, safety, or general welfare of the public.
- F. Conducting business for recreational marijuana or any marijuana operations not exclusively authorized by this Ordinance and the Act.

Sec. 4. 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 not more than \$100, plus costs. 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 Village may bring an action for an injunction or other process against a person to restrain, prevent, or abate any violation of this Ordinance.

(c) This Ordinance shall be enforced and administered by the Village Manager, or such other Village official as may be designated from time to time by resolution of the Village Council.

Sec. 5. Repealed.

All Ordinance or parts of ordinances of the Village in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

Sec. 6. Adoption.

A First Reading of this Ordinance is hereby declared to have been approved by the Village Council of the Village of Cass City, County of Tuscola, State of Michigan, at a meeting, called and held on the 29th day of January 2019, and the second reading has been set for February 25, 2019.

Sec. 7. 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.

Sec. 8. Effective Date.

This Ordinance shall take effect immediately thirty (30) days following a second reading and adoption and with publication.

Sec. 9. Publication.

This Ordinance shall be recorded by the Village Clerk in the Village Ordinance Book as soon as it is adopted, which record shall be authenticated by the signatures of the Village President and Village Clerk and shall be published once in the Village newspaper of record.

A Motion to approve Village of Cass City, MI Ordinance No. 183, AN ORDINANCE TO AMEND THE VILLAGE OF CASS CITY CODE OF ORDINANCES, CHAPTER 48, Marijuana, ARTICLE II, Medical, Opt-In to Allow the Permitting of Certain Licensed Medical Marijuana Facilities,

Was offered by President Delamarter and supported by Trustee Leeson

Roll Call Vote: Ball: yea, Kim: yea, Leeson: yea, Piaskowski: yea, Zawilinski: nay, Delamarter: yea, Herron: excused.

Ayes: 5 Nays: 1 Excused 1

Ordinance Adopted as presented .

Daniel Delamarter

President, Village of Cass City

Nanette Walsh

Clerk/Treasurer, Village of Cass City

Introduction and First Reading: *January 29, 2019*

Public Notice: *February 6, 2019*

Public Hearing: *February 25, 2019*

Second Reading: *February 25, 2019*

Adopted: *February 25, 2019*

Effective: 30 days following a second reading and adoption by the Cass City Village Council, with publication

CERTIFICATION

I, the undersigned duly appointed Village Clerk of the Village of Cass City, County of Tuscola, State of Michigan, do hereby certify that the above ordinance, or a summary thereof, was published in Cass City Chronicle, a newspaper of general circulation in the Village on March 6, 2019, and that such ordinance was entered with the Ordinance Book of the Village on March 6, 2019.

Dated: March 6, 2019

Nanette Walsh
Clerk/Treasurer, Village of Cass City