

TOWNSHIP OF BIRCH RUN
COUNTY OF SAGINAW, STATE OF MICHIGAN

ORDINANCE NO. 2022-02

ADOPTED: February 8, 2022

PUBLISHED: February 23, 2022

EFFECTIVE: March 25, 2022

AMENDED: October 11, 2022; December 13th, 2022; June 13th, 2023

BIRCH RUN TOWNSHIP PROHIBITION OF CERTAIN TYPES AND QUANTITIES
OF RECREATIONAL MARIHUANA ESTABLISHMENTS POLICE-POWER
ORDINANCE

The Township of Birch Run hereby Ordains the following: To provide an intent and purpose for this Ordinance; to provide a title for the ordinance; to define words; to prohibit certain types and/or quantities of 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; to require an operating license; to prescribe fees; to provide a procedure for the granting of adult-use/recreational marihuana licenses; to provide a procedure for license renewal; to provide location requirements; to provide operational requirements; to provide a procedure for revocation; to provide penalties for violation of this ordinance; to provide for severability; to repeal all ordinances or parts of ordinances in conflict herewith; and to provide an effective date.

TOWNSHIP OF BIRCH RUN
SAGINAW COUNTY, MICHIGAN

THE TOWNSHIP OF BIRCH RUN ORDAINS:

I. Section I. Purpose and Intent.

1. This ordinance is adopted for the purpose of promulgating Township rules, requirements, and regulations for Recreational/Adult-Use Marihuana Facilities in a manner that promotes and protects the public health, safety and welfare, mitigates potential impacts on surrounding properties and persons, and that conforms with the policies and requirements of the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951 *et seq.*, as amended (hereinafter "MRTMA") (as well as other applicable law) and the State Administrative Rules, as amended, adopted pursuant to the MRTMA. In the event of any conflict between any provision of this Ordinance and state law, state law shall be controlling regarding any entirely conflicted provision(s) of this Ordinance.

2. It is also the intent of this ordinance to help defray administrative and enforcement costs associated with the operation of a Marihuana facility in the Township through imposition of an annual, nonrefundable fee of not more than \$5,000.00 on each recreational Marihuana facility licensee. Authority for the enactment of these provisions is set forth in the MRTMA.

3. Nothing in this ordinance is intended to grant immunity from criminal or civil

prosecution, penalty, or sanction for the cultivation, manufacture, possession, use, sale, or distribution of Marihuana, in any form, that is not in compliance with the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951 *et seq.*; the Marihuana Tracking Act, MCL 333.27901 *et seq.*; and/or all other applicable rules promulgated by the state of Michigan.

4. As of the effective date of this ordinance, Marihuana remains classified as a Schedule 1 controlled substance under the Federal Controlled Substances Act, 21 U.S.C. Sec. 801 *et seq.*, which makes it unlawful to manufacture distribute, or dispense Marihuana, or possess Marihuana with intent to manufacture, distribute, or dispense Marihuana. Nothing in this ordinance is intended to grant immunity from any criminal prosecution under federal law(s).

II. Section II. Name. This ordinance shall be known as and may be cited as the Township of Birch Run Prohibition of Certain Types and Quantities of Recreational Marihuana Establishments Police-Power Ordinance.

III. Section III. Definitions. Except otherwise stated herein, words used herein 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:

1. “Applicant” means a person who applies for a Township operating license. 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.

2. “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.

3. “Person” means an individual, corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or other legal entity.

4. “Recreational facility” means any public building or field used for the primary purpose of sports, leisure, or recreation.

5. “School” means any public or private school meeting all requirements of the compulsory education laws of the state.

6. “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:

- a. Marihuana Grower.
- b. Marihuana Processor.
- c. Marihuana Retailer.
- d. Marihuana Secure Transporter.

