

ORDINANCE NO. 2022-01

TOWNSHIP OF BIRCH RUN

SAGINAW COUNTY, MICHIGAN

ADOPTED: February 8, 2022

PUBLICATION DATE: February 23, 2022

EFFECTIVE: February 24, 2022

An ordinance of the Township of Birch Run, Saginaw County, Michigan, to amend the Birch Run Township Zoning Ordinance; to ratify and confirm the remainder of the Birch Run Township Zoning Ordinance unless otherwise stated; to provide a procedure for conflicts with other laws; to provide for sanctions; to provide that pending proceedings are not affected; to provide for severability; to repeal all Ordinances or parts of Ordinances in conflict herewith; to provide for an Effective Date; and to direct the publication of this Ordinance or a legally-permissible summary.

**THE TOWNSHIP OF BIRCH RUN
SAGINAW COUNTY, MICHIGAN**

ORDAINS:

SECTION I

AMENDMENT TO BIRCH RUN TOWNSHIP ZONING ORDINANCE

1. The Birch Run Township Zoning Ordinance is amended to add “Marihuana Establishment operating under the Michigan Regulation and Taxation of Marihuana Act Initiated Law 1 of 2018, MCL 333.27951 *et seq.*” as a use permitted with a Special Land Use Permit in a C-1 or C-2 Commercial Zoning District. This shall be reflected in the applicable Table of Uses contained in the Birch Run Township Zoning Ordinance.

2. The Birch Run Township Zoning Ordinance is further amended so as to list “Marihuana Establishment operating under the Michigan Regulation and Taxation of Marihuana Act Initiated Law 1 of 2018, MCL 333.27951 *et seq.*” as a prohibited use in all zoning districts other than in a C-1 or C-2 Commercial Zoning District where it shall be permitted with the attainment of a Special Land Use Permit.

3. The Birch Run Township Zoning Ordinance is further amended so as to state that the Township of Birch Run hereby prohibits all recreational marihuana establishments within the boundaries of the Township of Birch Run pursuant to Initiated Law 1 of 2018, MCL 333.27951, *et seq.*, as may be amended, except for the following type(s) of recreational marihuana establishments, which are permitted within the boundaries of the Township of Birch Run pursuant to Initiated Law 1 of 2018, MCL 333.27951, *et seq.*, as may be amended and pursuant to the regulations and constraints of the Township of Birch Run Prohibition of Certain Types and

Quantities of Recreational Marihuana Establishments Ordinance, the Birch Run Township Zoning Ordinance (as amended), and other applicable local and state law and regulations:

- a. Marihuana retailer, as defined by MCL 333.27953 as amended. Marihuana retailer marihuana establishment is hereby permitted within the boundaries of the Township of Birch Run pursuant to Initiated Law 1 of 2018, MCL 333.27951, *et seq.*, as may be amended, subject to all other applicable state and local laws and regulations including but not limited to the Birch Run Township Zoning Ordinance, as amended. The number of Birch Run Township Marihuana licenses for a recreational Marihuana retailer establishment shall be limited to a total of two (2).
- b. Marihuana secure transporter, as defined by MCL 333.27953 as amended. Marihuana secure transporter marihuana establishment is hereby permitted within the boundaries of the Township of Birch Run pursuant to Initiated Law 1 of 2018, MCL 333.27951, *et seq.*, as may be amended, subject to all other applicable state and local laws and regulations including but not limited to the Birch Run Township Zoning Ordinance, as amended. The number of Birch Run Township Marihuana licenses for a recreational Marihuana secure transporter establishment shall be limited to a total of four (4).

4. Except otherwise stated herein, words used herein in regard to the use or proposed use of recreational marihuana shall have the definitions as provided for in Initiated Law 1 of 2018, MCL 333.27951, *et seq.*, as may be amended. The following words shall have the following specific definitions for purposes of this Ordinance:

- a. “Applicant” means a person who applies for a Township operating license or Special Land Use Permit. With respect to disclosures in an application, or for purposes of eligibility for a Township license, the term applicant includes an officer, director, and managerial employee of the applicant and a person who holds any direct or indirect ownership interest in the applicant.
- b. “Day care center” means a facility, other than a private residence, receiving 6 or more preschool or school age children for care for periods of less than 24 hours a day, and where the parents or guardians are not immediately available to the child. Day care center includes a facility which provides care for not less than 2 consecutive weeks, regardless of the number of hours of care per day. The facility is generally described as a child-care center, day care center, day nursery, nursery school, parent cooperative preschool, play group, or drop-in center.
- c. “Marihuana establishment” shall mean a Marihuana Retailer or Marihuana Secure Transporter as defined Initiated Law 1 of 2018, MCL 333.27951, *et seq.*, as may be amended.
- d. “Person” means an individual, corporation, limited liability company,

partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or other legal entity.

