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MANAGER
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MEMORANDUM

TO: Township Board
Andrew Dymczyk – Township Manager

FROM: Brett C. Wittenberg, Community Development Director *BCW*

SUBJECT: Proposed Ordinance Amendment 20-2 – Marihuana Operations

DATE: March 17, 2021

RECOMMENDED ACTION:

Ordinance 20-2

The Township Board, based on a unanimous recommendation from the Planning Commission at their meeting of February 1, 2021, and after finding that the proposed amendment has complied with the process for amending the Zoning Ordinance, approve the second reading of Ordinance 20-2 as it relates to the establishment of Marihuana Operations, based on the finding that the proposed amendment complies with the process for amending the Zoning Ordinance.

STRATEGIC PLAN:

Strategic Initiatives: Community and Economic Development

Strategies: Encourage a variety of businesses and a diverse housing stock.

Objectives:

- Increase Economic Development initiatives to promote commercial and industrial growth.

Strategies: Utilize strong planning principles and a policy of managed growth.

Objectives:

- Evaluate planning and zoning processes to ensure appropriateness and efficiency.

BACKGROUND:

At the February 22, 2021 Township Board meeting, the Board concurred with the Planning Commission's recommendation and approved on first reading with the Planning Commission recommended action.

Since there were not any revisions to the Zoning Ordinance Amendment at the first reading, should any of the Board want copies of the February 22, 2021 meeting packet, please contact me.

Attachment: Proposed Ordinance 20-2

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**CHARTER TOWNSHIP OF DEWITT
CLINTON COUNTY, MICHIGAN**

**ZONING ORDINANCE AMENDMENT FOR MARIHUANA OPERATIONS
ORDINANCE NO. 20-2**

PREAMBLE

AN ORDINANCE TO AMEND THE DEWITT CHARTER TOWNSHIP ZONING ORDINANCE, ARTICLE 4.0 “USE STANDARDS” TO ADD SECTION 4.82 TO ESTABLISH “MARIHUANA OPERATIONS ZONING” PROVIDED UNDER THE MICHIGAN REGULATION AND TAXATION OF MARIHUANA ACT AND THE MICHIGAN MEDICAL MARIHUANA FACILITIES LICENSING ACT AND APPLICABLE RULES PROMULGATED UNDER LARA; TO ESTABLISH PENALTIES FOR VIOLATION; TO REPEAL ORDINANCES IN CONFLICT HEREWITH; AND TO ESTABLISH AN EFFECTIVE DATE HEREOF.

THE CHARTER TOWNSHIP OF DEWITT, CLINTON COUNTY, MICHIGAN, ORDAINS:

§ 1. TITLE.

This Ordinance shall hereby be known as the “*DeWitt Township Marihuana Operations Zoning Ordinance.*”

§ 2. DEFINITIONS.

See terms and definitions contained Chapter 44 – “Marihuana Operations”.

§ 3. LIMITS ON MARIHUANA OPERATIONS LICENSES AND LOCATIONS; OTHER REQUIREMENTS.

(See also **MARIHUANA OPERATIONS ORDINANCE No. 2021-02-01**).

- A. *Purpose.* The concentration of any specific use within a smaller geographic area can be burdensome for reasons of noise, odor, vehicle traffic congestion, excessive parking needs, security, fire and police response. It is the intent of these provisions to ensure that quality of life is not impaired, neighborhood character is preserved, commercial activities developed and increased, employment opportunities expanded, and positive planned land use developed.
- B. The Township Board and Planning Commission are prohibited from waiving any portion of this section, except as specifically authorized by subsection I(3).
- C. The maximum number of each type of marihuana operation under the MMFLA and MRTMA permitted in the Township is governed by type of marihuana operations, applicable location as authorized under this Ordinance, and zoning regulations or as set

forth in the table below and the Zoning Ordinance. Marihuana operations not specifically authorized in the table are prohibited. Provisions of this Section do not apply to the medical use of marihuana in compliance with the Michigan Medical Marihuana Act (MMMA).