- e. Marihuana Safety-Compliance Facility.
 - f. Marihuana Microbusiness.
7. "Township" means the Birch Run Township.
8. "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:
- a. Marihuana Grower.
 - b. Marihuana Processor.
 - c. Marihuana Retailer.
 - d. Marihuana Secure Transporter.
 - e. Marihuana Safety-Compliance Facility.
 - f. Marihuana Microbusiness.
9. "Township Licensee" means a person holding a valid Township operating license.

IV. Section IV. Certain Marihuana Establishments and Quantities thereof Prohibited. 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 this Ordinance, the Birch Run Township Zoning Ordinance, and other applicable local and state law and regulations:

1. 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 permits/licenses for a recreational Marihuana retailer establishment shall be limited to a total of no more than eight (8). *[Amended 10.11.2022; 6.13.2023]*

2. 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 permits/licenses for a recreational Marihuana secure transporter establishment shall be limited to a total of four (4).

V. Section V. License Required. A person shall not engage in the business or occupation of a Marihuana Facility within the Township without first obtaining: (1) A State operating license for the Marihuana Facility, and (2) A Township operating license issued by the Township pursuant to the requirements and procedures set forth in this ordinance and other applicable Township law and regulations.

VI. Section VI. Fees. An application fee in the amount of \$5,000 must be paid at the time of filing an application for a Township operating license to defray the administrative costs of processing and reviewing an application. Except as expressly provided by this Ordinance, application fees are non-refundable. In the event an application is referred for a consultant review, the applicant shall pay all consultant review fees. Upon approval or renewal of a Township operating license, the Township Licensee shall pay to the Township an annual nonrefundable operating fee in the amount of \$5,000 or as may be otherwise established by the Township Board, to help defray Township costs associated with the operation of a Marihuana Facility within the Township.

VII. Section VII. Requirements and Procedure for Granting Adult-Use/Recreational Marihuana Licenses.

1. Any Person who desires to obtain an Adult-Use/Recreational Marihuana License to operate a Recreational-Marihuana Establishment within the Township of Birch Run shall submit an Application to the Township on an Application form to be provided by the Township Board. The Applicant shall also submit all other documentation requested by the Township to support the application. The Applicant's application and supporting documentation shall be reviewed and scored by the Township, or the Township's designee. The scoring criteria shall be developed and promulgated by the Township. No Person may be awarded an Adult-Use/Recreational Marihuana License to operate a Recreational-Marihuana Establishment within the Township of Birch Run unless that person attains a minimum score of at least 60 following the reviewing and scoring of the Applicant's application. In the event that the number of applicants for a given Adult-Use/Recreational-Marihuana License exceeds the number of available licenses, the license(s) will be awarded to the Person(s) who submitted the highest-scoring application(s), subject to the minimum-scoring requirements. Prior to submitting an Application to the Township for an Adult-Use/Recreational Marihuana License to operate a Recreational-Marihuana Establishment within the Township of Birch Run, an Applicant must have obtained and present proof of pre-approval of a State Recreational Marihuana Operating License from the State of Michigan.

2. Application for a Township Operating License shall be made to the Township Clerk upon Township application forms for a Township Operating License and signed by the applicant verifying:

- a. The truth and accuracy of all information and representations in the application, and;
- b. The Applicant's legal authority to make application for the proposed Marihuana Facility at the proposed location. Applications including information and documentation provided pursuant to an application shall be subject to the disclosure provisions under the MRTMA or other applicable law or regulations. In addition to information and submittals required by this ordinance, the application shall include payment of an application fee in the amount of \$5,000.

3. Operating Requirements. Any land use, site plan or other zoning approval of a Marihuana Facility granted under any provision of this Ordinance or the Township's Zoning Ordinance shall be deemed conditional upon the timely approval and issuance of both a State and Township Marihuana Facility Operating License. Revocation or denial of a required

Marihuana Facility Operating License shall render any approval of a Marihuana Facility granted under any provision of the zoning ordinance null and void.