- e. "Recreational facility" means any public building or field used for the primary purpose of sports, leisure, or recreation.
- f. "School" means any public or private school meeting all requirements of the compulsory education laws of the state.
- g. "State operating license" or, unless the context requires a different meaning, "State License" means a license that is issued under the MRTMA that allows the licensee to operate as 1 of the following, specified in the license:
 - i. Marihuana Grower.
 - ii. Marihuana Processor.
 - iii. Marihuana Retailer.
 - iv. Marihuana Secure Transporter.
 - v. Marihuana Safety-Compliance Facility.
 - vi. Marihuana Microbusiness.
- h. "Township" means the Birch Run Township.
- i. "Township operating license" or, unless the context requires a different meaning, "Township License" means a license that is issued by the Township under this Ordinance that allows the licensee to operate as 1 of the following, specified in the license:
 - i. Marihuana Grower.
 - ii. Marihuana Processor.
 - iii. Marihuana Retailer.
 - iv. Marihuana Secure Transporter.
 - v. Marihuana Safety-Compliance Facility.
 - vi. Marihuana Microbusiness.
- j. "Township Licensee" means a person holding a valid Township operating license.

5. The Birch Run Township Zoning Ordinance is further amended so as to state the following requirements regarding the attainment of a Special Land Use Permit:

- a. All Recreational Marihuana Facilities are subject to review and approval by the Birch Run Township Planning Commission in accordance with the Birch Run Township Zoning Ordinance.

- b. Any person or entity that wishes to operate a Marihuana Establishment in the Township shall obtain a Township License and must obtain a State Operating License prior to opening or operating.
- c. The Township shall assess an annual fee in the amount of \$5,000.00 per application to defray the costs incurred by the Township for inspection, administration and enforcement costs associated with the operation of the Marihuana Establishment(s) operating in the Township.
- d. No License issued under this section shall be transferrable unless first approved by Birch Run Township and the State of Michigan.
- e. All Licenses issued under this section shall be renewed annually and subject to annual inspection and renewal fees as set from time to time by the Township by resolution.
- f. The Township may limit the number of Licenses issued under this section and may revise this limit from time to time.
- g. No person or entity that has opened or operated a facility doing business or purporting to do business under any state law, this Ordinance or the MRTMA without first obtaining a License shall be eligible for a License.
- h. A person or entity that receives a License under this Ordinance shall display its License and, when issued, its State Operating License in plain view clearly visible to Township officials and authorized agents of the State of Michigan.
- i. The Birch Run Township Board of Trustees shall be empowered to issue final approval or denial for any Application for a Recreational Marihuana Township Operating License.
- j. The Birch Run Township Planning Commission shall be empowered to issue final approval, denial, or approval with conditions for any Application for a Township Special Land Use Permit where the property that is the subject of the Special Land Use Permit Application will be used in whole or in part for any purpose relating to Recreational Marihuana.

6. The Birch Run Township Zoning Ordinance is further amended so as to state the following requirements regarding the location of a marihuana establishment located in Birch Run Township:

- a. All Marihuana Establishments must be located in a C-1 or C-2 Commercial Zoning District.
- b. No Marihuana Establishment shall be located within 1,000 feet from a school, day care center, recreational facility, church, public or private park. The minimum required distance of 1,000 feet shall be measured as the shortest distance between the principal building unit that is occupied by the regulated use to the nearest property line of the protected use. For purposes of this ordinance "School" means any public or private school meeting all requirements of the compulsory education laws of the state.
- c. No Marihuana Establishment shall be located within 500 feet from another Marihuana Establishment. The minimum required distance of 500 feet shall be measured as the shortest distance between the principal building unit that is occupied by the regulated use to the nearest property line of the protected use.
- d. The Applicant location shall meet all applicable written and duly promulgated standards of the Township and, prior to opening, shall demonstrate to the Township that it meets the rules and regulations promulgated by the State of Michigan.
- e. The Applicant's location shall conform to all standards of the zoning district in which it is located.
- f. No person shall reside or permit any person to reside in or on the premises of a recreational marihuana facility.