D. Table of Marihuana Operation:

<u>Type of Marihuana Operation</u>	<u>Number of Permitted License within Districts</u>
Marihuana Retailer	0
Provisioning Center	0
Marihuana Microbusiness	0
Temporary Marihuana Event	0
Designated Consumption Establishment	0
Marihuana Safety Compliance Facility	Restricted to Districts: I-L, I-H, I-P, A.
Marihuana Secure Transporter	Restricted to Districts: I-L, I-H, I-P, BC, A.
Marihuana Processor	Restricted to Districts: I-L, I-H, I-P, A.
Marihuana Grower	Restricted to Districts: I-L, I-H, I-P, A
Excess Marihuana Grower License	Restricted to Districts: I-L, I-H, I-P, A, and as permitted under LARA Rules

E. Marihuana Operations licensees permitted under this Ordinance are governed by type and additional requirements, as follows:

(1) *Marihuana Grower License.*

- i. Marihuana Grower shall comply with all of the provisions of the MMFLA and MRTMA and applicable LARA rules and regulations. Only one (1) Marihuana Grower licensed under the MRTMA and one (1) Marihuana Grower licensed under the MMFLA may be permitted on one continuous property. (Each Grower Licensee may hold a combination of Class A, B, C licenses and Excess Grower License, as permitted under applicable LARA rules.)
- ii. A Grower must be in-door operations within an enclosed secured structure.
- iii. A Grower may occupy the same premises if holding a Grower and Processor license for the premises, and otherwise consistent with the MMFLA and MRTMA and any rules promulgated by LARA as permitted under this Ordinance.

- iv. A Grower may hold more than one class of grower license and excess marihuana grower license.
 - v. Consistent with the provisions of the MMFLA and MRTMA, an applicant and each investor in a Grower license cannot have an interest in a secure transporter, safety compliance establishment, or microbusiness.
- (2) *Marihuana Processor License.* Marihuana Processor shall comply with all of the provisions of the MMFLA and MRTMA and applicable LARA rules and regulations. The Township will restrict locations and only one Marihuana Processor licensee under the MMFLA and MRTMA shall be permitted on one continuous property.
- i. All Processor operations must be within an enclosed, secured structure.
 - ii. A Processor licensee may occupy the same premises if holding a Grower and Processor license for the premises, and otherwise consistent with the MMFLA and MRTMA, and any LARA rules.
 - iii. A Processor license authorizes the purchase of marihuana only from a Grower and sale of marihuana-infused products or marihuana only to a marihuana retailer/provisioning center, unless otherwise provided for under LARA rules.
 - iv. An applicant and each investor in a processor license shall not have an interest in a secure transporter, safety compliance establishment or microbusiness.
- (3) *Marihuana Secure Transporter License.* Marihuana Secure Transporter shall comply with all of the provisions of the MMFLA, MRTMA, and applicable LARA rules and regulations. Secure Transporter must meet the following requirements:
- i. Secure Transporter license is limited to the storage and transport of marihuana, marihuana-infused products and money associated with the purchase or sale of marihuana and marihuana-infused products between marihuana establishments at the request of a person with legal custody of the marihuana, marihuana-infused products, or money.
 - ii. An applicant and each investor with an interest in a secure transporter license cannot have an interest in a grower, processor, marihuana retailer, marihuana microbusiness or safety compliance facility.

- (4) *Marihuana Safety Compliance Facility License.* Marihuana Safety Compliance Facility shall comply with all of the provisions of the MMFLA and MRTMA and applicable LARA rules and regulations and must meet the following requirements:
- i. All testing must be conducted within an enclosed, secured structure.
 - ii. A safety compliance facility must be accredited by an entity approved by the Marihuana Regulatory Agency (MRA) by 1 year after the date the license is issued or have previously provided drug testing services to this state or this state's court system and be a vendor in good standing in regard to those services. The Agency may grant a variance from this requirement upon a finding that the variance is necessary to protect and preserve the public health, safety, or welfare.
 - iii. An applicant and each investor with any interest in a safety compliance facility cannot have an interest in a grower, secure transporter, processor, marihuana retailer or marihuana microbusiness.

F. *Geographic Boundaries.* Special regulations of marihuana operations have been deemed necessary to limit the intensity and density of this use. All marihuana operations shall be restricted to and only permitted within the following Township geographic boundaries:

- (1) South of State Road,
- (2) East of Old U.S. 27,
- (3) West of U.S. 127, and
- (4) North of Sheridan Road.

G. *Zoning Districts Permitted for Marihuana Operations.* Grower, including Excess Grower, Processor, Safety Compliance Facility, and Secure Transporter, shall be a permitted use but restricted to and only permitted within the following Township Zoning Districts within the permitted geographic boundaries*:

- (1) Light Industrial (IL),
- (2) Heavy Industrial (IH),
- (3) Industrial Park (IP),
- (4) Agricultural (A), and
- (5) Secure Transporter (also permitted in Business Community (BC) subject to a Special Land Use permit).

(*see, Cannabis Campus Map.)

