

**VILLAGE OF MARCELLUS RECREATIONAL MARIHUANA  
ESTABLISHMENTS AND MEDICAL MARIHUANA FACILITIES ORDINANCE**

**VILLAGE OF MARCELLUS  
CASS COUNTY, MICHIGAN**

**ORDINANCE NO. 241  
Adopted: September 28, 2021  
Effective: November 6, 2021**

An Ordinance enacted pursuant to the authorization(s) granted to cities, villages, and townships by the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, MCL 333.27951, *et seq.* as may be amended, and the Medical Marihuana Facilities Licensing Act, Public Act 281 of 2016, MCL 333.27102 *et seq.*, as may be amended to allow certain recreational marihuana establishments operated in accordance with state law; to allow certain medical marihuana facilities operated in accordance with state law; to amend the Village of Marcellus Zoning Ordinance; to repeal all ordinances or parts of ordinances in conflict; and to provide an effective date.

THE VILLAGE OF MARCELLUS ORDAINS:

SECTION I – TITLE

This ordinance shall be known and may be cited as the *Village of Marcellus Recreational Marihuana Establishments and Medical Marihuana Facilities Ordinance*.

SECTION II – DEFINITIONS

The following words and phrases have the meanings ascribed to them when used in this ordinance:

- (a) *Co-location or co-located* means the siting and operation of a combination of multiple establishments or establishment types at a single location.
- (b) *Designated consumption establishment* means a commercial space that is licensed by LARA and authorized to permit adults 21 years of age and older to consume marihuana products at the location indicated on the state license.
- (c) *Emergency Rules* means the emergency rules for adult-use marihuana establishments issued by LARA on or about July 3, 2019, and as amended.
- (d) *LARA* means the Michigan Department of Licensing and Regulatory Affairs and any successor department or agency within the department, including the Marihuana Regulatory Agency.

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- (e) *Licensee* means a person holding a state operating license.
- (f) *Marihuana* means all parts of the plant genus *cannabis*, growing or not; the seeds of that 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. *Marihuana* does not include 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. *Marihuana* does not include industrial hemp.
- (g) *Marihuana establishment* or *establishment* means a marihuana grower, marihuana safety compliance establishment, marihuana processor, marihuana microbusiness, marihuana retailer, marihuana secure transporter, or any other type of marihuana-related business licensed by LARA under the MRTMA.
- (h) *Medical marihuana facility* or *facility* means a medical marihuana grower, medical marihuana safety compliance facility, medical marihuana processor, medical marihuana secure transporter, medical marihuana provisioning center, or any other type of medical marihuana-related business licensed by LARA under the MMFLA.
- (i) *Medical marihuana grower* means a commercial entity located in this state and licensed by LARA that cultivates, dries, trims, or cures and packages marihuana for sale to a processor, provisioning center, or another grower.
- (j) *Marihuana processor* means a commercial entity located in this state and licensed by LARA that purchases marihuana from a grower and that extracts resin from the marihuana or creates a marihuana-infused product for sale and transfer in packaged form to a provisioning center or another processor.
- (k) *Medical marihuana provisioning center* means a commercial entity located in this state and licensed by LARA that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualifying patients, directly or through the patients' registered primary caregivers. *Provisioning center* includes any commercial property where medical marihuana is sold at retail to registered qualifying patients or registered primary caregivers. A noncommercial location used by a registered primary caregiver to assist a qualifying patient connected to the caregiver through LARA's medical marihuana registration process in accordance with the MMMA is not a provisioning center for purposes of this Ordinance.
- (l) *Medical marihuana secure transporter* means a commercial entity located in this state and licensed by LARA that stores marihuana and transports marihuana between marihuana facilities for a fee.
- (m) *Medical marihuana safety compliance facility* means a commercial entity licensed by LARA that takes marihuana from a medical marihuana facility or receives marihuana from a registered primary caregiver, tests the marihuana for contaminants and for tetrahydrocannabinol and other cannabinoids, returns the test results, and may return the marihuana to the medical marihuana facility.