7. The Birch Run Township Zoning Ordinance is further amended so as to state the following requirements regarding the operation of a marihuana establishment located in Birch Run Township:

- a. A Recreational Marihuana Establishment operating in the Township shall at all times comply with the operational requirements described herein, which the Township may review and amend from time to time as it determines reasonable.

- b. **Scope of Operation.** Recreational Marihuana Establishments shall comply with all respective codes of the local zoning, building, and health departments. The Marihuana Establishment must hold a valid License and State Operating License for the type of Recreational Marihuana Establishment intended to be carried out on the property. All Recreational Marihuana Establishments shall comply with all applicable state laws.
- c. **Security.** License Holders shall at all times maintain a security system that includes the following:
 - i. Security surveillance cameras installed to monitor all entrances, along with the interior and exterior of the property.
 - ii. Robbery and burglary alarm systems which are monitored and operated 24 hours per day.
- d. All Recreational Marihuana in whatever form stored at the property shall be kept in a secure manner and shall not be visible from outside the property.
- e. **Operating Hours.** No Recreational Marihuana Establishment shall operate between the hours of 9:00 p.m. and 9:00 a.m. on any Monday, Tuesday, Wednesday, Thursday, Friday, or Saturday. No retailer shall operate between the hours of 9:00 p.m. and 11:00 a.m. on any Sunday.
- f. **Sign Restrictions.** It shall be prohibited for any Recreational Marihuana Establishment to display any signs that are inconsistent with local laws, regulations, or any other applicable laws. No pictures, photographs, drawings or other depictions of Recreational Marihuana shall appear on the outside of any property nor be visible outside the property. The words “Marihuana,” “Cannabis” and any other words used or intended to convey the presence or availability of Marihuana shall not appear on the outside of the Licensed Premises nor be visible outside of the Licensed Premises on the property.
- g. **Use of Marihuana.** The sale, consumption or use of alcohol or tobacco products on the Licensed Premises is prohibited. Smoking or consumption of controlled substances, including Recreational Marihuana, on the Licensed Premises is prohibited.

- h. Disposal. The disposal of Recreational Marihuana shall be accomplished in a manner that prevents its acquisition by any person who may not lawfully possess it.
- i. All Recreational Marihuana delivered to a customer shall be packaged and labeled as provided by applicable laws and Ordinances.
- j. Additional Conditions. The Planning Commission may impose such reasonable terms and conditions on a Recreational Marihuana Establishment's special use as may be necessary to protect the public health, safety, and welfare, and to obtain compliance with the requirements of this Ordinance and applicable law.

8. The Birch Run Township Zoning Ordinance is further amended so as to state the following requirements regarding the application of a marihuana establishment located in Birch Run Township:

- a. An Application for a License for a Recreational Marihuana Establishment and/or a Special Land Use Permit for a Recreational Marihuana Establishment shall be submitted to the Township Clerk, and shall contain the following information:
 - i. The name, address, and phone number of the proposed Applicant and the proposed Marihuana Establishment.
 - ii. The names, addresses, and phone numbers for all owners, directors, officers, and managers of the Applicant and the Marihuana Establishment.
 - iii. If the disclosed entity is a trust, the application shall disclose the names and addresses of the beneficiaries; if a corporation, the names and addresses of all shareholders, officers, and directors; if a partnership or limited liability partnership, the names and addresses of all partners; if a limited partnership or limited liability limited partnership, the names of all partners, both general and limited; or if a limited liability company, the names and addresses of all members and managers.
 - iv. The appropriate non-refundable application fee and the nonrefundable licensing fee in the amount determined by the Township.
 - v. The address of the proposed Recreational Marihuana Establishment, proof of ownership of the proposed location where the Recreational Marihuana Establishment is to be operated or a copy of the lease for the premises or a copy of a fully-executed

Purchase Agreement listing the Applicant as the buyer of the proposed location where the Recreational Marihuana Establishment is to be operated, indicating use of the premises in a manner requiring licensure under this Ordinance, and any additional contact information deemed necessary and requested by the Township.