H. *Separation Distance Measurements.* The distances described in this subsection shall be computed by measuring a straight line from the marihuana operations facility building to the nearest property line of the property use as identified below in subsection I(1).

I. *Applicability.* The location and co-location of authorized marihuana operations shall be determined as follows:

- (1) The following minimum-distancing regulations shall apply to marihuana operations facilities. A Grower or Processor shall not be located within:
 - a. One thousand (1,000) feet of a childcare center, or a school,
 - b. One thousand (1,000) feet of a public park (Granger),
 - c. One thousand (1,000) feet of a religious institution,
 - d. One thousand (1,000) feet of a Substance Abuse Program licensed by the State of Michigan, and
 - e. One thousand (1,000) feet of a Residential Zone District, as defined in the Zoning Ordinance, as measured along the primary street frontage on which the use is located.
- (2) Minimum-distancing regulations do not include Secure Transporters or Safety Compliance Facilities.
- (3) *Waiver.* The required separation distances between a proposed marihuana Grower and Processor location cannot be waived or modified except as allowed in this subsection by Special Land Use permit. Waivers or modifications of required separation distances as allowed by this subsection are limited to the following marihuana uses: Grower of any class (medical or recreational) and Processor (medical or recreational).
 - a. Uses that may be considered eligible for a separation distance waiver or modification are only as follows: publicly owned park or playground, religious institution, or a licensed Substance Abuse Program (“eligible uses”).
 - b. The application shall provide evidence that all eligible uses within one thousand (1,000) feet of the proposed marihuana operation location have been notified by the applicant of the intent to seek a waiver or modification from the separation distance requirements. Failure to satisfy this requirement may be grounds to deny a proposed separation distance waiver or modification.
 - c. If an eligible land use files a written objection with the Planning Department, the Planning Commission may waive or modify the required separation distance. Such consideration shall be at a public hearing. Notwithstanding, if an objection

is not filed by an eligible land use, the Planning Commission may waive or modify the required separation distance.

- d. The Planning Commission shall consider whether the proposed distance waiver or modification, if granted, will impair the quality of life, neighborhood character, commercial growth, employment opportunities, positive planned land use, and recommendations from the Fire and Police Departments.
 - e. Processor and Grower, and/or any marihuana operation defined as a “marihuana establishment” under MRTMA, shall not be located in an area zoned exclusively residential. This subsection is not eligible for waiver nor modification.
- (4) A marihuana operations licensee shall not operate at any place in the Township other than the address provided in the application on file with the Township Clerk.
 - (5) *Co-Location and Stacked Licenses.* There may be only one (1) state operating license per parcel, except co-location and stacked Grower licenses and one (1) Processor license are permitted per parcel. A marihuana operations facility with a stacked grower license counts as a single grower for the purposes of facility separation distance requirements.
 - (6) *Zoning Application Requirements.* Each Zoning Application shall be accompanied by a detailed site plan and any information necessary to describe the proposed use or change of use. Each request shall be considered a new application, including those for class change, stacking, expansion, transfers or other modifications that require Planning Department review or Special Land Use approval. If more than one (1) use is being requested for a parcel at the same time (e.g., co-location) only one (1) application shall be processed. Only one (1) application shall be processed per parcel at a time; once a Zoning Application is submitted, any other Zoning Applications for the same parcel will be rejected until the first Zoning Application is decided. All items must be satisfactorily completed for a Zoning Application to be considered eligible for review.
 - a. *Verification.* A signed statement by the applicant indicating the proposed marijuana operations type, including if the proposed type involves stacked licenses or co-location and the number of licenses.
 - b. *Consent.* A notarized statement by the property owner that acknowledges use of the property for a marihuana operations facility and agreement to indemnify, defend and hold harmless the Township, its officers, elected officials, employees, and insurers, against all liability, claims or demands arising out of, or in connection to, the operation of a marihuana operations facility. Written consent shall also include approval of the owner and operator for the Township to inspect

the facility at any time during normal business hours to ensure compliance with applicable laws and regulations.

