

DRAFT ORDINANCE

THE VILLAGE OF NEW HAVEN ORDAINS:

SECTION _____ • ADULT USE MARIJUANA FACILITIES

An ordinance to license, site plan and regulate certain adult use marijuana facilities in the Village of New Haven.

Adult use marijuana facilities shall conform to and be subject to the provisions of this ordinance, including an application process and a site plan review.

A. Definitions. The definitions as set forth in the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951 Et. Seq. (“MRTMA”), including all future amendments, are adopted by reference herein.

The following definitions also apply herein:

1. **Applicant:** Any individual, organization, entity, or association, including any corporation, partnership, limited liability company, or any other lawfully established business, that applies for a License under this ordinance.
2. **Department:** The State of Michigan Department of Licensing and Regulatory Affairs, including any successor entity.
3. **License:** A license to operate a marijuana facility in the Village of New Haven under this ordinance.
4. **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 otherwise permitted under this ordinance.

All other terms and phrases shall be subject to their plain meaning.

B. Permitted and Prohibited Facilities.

1. **Conflicts of Law.** As of the effective date of this ordinance, marijuana remains classified as a Schedule 1 controlled substance under the Federal Controlled Substances Act, 21 USC S801, et. seq. which makes it unlawful, under federal law, 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 and any entity receiving a license under this ordinance shall defend, indemnify and hold the Village of New Haven harmless against any claims, suits or demands relating to federal law enforcement actions accordingly.

For the purposes of this ordinance, the spelling of the above defined term shall be 'marijuana' and should be deemed to be the 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, at Section 3(e).

2. **Permitted Facilities.** Only the following listed marijuana facilities, as defined in MRTMA at MCL 333.27953, shall be allowed to be located within the Village of New Haven under this ordinance:

- a. Marijuana Retailer
- b. Marijuana Safety Compliance Facility
- c. Marijuana Secure Transporter

No person or entity shall establish or operate any adult use marijuana facility in the Village of New Haven without first complying with this ordinance, the Village of New Haven application and site plan review processes and without first complying with any and all applicable state laws and regulations, including all amendments to the applicable state laws and state regulations. This shall specifically include all approvals required to be obtained from the Department and any other authorized State Agency having the authority and the purpose to regulate any adult use marijuana facility in Michigan.

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 New Haven requirements for the shared use of marijuana facilities. Marijuana facilities may be allowed to occupy more than one building on the same parcel provided the facility and buildings are operated in compliance with all State and Village of New Haven requirements, including all zoning ordinances and site plan requirements.

4. **Prohibited Facilities.**

- a. **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 as an accessory use.
- b. **Other Marijuana Facilities Prohibited.** Any marijuana facility or event not specifically listed as a permitted facility in Section 2 herein shall be prohibited within the Village of New Haven.

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

1. **Set Backs.** These set backs are mandatory, shall be affirmatively presented on the Site Plan and are not subject to modification or deviation by a Dimensional or use Variance process or by any Village of New Haven Council.

- a. 1,000 feet from the nearest boundary of any designated Residential Zoning District.
- b. 1,000 feet from the nearest lot line of any residential home structure.
- c. 1,000 feet from the nearest lot line of any church structure.
- d. 1,000 feet from the nearest lot line of any licensed alcohol or drug Rehabilitation Center.
- e. 1,000 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, including any successor entity.
- f. 1,000 feet from the nearest lot line of any 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. **Permitted Districts.**

- a. **Light and Heavy Industrial Zoning District:** All marijuana facilities otherwise permitted at Section B in this ordinance and otherwise meeting the setbacks set forth herein shall be allowed as a permitted use only on parcels in the Village of New Haven that are otherwise fully located in the Light or Heavy Industrial Zoning District under the then current Village of New Haven Zoning Ordinance.

D. General Use Requirements For All Marijuana Facilities. All general use requirements shall be and are part of the required site plan review and approval process, including the following:

1. **Hours of Operation.** Any marijuana facility shall provide the Village of New Haven administration with the hours of operation of the facility. Any changes to the hours of operation must be communicated forty-eight (48) hours in advance of the change. Marijuana retailers shall only be open from 9:00 a.m. to 9:00 p.m. with no modifications allowed.
2. **Odor Control.** Any marijuana facility shall be equipped with an operable filtration, ventilation, and exhaust system that, at all times, effectively confines any and all odors to the interior of the building from which the odor is generated.