4. Approved Site Plan Required. Use of any property or structure as a Marihuana Facility requires Site Plan Review and approval of a site plan by the Planning Commission pursuant to the Birch Run Township Zoning Ordinance. Marihuana Facilities shall be operated and maintained in compliance with the approved site plan for the facility. Any use of property or a structure without, or in violation of, an approved site plan shall constitute a violation of the zoning ordinance and a nuisance per se subject to abatement by a court of competent jurisdiction.

5. Site Plan Application and Review Criteria. A site plan and site plan approval application for a Marihuana Facility shall comply with the Birch Run Township Zoning Ordinance. A site plan application for a Marihuana Facility shall be processed in accordance with the Planning Commission Review procedures prescribed by the Birch Run Township Zoning Ordinance. In addition to the criteria set forth in the Birch Run Township Zoning Ordinance, the following shall apply to a site plan/application for a Marihuana Facility:

- a. Identification of the type of Marihuana Facility applied for (e.g., retailer, secure transporter) and a detailed description of all services, products, items, uses, operations, or merchandise produced, sold, offered, conducted or provided by the proposed Marihuana Facility.
- b. Marihuana Facility uses, operations and activities shall comply with all rules and operating regulations adopted pursuant to the MRTMA and other applicable law. A description of an operating plan for the proposed Marihuana Facility shall be provided including the following:
 - i. A description of the products and services to be provided by the Marihuana Facility, including retail sales of food and/or beverages, if any, and any related accommodations or facilities.
 - ii. A floor plan, drawn to scale, showing the layout of the Marihuana Facility and the principal uses of the floor area depicted therein, including a detailed depiction of where any uses other than Marihuana related uses are proposed to occur on the premises.
 - iii. A detailed description of all Marihuana storage facilities and equipment including enclosed, locked facilities, if any, as may be required by the MRTMA or other applicable law. Storage of Marihuana shall comply with applicable rules adopted pursuant to the MRTMA and other applicable law.
- c. A description of waste disposal procedures, methods and facilities for Marihuana waste products including, but not limited to, usable and non-usable Marihuana. Waste product disposal and storage shall comply with applicable rules adopted pursuant to the MRTMA and other applicable law.
- d. A description of any proposed signs including a detailed depiction of sign language or displays, dimensions, locations, quantity, configuration, and illumination. Signs shall comply with applicable provisions of the

Township's Sign Ordinance and any marketing /advertising restrictions for Marihuana products and facilities adopted pursuant to the MRTMA and other applicable law.

- e. Signed and dated verification by the property owner, or his/her duly authorized agent, of the premises where the proposed Marihuana Facility will be located certifying that the property owner has been provided with and reviewed a complete copy of the application and consents to use and occupancy of the premises as a Marihuana Facility as described and referenced in the application. A detailed description of the proposed security plan for the facility including identification of all proposed security measures, equipment, and devices. A security plan shall comply with rules and security regulations adopted pursuant to the MRTMA and other applicable law. Security plans require review and approval by the Township Code Enforcement Officer (or such other individual as the Township Board may designate from time to time). The Township Code Enforcement Officer 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 entirely by the applicant.
- f. A Marihuana Establishment shall not be located less than one-thousand (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.
- g. Unless otherwise authorized pursuant to any rules adopted pursuant to the MRTMA and other applicable law, all facility operations, transactions, and activities shall be conducted within an enclosed structure. Other than waste disposal, outdoor storage is prohibited.
- h. An area map, drawn to scale, shall be provided indicating, within a radius of five-hundred feet (500 ft.) from the boundaries of the proposed site, the proximity of the site to any existing marihuana site.

6. Action by Planning Commission. The Planning Commission shall review the proposed application for a recreational Marihuana facility, together with any reports and recommendations from staff, the Township Department heads, the Township Planner, Township Attorney, other Township consultants, and any public comments. The Planning Commission shall identify and evaluate all relevant factors and shall report its findings and recommendation in writing to the Township Board.