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- (n) *Marihuana grower* means a person licensed by LARA to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.
- (o) *Marihuana microbusiness* means a person licensed by LARA to cultivate not more than 150 marihuana plants; process and package marihuana; and sell or otherwise transfer marihuana to individuals who are 21 years of age or older or to a marihuana safety compliance establishment, but not to other marihuana establishments.
- (p) *Marihuana processor* means a person licensed by LARA to obtain marihuana from marihuana establishments; process and package marihuana; and sell or otherwise transfer marihuana to marihuana establishments.
- (q) *Marihuana retailer* means a person licensed by LARA to obtain marihuana from marijuana establishments and to sell or otherwise transfer marihuana to marihuana establishments and to individuals who are 21 years of age or older.
- (r) *Marihuana secure transporter* means a person licensed by LARA to obtain marihuana from marihuana establishments in order to transport marihuana to marihuana establishments.
- (s) *Marihuana safety compliance establishment* means a person licensed by LARA to test marihuana, including certification for potency and the presence of contaminants.
- (t) *MMMA* means the Michigan Medical Marihuana Act, Initiated Law 1 of 2008, as amended, MCL §333.26424 *et seq.*
- (u) *MMFLA* means the Medical Marihuana Facilities Licensing Act, 2016 PA 281, as amended, MCL §333.27102 *et seq.*
- (w) *MRTMA* means the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, MCL §333.27951 *et seq.*
- (x) *MRTMA rules* means rules, including emergency rules, promulgated by LARA to implement the MRTMA.
- (y) *Prequalification step* or *prequalified* means the portion of the application for a state operating license pertaining to the applicant’s financial background and the criminal history of the applicant and other associated persons, as provided by Emergency Rule 6.
- (z) *State operating license* or, unless the context requires a different meaning, “*license*” means a license that is issued by LARA under the MRTMA that allows the licensee to operate a marihuana establishment.

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**SECTION III – AUTHORIZED ESTABLISHMENTS.**

- (a) *Authorization and special use permit required.* No person shall operate a marihuana establishment or facility in the Village without an authorization issued by the Village pursuant to the provisions of this Ordinance and a special use permit pursuant to this Ordinance. Hours of operation, signage, lighting, off street parking and other conditions may be considered when granting special use permits pertaining to this Ordinance.
  
- (b) *Marihuana Establishments.* The following marihuana establishments may be authorized to operate in the Village, subject to this Ordinance and the Village Zoning Ordinance, as amended:
  - (1) Class A Licenses;
  - (2) Class B licenses;
  - (3) Class C licenses;
  - (4) Retailers;
  - (5) Processors;
  - (6) Secure transporters;
  - (7) Safety compliance establishments;
  - (8) Microbusinesses;
  - (9) Excess marihuana growers; and
  - (10) Temporary marihuana events
  
- (c) *Medical Marihuana Facilities.* The following medical marihuana facilities may be authorized to operate in the Village, subject to this Ordinance and the Village Zoning Ordinance, as amended:
  - (1) Grower operating under Class A Licenses;
  - (2) Grower operating under Class B licenses;
  - (3) Grower operating under Class C licenses;
  - (4) Provisioning centers;
  - (5) Processor;
  - (6) Secure transporter; and
  - (7) Safety compliance facilities;
  
- (d) *Final authorization from Village required.* The authorization process described in Section IV determines the locations in the Village at which establishments may operate. A proposed establishment is not eligible to operate until the Clerk as directed by the Village Council grants final authorization pursuant to Section IV and until the applicant receives a special use permit and all required approvals and licenses from LARA.



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**SECTION IV – APPLICATION FOR AUTHORIZATION.**

(a) *Required Application Materials.* An application is not considered complete until all of the following are received by the Village Clerk:

- (1) An advance of the annual non-refundable administrative fee of \$5,000 per license sought.
- (2) A photocopy of a valid, unexpired driver’s license or state issued identification card for all owners, directors, and officers of the proposed establishment.
- (3) A signed application (available in the Clerk’s office), which must include all of the following information and documents:
  - (A) If the applicant is an individual: the applicant’s name, date of birth, Social Security number, physical address (including residential and any business address), copy of government-issued photo identification, email address, and one or more phone numbers, including emergency contact information;
  - (B) If the applicant is not an individual: the names, dates of birth, physical addresses (including residential and any business address), copy of government-issued photo identifications, email address, and one or more phone numbers of each stakeholder of the applicant (including designation of the highest ranking representative as an emergency contact person), contact information for the emergency contact person, articles of incorporation or organization, assumed name registration, Internal Revenue Service EIN confirmation letter, copy of the operating agreement of the applicant (if a limited liability company), copy of the partnership agreement (if a partnership), names and addresses of the beneficiaries (if a trust), or a copy of the bylaws or shareholder agreement (if a corporation);
  - (C) The name, address, tax identification number, and current zoning designations of the property on which the proposed marihuana establishment or facility will be located;
  - (D) The name and address of the current property owner of record of the property on which the proposed marihuana establishment or facility will be located;
  - (E) If the current property owner is different than the applicant (e.g. where the applicant has a lease, option, land contract, or other future interest in the property), the property owner’s signature is required in addition to the applicant’s signature. An applicant may submit applications for multiple properties. However, only one application shall be submitted per proposed marihuana establishment property, unless the applications are for proposed co located establishments.