No marijuana at any facility shall be managed in any manner that emits odors beyond the interior of the premises or which is otherwise discernable to another person. The odor shall be prevented by the installation of an operable odor control system. Odors shall 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.** Any marijuana facility 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 of New Haven Engineer during the site plan process.
4. **Security Requirements.** Any marijuana facility shall 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, shall be individually locked and accessible only to authorized personnel. The building(s) housing the marijuana facility shall all be equipped with security cameras, 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 Village of New Haven 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 directly and in full 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.** Any 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. A greenhouse shall not be considered an enclosed structure or an indoor structure for purposes of this ordinance.
6. **Lighting.** Any artificial lighting shall be shielded to prevent glare and light trespass and shall otherwise not be visible from neighboring properties, adjacent streets or public right of ways.
7. **Inspections.** Any marijuana facility shall be subject to inspections to ensure compliance with all applicable Village of New Haven codes and ordinances and all applicable State laws and regulations, including all future amendments. Any marijuana facility under this ordinance shall comply with all local permitting and inspection processes as applicable.
8. **Prohibited Activities.** No smoking, inhalation, or consumption of marijuana shall take place on the premises of any marijuana facility.

9. **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 New Haven.
10. **General Restrictions.** All activities shall be conducted so as to not create or permit trespass or spillage of dust, glare, sounds, noise, vibrating, fumes, odors or light to any neighboring property, street or public right of way.
11. **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.
12. **Transfers of License.** A Marijuana facility license issued under this ordinance is not transferable or assignable under any circumstances.

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 New Haven.

1. **Application Form.** A signed and dated application form to be provided by the Village of New Haven. If the applicant does not own the property, a signed and notarized statement granting permission from the lawful owner 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 any 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 New Haven. The burden to obtain any and all State approvals shall be on the applicant.
3. **Site Plan.** A fully completed site plan including all information required in the Village of New Haven zoning ordinance and all general use requirements set forth in this ordinance. The site plan shall be reviewed and approved consistent with the procedures set forth in the Village of New Haven 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.
5. **Hours of Operation.** A written statement identifying the marijuana facilities' proposed hours of operation.
6. **Odor Control Plan.** An odor control plan consistent with the requirements of this ordinance and any applicable State laws and regulations.

7. **Waste Water Control Plan.** A waste water control plan consistent with the requirements of this ordinance and any applicable State laws and regulations.
8. **Security Plan.** A security plan consistent with the requirements of this ordinance and any applicable State laws and regulations.
9. **Lighting Plan.** A Lighting plan consistent with the requirements of this ordinance and any applicable State laws and regulations.
10. **Liability Release and Insurance Documentation.** An executed release of liability, indemnification and hold harmless in the form provided by the Village of New Haven's application and proof of insurance providing general liability coverage for loss, liability and damage claims arising out of injury to persons or property in the amounts and the format set forth in the application process.
11. **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, including the site plan requirements.

F. Application Consideration.

A completed application for a license shall be reviewed for completeness. There shall be no other review policy or guideline under this ordinance.

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 the 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 New Haven. This fee is to defray administrative and enforcement costs.
3. **No Property Right.** A Village of New Haven license for a marijuana facility is a revocable privilege granted by the Village of New Haven and is not a property right. Granting a license under this ordinance does not create or vest any right, title, franchise, privilege 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 New Haven, be inspected by the Village of New Haven at any time to ensure compliance. The Village of New Haven reserves the right to establish any appropriate inspection fee in accordance with the Village of New Haven schedule of fees process.

G. Adverse License Actions.

The Village of New Haven 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 application or any renewal process.
2. Any violation of this ordinance or any State Marijuana Law, regulation or rule.
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 department or any other authorized state agency on a State license applies equally to the corresponding license issued by the Village of New Haven.

If a license is not renewed or is suspended or revoked, the licensee must immediately cease all operations at the marijuana facility regardless of its location on a permitted parcel and regardless of its status as a permitted use.

Nothing in this section prohibits the Village of New Haven from imposing other penalties authorized in the Village of New Haven 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 New Haven Council President may temporarily suspend a license without a hearing but only until such time as a hearing can be reasonably scheduled and held.

The Village of New Haven 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 final and binding recommendation of the Village of New Haven Council President. The licensee may appeal a recommended adverse action issued under this subsection to the Village of New Haven Planning Commission. The Planning Commission's review shall be limited to the information possessed by the Village of New Haven Council President at the time the recommendation was issued.

The Village of New Haven Planning Commission shall, as soon as practicable, conduct a public hearing where the licensee and the Village of New Haven Council President 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 New Haven.** A recommendation of the Planning Commission may be appealed through a written request to the Village of New Haven Clerk within 10 business days from the date the Planning Commission issued its recommendation. The Village of New Haven Clerk shall place the appeal on the agenda for the next regular meeting of the Village of New Haven Council. A written appeal shall be limited to 20 pages and up to 10 pages of exhibits.

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

If the Planning Commission's recommendation is supported by the existing record, then the Planning Commission's recommendation shall be adopted by the Village of New Haven 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 existing record.

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

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