- c. *LARA*. A copy of official paperwork issued by LARA indicating that the applicant has successfully completed the prequalification step of the application for the state operating license associated with the proposed land use, or proof that the applicant has filed such application for the prequalification step with LARA, including all necessary application fees.
 - d. Required LARA marihuana facility plans and security plans shall be submitted. Copies of all documents submitted to LARA in connection with the initial license application, subsequent renewal applications, or investigations conducted by LARA shall be made available upon request when such information is necessary and reasonably related to the application review.
 - e. *Proof of Insurance*. Evidence of a valid and effective policy for general liability insurance within minimum limits of one million dollars (\$1,000,000.00) per occurrence and a two million dollar (\$2,000,000.00) aggregate limit issued from a company licensed to do business in Michigan having an AM Best rating of at least B++ shall be produced that includes the name(s) of the insured, effective and expiration dates, and policy number. The DeWitt Township Board, and its officials and employees shall be named as additional insureds. The Township shall be notified of any cancellation, expiration, reduction in coverage, or other policy changes within five (5) business days of the event.
 - f. *Site Plan*. Existing and proposed site changes must be submitted that demonstrate compliance with this Ordinance and all other Township ordinances and codes.
 - g. *Sign and Lighting Plan*. A sign and lighting plan for the exterior of the building and any interior signs that will be visible to the public from the public right-of-way shall be submitted with sizes, lighting, and locations. All lighting fixtures visible to the public shall be identified by location, type, and intensity.
 - h. *Radius*. A map, drawn to scale, containing all childcare centers, schools, publicly owned parks or playgrounds, religious institutions, Substance Abuse Programs, and Residential Districts within 1000 feet of the proposed facility.
- (7) *Operations and Management Plan*. An operations and management plan shall be submitted.

- (8) *Marihuana Operations.* Marihuana operation facilities must be operated in compliance with all applicable state laws, LARA rules, all conditions of the marihuana operations state operating licenses, and all applicable Township ordinances.
- a. *Security Plan.* A marihuana operator must have a Township Police Department approved security plan prior to operation.
 - b. *Facility Exterior.* The exterior appearance of a facility must be compatible with surrounding businesses and any descriptions of desired future character, as described in the Master Plan.
 - c. No marihuana or equipment used in the growing, production, processing, or transport of marihuana can be placed or stored outside of an enclosed building. This Section does not prohibit the placement or storage of motor vehicles outside of an enclosed building so long as money or marihuana is not left in an unattended vehicle.
 - d. Site and building lighting shall be sufficient for safety and security, but not cause excessive glare or be designed so as to be construed as advertising with the intent to attract attention.
 - e. Neither marihuana nor marihuana-infused products may be directly visible from the exterior of the marihuana operations facility/building(s).
 - f. Interior lighting shall not be so bright so as to create a nuisance to neighboring property owners or passersby.
 - g. *Odor Control.*
 - i. No person, tenant, occupant, or property owner shall permit the emission of unreasonable marihuana odors from any source to result in detectable unreasonable odors that leave the premises upon which they originated and interfere with the reasonable and comfortable use and enjoyment of another's property.
 - ii. Whether or not marihuana odor emissions interfere with the reasonable and comfortable use and enjoyment of a property shall be measured against the objective standards of a reasonable person of normal sensitivity.
 - iii. A grower or a processor shall install and maintain in operable condition a system which precludes the emission of unreasonable marihuana odors from the premises.

- iv. No marihuana cultivation activity shall result in the emission of any gas, vapors, unreasonable odors, smoke, dust, heat or glare that is noticeable at or beyond the property line of the location at which the cultivation occurs. Sufficient measures and means of preventing the escape of such substances from a dwelling must be provided at all times. In the event that any gas, vapors, unreasonable odors, smoke, dust, heat or glare, or other substances exit a dwelling, the owner of the subject premises shall be liable for such conditions and shall be responsible for immediate, full clean-up and correction of such condition. The owner shall properly dispose of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations. In the event there is a lessee of the subject premises, the owner and the lessee shall be jointly and severally liable for such conditions.
- h. Ventilation, by-product and waste disposal, and water management (supply and disposal) for the facility will not produce contamination of air, water, or soil; or reduce the expected life of the building due to heat and mold; or create other hazards that may negatively impact the structure and/or surrounding properties.
- i. Air contaminants must be controlled and eliminated by the following methods:
 - i. The building must be equipped with an activated air scrubbing and carbon filtration system that eliminates all air contaminants prior to leaving the building.
 - ii. Fan(s) must 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 (3).
 - iii. The filter(s) shall be rated for the applicable CFM.
 - iv. An air scrubbing and filtration system must be maintained in working order and must be in use at all times. Filters must be changed per manufacturers' recommendation to ensure optimal performance.
 - v. Negative air pressure must be maintained inside the building.
 - vi. Doors and windows must remain closed, except for the minimum time length needed to allow people to ingress or egress the building.