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- (F) The proposed establishment or facility type.
  - (G) A complete list of all marihuana permits and licenses held and applied for by the applicant.
  - (H) Written consent for the Village to inspect the establishment or facility at any time during normal business hours to ensure compliance with applicable laws and regulations.
  - (I) A location area map of the marihuana establishment and/or marihuana facility and surrounding area that identifies the relative locations and the distances (closest property boundary line of the subject marihuana establishment's property) to the closest real property boundary line comprising a public or private elementary, vocational or secondary school.
  - (J) A copy of all documents submitted by the applicant to LARA in connection with the application for a state operating license under the MRTMA (including documents submitted for prequalification).
  - (K) A copy of all documents submitted by the applicant to LARA in connection with the application for a state operating license under the MMFLA, if applicable.
  - (L) A copy of all documents issued by LARA indicating that the applicant has been prequalified for a state operating license under the MRTMA.
  - (M) Any other information reasonably requested by the Village relevant to the processing or consideration of the application.
  - (N) Executing and Attestation of Covenant Not to Sue, a Release of Liability, and an Affidavit of Verification of Full Disclosure.
- (b) *Clerk action upon receipt.* The Clerk will accept and receive any complete application that includes the information and documents required unless the Village has already received an application for the same property from another applicant. Upon receiving a complete application, the Clerk will time- and date-stamp the application and inform the applicant of the receipt of the application.
- (c) *Conditional Authorization.* Upon receipt of a complete and accurate application, the Village Clerk shall determine the applicant is conditionally authorized.
- (d) *Final authorization.* The Clerk as directed by the Village Council will grant final authorization for the establishment if the applicant:

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- (1) Submits the paperwork for the facility or establishment-step of the application for a state operating license to LARA within 30 days of receiving conditional authorization.
  - (2) Submits an application for special use authorization pursuant to this Ordinance within 30 days of receiving conditional authorization.
  - (3) Obtains special use authorization within 6 months of receiving conditional authorization; and
  - (4) Receives all required operating licenses and approvals from LARA within 18 months after conditional authorization is granted.
- (e) *Expiration of conditional authorization.* If the applicant for a conditionally authorized establishment or facility fails to satisfy any of the deadlines established above, the conditional authorization will expire. The Village Council may extend any of the deadlines upon a showing of good cause.

**SECTION V – RELOCATION OF ESTABLISHMENTS, TRANSFERS OF LICENSES, AND EXPANSION OF GROW OPERATIONS**

- (a) An existing establishment or facility may be moved to a new location in the Village, subject to applicable zoning regulations, prior Village Council approval, and approval by LARA. In deciding whether to approve a new location for an existing establishment, the Village Council shall consider the following nonexclusive factors:
- (1) The impact of the establishment’s new location on traffic, parking, public safety, noise, and aesthetics.
  - (2) The impact of the establishment’s new location on the community as a whole; and
  - (3) The existing establishment’s compliance with Village ordinances and with state law and applicable administrative rules.
- (b) A license for an existing establishment or facility may be transferred to a new licensee that intends to continue operating at the same location, subject to approval by the Village Council and LARA. A license that is approved to be transferred is subject to the annual fee to cover the administrative costs of considering and investigating the transfer regardless of whether the annual fee for that year to which the transfer is intended to occur had already been paid by the transferor.

**SECTION VI – GENERAL REGULATIONS**

- (a) *Submission of Information.* Applicants for Village authorization and persons operating existing establishments or facilities in the Village must provide the Village Clerk with copies of all

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documents submitted to LARA in connection with the initial license application, subsequent renewal applications, or investigations conducted by or on behalf of LARA. Documents must be provided to the Clerk within 7 days of submission to LARA and may be submitted electronically to the Village unless otherwise requested by the Clerk.

- (b) *Compliance with applicable laws and regulations.* Adult-use marihuana establishments must be operated in compliance with the MRTMA, MRTMA rules, all conditions of the establishments or facility's state operating licenses, and all applicable Village ordinances. Compliance with the foregoing does not create immunity from prosecution by federal authorities or other authorities of competent jurisdiction.
- (c) *No consumption on premises.* No smoking, inhalation, or other consumption of marihuana shall take place on or within the premises of any establishment or facility, except for consumption establishments and special permit events only as by the MRTMA and MMFLA. It shall be a violation of this Ordinance to engage in such behavior, or for a person to knowingly allow such behavior to occur. Evidence of all of the following gives rise to a rebuttable presumption that a person allowed the consumption of marihuana on or within a premises in violation of this section:
- (1) The person had control over the premises or the portion of the premises where the marihuana was consumed;
  - (2) The person knew or reasonably should have known that the marihuana was consumed; and
  - (3) The person failed to take corrective action.
- (d) *Annual fee.* A licensee must pay a fee of \$5,000 for each license used within the Village in order to help defray administrative and enforcement costs. The initial annual fee(s) must be paid to the Village Clerk when the application for Village approval is submitted. In each subsequent year, fees are due on the date on which the licensee submits an application to LARA for renewal of the state operating license. The amount of the annual fee may be reduced by resolution of Village Council, without an amendment to this Ordinance.