- vi. Proof of an adequate premise liability and casualty insurance policy in a minimum amount to be determined by the Township Board. This minimum amount may be adjusted from time to time as the Township Board finds appropriate.
 - vii. Any other information required by the MRTMA or this Ordinance or deemed by the Township to be required for consideration of a License.
 - viii. The Township Board and/or Township Planning Commission shall not consider an incomplete application but shall, within a reasonable time, return the application to the applicant with notification of the deficiency and instructions for submitting a corrected application.
- b. Renewal. The same requirements that apply to all new Applications for a License apply to all renewal applications. Renewal applications shall require Township approval and shall be submitted to and received by the Clerk prior to expiration of the License.
- c. Upon approval of a Special Use Permit for any Establishment contemplated herein, the Planning Commission shall transmit their action to the Township Board. The Township Board shall, upon receipt of a complete Operating License Application and approval by the Planning Commission along with all required fees, approve or deny the Operating License Application within one-hundred-twenty (120) days of receipt of the complete License Application and approval by the Planning Commission along with all required fees, or within one-hundred-fifty (150) days if the location of the Licensed Premises is proposed to be amended. The processing time may be extended upon written notice by the Township for good cause, and any failure to meet the required processing time shall not result in the automatic granting of the Operating License. Any denial must be in writing and must state the reason(s) for denial. Any final denial of an Operating License may be appealed to a court of competent jurisdiction; provided that, the pendency of an appeal shall not stay or extend the expiration of any Operating License. The Township has no obligation to process or approve any incomplete SLUP

Application or Operating License Application, and any times provided under this Ordinance shall not begin to run until the Township receives a complete SLUP Application/Operating License Application, as determined by the Township Board. A determination of a complete SLUP Application/Operating License Application shall not prohibit the Township from requiring supplemental information.

- d. The Birch Run Township Board of Trustees shall be empowered to issue final approval or denial for any Application for a Recreational Marihuana Township Operating License.
- e. The Birch Run Township Planning Commission shall be empowered to issue final approval, denial, or approval with conditions for any Application for a Township Special Land Use Permit where the property that is the subject of the Special Land Use Permit Application will be used in whole or in part for any purpose relating to Recreational Marihuana.

SECTION II
RATIFICATION AND CONFIRMATION OF REMAINDER OF BIRCH RUN
TOWNSHIP ZONING ORDINANCE

Except as otherwise stated herein, the remainder of the Birch Run Township Zoning Ordinance is hereby confirmed and ratified.

SECTION III
CONFLICTS WITH OTHER LAWS OR REGULATIONS

If any provision of this Ordinance differs from a provision of any other applicable law, ordinance, rule, or regulation, both the provision of this Ordinance and the differing provision shall apply if possible. If the two (2) provisions are in conflict, then the provision establishing the higher or stricter standard shall apply.

SECTION IV
PENDING PROCEEDINGS NOT AFFECTED.

Nothing in this ordinance shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

SECTION V
SEVERABILITY

Should any section, clause or provision of this Ordinance be declared to be invalid by a court of competent jurisdiction, the same shall not affect the validity of the Ordinance as a whole

or any other part thereof other than the parts so declared to be invalid. The Birch Run Township Board of Trustees hereby declares that it would have enacted this Ordinance even without whatever provision may be declared invalid by a court of competent jurisdiction.

SECTION VI
REPEAL OF CONFLICTING ORDINANCES

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

SECTION VII
EFFECTIVE DATE

This Ordinance and the rules, regulations, provisions, requirements, orders, and matters established and adopted hereby shall take effect on February 24, 2022, following publication as required by law following adoption by the Township Board.

SECTION VIII
TOWNSHIP PUBLICATION

The Township Clerk is hereby ordered and directed to cause a Notice of Ordinance adoption to be published in a newspaper of general circulation within Birch Run Township.

This Ordinance is hereby declared to have been adopted by the Birch Run Township Board of Trustees, County of Saginaw, State of Michigan, at a regular meeting held on the 8th day of February 2022 and ordered to be given publication in the manner prescribed by law.

Ray Letterman, Supervisor

Riley Kiessling, Clerk

Date of Publication: February 23, 2022.

Newspaper: Birch Run/Bridgeport Herald

******The Township Clerk's Certification is contained on the following page******
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CERTIFICATION

ADOPTED

YEAS: R. Letterman, C. Trinklein, K. Parlberg, D. Trinklein, K. Kiessling, C. Watts, F. Sheridan

NAYS: None

ABSENT: None

State of Michigan, County of Saginaw,

I the undersigned Township Clerk for the Township of Birch Run, Saginaw County, Michigan, certify that the above Ordinance No. 2022-01, adopted by the Township Board of Trustees of the Township of Birch Run on the 8th day of February 2022, and was recorded in full in the Minutes of the Meeting of the Township Board of Trustees on said date. It was signed by the Supervisor and Clerk of the Township.

Dated: February 8, 2022

Riley Kiessling, Clerk

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