- j. A variance may be granted for an alternative odor control system, in accordance with the Michigan Mechanical Code, if a mechanical engineer licensed in the State of Michigan submits a report that sufficiently demonstrates the alternative system will be equal to or better than the air scrubbing and carbon filtration system otherwise required.
- k. For purposes of this section, “air contaminants” means stationary local sources producing air-borne particulates, heat, odors, fumes, spray, vapors, smoke or gases in such quantities as to be irritating or injurious to health.
- l. A marihuana operation shall not be granted a state operating license until the findings and approvals of this Section are completed.

§ 4. SIGNAGE AND ADVERTISING.

A. It shall be unlawful for any licensee to:

- (1) Use advertising material that is misleading, deceptive or false or that, as evidenced by the content of the advertising material or by the medium or the manner in which the advertising material is disseminated, is designed to appeal to minors; and
- (2) Advertise in a manner that is inconsistent with the provisions of this Ordinance, the MRTMA, the MMFLA, LARA rules, other Township Ordinances, or is profane.

§ 5. PROHIBITED ACTS.

- A. It shall be unlawful for a marihuana provisioning center, marihuana retailer, or similar type of entity, or a marihuana microbusiness, or similar entity, to locate and operate within the boundaries and jurisdiction of the Township.
- B. It shall be unlawful for a temporary marihuana event, or similar marihuana event, and designated consumption establishment, or similar entity, to locate and operate within the boundaries and jurisdiction of the Township.
- C. It shall be unlawful for any licensee to permit the consumption of alcohol beverages on the marihuana licensed premises.
- D. It shall be unlawful for any licensee to permit the consumption of retail marihuana or retail marihuana products on the licensed premises.

§ 6. VIOLATIONS AND PENALTIES.

- A. In addition to the possible denial, suspension, revocation or nonrenewal of a license under the provisions of this Ordinance, any person or marihuana operation, including, but not limited to, any licensee, manager or employee of a marihuana commercial entity, who violates any of the provisions of this Ordinance, shall be responsible for a municipal civil infraction and a fine of \$500, or as permitted by law, as established by Resolution.

- B. In addition, any person, including any person, customer or member of the public, who violates the provisions of section 4 of the MRTMA, MCL 333.27954, and who acts in a manner contrary to the acts prohibited therein, except as may be otherwise provided in MCL 333.27965, shall be guilty of a misdemeanor.
- C. Notwithstanding the above, to the extent any violation or penalty set forth herein may be deemed inconsistent with any State law, or inconsistent with any rule or penalty which is promulgated by the Department, now or hereafter, including but not limited to those promulgated pursuant to MCL 333.27958, then the State law or Department rule or penalty shall govern over the provisions of this Ordinance, as determined by state preemption.
- D. A violation of this Ordinance is deemed to be a nuisance, per se. In addition to any remedies available at law, the Township may bring an action for an injunction or other process against any person to restrain, prevent or abate any violation of this Ordinance and such other relief as may be provided by law.
- E. Each day on which any violation of this Ordinance occurs or continues constitutes a separate offense, subject to separate sanctions. The paying of a fine or sanctions under this Ordinance shall not exempt the offender from meeting the requirements of this Ordinance.
- F. This Ordinance shall be administered and enforced by the Township or by such other person(s) as designated by the Township.

§ 7. 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) marihuana establishments pursuant to Initiated Law 1 of 2018, as amended, licensing medical marihuana establishments pursuant to Public Act 281 of 2016, as amended, nor provisions contained within Initiated Law 1 of 2008, as amended.

§ 8. OTHER ORDINANCE PROVISIONS.

All ordinances or parts of ordinances in conflict or inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such conflict or inconsistency. Except as provided in this Ordinance, all other provisions of the DeWitt Charter Township Zoning Ordinance shall remain in full force and effect.

§ 9. SAVINGS.

All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this Ordinance takes effect are saved and may be consummated according to the law in force when they were commenced.

§ 10. EFFECTIVE DATE.

This Ordinance shall only become effective upon the passage of the “*DeWitt Township Marihuana Operations Ordinance*” and then the immediate passage of this Ordinance, publication and recording by the DeWitt Charter Township Clerk as required by law.

First Reading: _____
First Publication: _____
Second Reading: _____
Second Publication: _____
Effective Date: _____

Rick Galardi, Supervisor

Adam Cramton, Clerk

I, Adam Cramton, Clerk of the Charter Township of DeWitt, hereby certify that the foregoing constitutes a true and complete copy of Ordinance No. ____, duly adopted by the Township Board of the Charter Township of DeWitt, Clinton County, Michigan, on the ____ day of _____, 2021, and that the same was posted and published as required by law on the ____ day of _____, 2021.

Adam Cramton, Clerk