**SECTION VII – VIOLATIONS**

- (a) *Request for revocation of state operating license.* If at any time an authorized establishment or facility violates this Ordinance or any other applicable Village ordinance, the Village Council may request that LARA revoke or refrain from renewing the establishment's state operating license.
- (b) *Civil infraction.* It is unlawful to disobey, neglect, or refuse to comply with any provision of this Ordinance. A violation of is a municipal civil infraction. Each day the violation continues



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shall be a separate offense. Notwithstanding any other provision of this Ordinance to the contrary, a violator shall be subject to a civil infraction of \$500.00.

- (c) *Other remedies.* The foregoing sanctions are in addition to the Village’s right to seek other appropriate and proper remedies, including actions in law or equity.
- (d) *Nuisance.* A violation of this Ordinance is deemed a nuisance *per se*.
- (e) *Administration & Enforcement.* This Ordinance shall be administered and enforced by the Village Zoning Administrator, the Village President, or by such other person(s) designated by the Village Council by resolution. Marihuana facilities may be searched without any cause or warrant as provided by MCL 333.27201, .27208, .27303(1). Marihuana establishments may be searched without cause or warrant as the recreational marijuana industry is a “closely regulated industry.” *New York v. Burger*, 482 US 691, 719 (1987).

**SECTION VIII - ZONING**

(a) *Zoning.* The following amendments are made to the Village of Marcellus Zoning Ordinance:

(i) Section 14.03-Retail Commercial is amended to add subsection (c):

D. The following establishments: retailers, secure transporters, safety compliance establishments, microbusinesses, and temporary marihuana events.

The following facilities: provisioning centers, secure transporters, and safety compliance facilities.

(ii) Section 15.03-Service Commercial is amended to add subsection (D):

D. The following establishments: Class A, B, and C growers, safety compliance establishments, microbusinesses, excess marihuana growers, and temporary marihuana events.

The following facilities: processors, secure transporters, and safety compliance facilities.

(iii) Section 16.03-Industrial is amended to add subsection (F):

D. The following establishments: excess marihuana growers.

The following facilities: Class A, B, and C growers, processors, and secure transporters.

(b) Marihuana establishments or medical marihuana facilities may not be closer than 350’ feet

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from any pre-existing public or private school providing education in kindergarten or any of grades 1 through 12. *See* MCL 333.27959(3)(c).

- (c) The distance in subsection (b) shall be measured directly from the closest property boundary directly to the closest property boundary.
- (d) Marihuana facilities and establishments may only operate between 9 a.m. and 9 p.m.

**SECTION IX – SEVERABILITY**

The provisions of this Ordinance are hereby declared to be severable. If any clause, sentence, word, section, or provision is 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.

**SECTION X – PUBLICATION & EFFECTIVE DATE**

This Ordinance was adopted by the Marcellus Village Council meeting held on the 28<sup>th</sup> day of September 2021 and shall take effect 30 days after publication on November 6, 2021.

**SECTION XI - REPEAL**

All Village Codes and Ordinances or parts of Code and Ordinance of the Village of Marcellus inconsistent herewith shall be and are hereby repealed, including specifically Ordinance No. 230, or parts of Ordinances in conflict with this ordinance.

Date: September 28, 2021

  
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 Jacqueline A. Terrill  
 Village Clerk

Date: September 28, 2021

  
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 Ronald E. Welburn  
 Village President

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Clerk's Certificate

**Certification:** I hereby certify that the foregoing is a true and complete copy of Ordinance No. 241, being a "*Recreational Marihuana Establishments and Medical Marihuana Facilities Ordinance*", adopted by the Village Council of the Village of Marcellus, County of Cass, State of Michigan, at a regular meeting held on September 28, 2021; the original of which is on file in my office and available to the public. Public Notice of said meeting was given pursuant to and in compliance with the Open Meetings Act, including, in the case of a special or rescheduled meeting, notice by posting at least 18 hours prior to the time set for said meeting. That ordinance was published in summary form or in full in *The Marcellus News* on October 7, 2021.

Date: October 7, 2021

  
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Jacqueline A. Terrill