7. The Township Board shall then make a determination based on the requirements of this Ordinance and the Township Zoning Ordinance, including the Township's Standards for Special Use Approval, as codified in the Township's Zoning

Ordinance. The Township Board is authorized to table, approve, approve subject to conditions or deny the special use as outlined in the Township's Zoning Ordinance.

8. In the event that the number of Applications for a given license type exceeds the number of available licenses, then the license(s) shall be awarded pursuant to a merit-based criteria system. The Township Board shall adopt and approve by Resolution Scoring Criteria that will be used by the Township to review and score Recreational Marihuana Establishment Applications. The Recreational Marihuana Establishment Applications shall be scored by the Birch Run Township Recreational Marihuana Sub-Committee ("the Sub-Committee"), which shall be created and established by the Township Board by Resolution. Following review and scoring, the Sub-Committee shall transmit its findings and report to the Birch Run Township Board for final approval or denial of any Birch Run Township Recreational Marihuana Operating License. A quorum of the Sub-Committee shall be constituted of one (or more) member of the Township Board and one (or more) member of the Township Planning Commission, and at least one additional person if only one member of the Township Board and one member of the Township Planning Commission are present.

9. An application for site plan approval of a Marihuana Facility that is materially incomplete or would result in a violation of state or local law shall be denied. Approval of a site plan for a Marihuana Facility does not guarantee, represent, or imply approval of a Marihuana Facility Operating License or any other permit, license or local approval that may be required by Township codes or ordinances for the proposed facility.

10. 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.

11. 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.

VIII. Section VIII. License Renewal.

1. A Township operating license expires on December 31st of each year regardless of the date that said license was issued or renewed.

2. A Township operating license may be renewed if:

- a. The Township Licensee submits a written request for renewal to the Township on forms prescribed by the Township on or prior to expiration and pays the yearly operating fee of \$5,000.
- b. The Township Supervisor, or his/her designee, verifies that at or immediately prior to expiration, the information, conditions, and representations contained in the original approved application remain materially correct, true and accurate.
- c. The State operating license for the Marihuana Facility has not been suspended or revoked.

- d. The Marihuana Facility passes inspection and is in compliance with all applicable laws, local building codes, ordinances and zoning regulations.
- e. The Township Licensee must apply for and receive a local Birch Run Township Business License.

3. If a renewal application is not submitted on or before the expiration date, the Township operating license may be renewed within 60 days after expiration upon application and payment of the renewal application fee. If the Township operating license is renewed within 60 days after expiration, the Township Licensee may continue to operate under the expired Township operating license during the 60 days following expiration.

4. An approved renewal of a Township operating license shall be held in escrow by the Township until the Applicant provides, or the Township receives, written verification that the Township Licensee has obtained:

- a. A valid renewal of a State operating license for a Marihuana Facility authorized by the Township operating license including identification of the true party in interest named as the State Licensee, and;
- b. Payment of the annual operating fee, and;
- c. The Marihuana Facility passes all required inspections. In the event the Township Licensee fails to provide verification of the above requirements within 60 days of notification of approval of a renewed Township operating license, the renewal of the Township operating license shall be deemed canceled unless the Township extends the time for providing verification of the above requirements upon a showing of good cause. Upon obtaining timely verification of the above requirements and receipt of the Township Licensee's annual operating fee, the Township shall deliver the renewed Township operating license to the Township Licensee. An approved renewal of a Township operating license shall not be valid until delivered to the Township Licensee by the Township and the Township Licensee pays all required fees.

IX. Section IX. Location Requirements. No person shall reside or permit any person to reside in or on the premises of a recreational marihuana facility. All Recreational/Adult-Use Marihuana Facilities/Establishments located in the Township of Birch Run shall fully comply with the Township of Birch Run Zoning Ordinance.

X. Section X. Operational Requirements.

1. No permit or license issued under this Ordinance shall be transferrable unless first approved by the State of Michigan and the Township Board.

2. A person or entity who/which receives a permit/license under this Ordinance shall display its permit and, when issued, its State Operating License in plain view clearly visible to Township Officials and State Marihuana Licensing Board authorized agents.

3. Permit/License Holders shall at all times maintain a security system that includes the following:

- a. Security surveillance cameras installed to monitor all entrances, along with the interior and exterior of the property.
 - b. Robbery and Burglary alarm systems, which are monitored 24 hours per day.
 - c. All recreational marihuana in any form whatsoever stored at the property shall be kept in a secure manner and shall not be visible from the outside of the property.
4. The sale, consumption or use of alcohol or tobacco products on the permitted/licensed premises is prohibited.
5. 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.

XI. Section XI. Revocation. A permit/license issued under this section may be revoked for any of the following non-exhaustive list of reasons:

1. Fraud or misrepresentation contained in the permit/license application.
2. Any known violation of this Ordinance or other Township Ordinance(s) or regulations.
3. Loss of the Applicant's State of Michigan Operating License.
4. Conducting business in an unlawful manner, or, in such a way as to constitute a menace to the health, safety or general welfare of the public or community.

XII. Section XII. Violations and Penalties.

1. Any person who disobeys, violates, 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.

2. A violation of this ordinance is a municipal civil infraction, for which the fines shall be not more than \$500, in the discretion of the Court. The foregoing sanctions shall be in addition to the rights of the Township of Birch Run to proceed at law or equity with other appropriate and proper remedies. Additionally, the violator shall pay the Township of Birch Run's costs which may include all expenses, direct and indirect which the Township of Birch Run incurs in connection with the municipal civil infraction, including but not limited to the attorney fee incurred by the Township of Birch Run in connection with the municipal civil infraction.

3. Each day during which any violation of this Ordinance continues shall be deemed a separate offense.

4. In addition, the Township of Birch Run may seek injunctive relief against a person or persons alleged to be in violation of this Ordinance, and such other relief as may be provided by law.

5. This Ordinance shall be administered and enforced by the Township Supervisor, Township Code-Enforcement Officer, or by such other person(s) as designated by the Township Board from time to time.

XIII. Section XIII. Prohibition of Medical Marihuana Establishments. Nothing herein shall be deemed to permit medical-marihuana establishments established pursuant to the Medical Marihuana Facilities Licensing Act, MCL 333.27101 *et seq.*, as all such medical-marihuana establishments are prohibited in Birch Run Township.

XIV. Section XIV. 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.

XV. Section XV. Repeal. All ordinance or parts of ordinances in conflict herewith are hereby repealed.

XVI. Section XVI. Effective Date. This Ordinance and the rules, regulations, provisions, requirements, orders, and matters established and adopted hereby shall take effect after the expiration of 30 days following publication as required by law following adoption by the Township Board.

XVII. Section XVII. Publication. The Township Clerk is hereby ordered and directed to cause this Ordinance to be published, either in full or in the form of a legally-permitted summary, in a newspaper of general circulation within Birch Run Township.

Made and passed by the Birch Run Township Board of Trustees this 8th day of February 2022.

RAY LETTERMAN
TOWNSHIP OF BIRCH RUN SUPERVISOR

RILEY KIESSLING
TOWNSHIP OF BIRCH RUN CLERK

******The certification of the Township Clerk is contained on the following page******
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CERTIFICATION

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

NAYS: None

ABSENT: None

ORDINANCE DECLARED ADOPTED

STATE OF MICHIGAN)
COUNTY OF SAGINAW)

I, the undersigned, Township Clerk for the Township of Birch Run, Saginaw County, Michigan, do hereby certify that Ordinance No 2022-02, adopted by the Township of Birch Run Board of Trustees on the 8th day of February 2022, was recorded in full in the Minutes of the Meeting of said Township Board on said date, and was signed by the Supervisor and the Clerk of the Township of Birch Run.

Dated: February 8, 2022.

RILEY KIESSLING, Clerk

Date of Publication: February 23, 2022.

Newspaper: Birch Run/Bridgeport Herald

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