

**ORDINANCE NO. 133-2017**

**TITLE: AMEND BARBERTON DEVELOPMENT CODE  
MEDICAL MARIJUANA ENTITIES**

**AN ORDINANCE AMENDING THE BARBERTON DEVELOPMENT CODE BY ADDING A NEW CHAPTER 1255, "MEDICAL MARIJUANA ENTITIES."**

**WHEREAS**, at the September 20, 2017 Planning Commission Meeting, the Planning Commission voted unanimously to recommend that City Council amend the Barberton Development Code by adding a new chapter regarding medical marijuana entities; and

**WHEREAS**, at the September 27, 2017 Barberton Health Board, the board voted unanimously to recommend this amendment to Barberton City Council; and

**WHEREAS**, a public hearing was held before City Council on September 25, 2017, regarding this text amendment.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Barberton, State of Ohio:

**SECTION 1.** That Council hereby amends the Barberton Development Code by adding Section 1255 "Medical Marijuana Entities" to read as follows:

Chapter 1255  
"Medical Marijuana Entities"

**PURPOSE:**

To establish Use Regulations and a Comprehensive Licensing System for medical marijuana entities in the City of Barberton; The inclusion of or reference to "dispensaries" in this section is to insure, to the extent required, conformance to the Ohio Revised Code, the City of Barberton **PROHIBITS** dispensaries.

On September 8, 2016, Ohio House Bill 523 took effect approving a Medical Marijuana Control Program, under which licensed medical marijuana cultivators, processors, dispensaries, and testing laboratories could legally operate within the State of Ohio.

The State of Ohio is currently creating rules related to the Medical Marijuana Control Program, with a legal mandate of having a functioning system of operating medical marijuana cultivators, processors, dispensaries, and testing laboratories in place by September 8, 2018.

The City of Barberton has the power to create zoning and licensing laws relating to these medical marijuana entities. These medical marijuana entities should be able to locate within the City of Barberton in order to ensure that Barberton residents stricken with one of the medical conditions for which the use of medical marijuana has been authorized have access to this promising form of medical relief in order to reduce or eliminate pain and suffering.

The following local zoning and licensing laws will ensure that medical marijuana cultivators, processors, and testing laboratories located in the City of Barberton operate in a safe and secure manner.

**Special Use Chapter 1255 Medical Marijuana Entities**

## **1255.10 – Medical Marijuana Entities – Definitions**

As used in this chapter:

- A. “Cultivator” means a person, business or organization as defined in this Section, that grows, harvests, packages, and/or transports medical marijuana as authorized by Chapter 3796 of the Ohio Revised Code.
- B. “Dispensary” means a person, business or organization as defined in this Section, that sells medical marijuana as authorized by Chapter 3796 of the Ohio Revised Code,
- C. “License Clerk”, means the Mayor and Safety Director or his/her designee.
- D. “Local operating license” means a license issued by the City of Barberton to a medical marijuana entity. A medical marijuana entity may not operate within the City of Barberton without a valid operating license.
- E. “Local provisional license” means a temporary license issued by the City of Barberton to a medical marijuana entity that establishes conditions that must be met by the medical marijuana entity before a certificate of operation is issued to it.
- F. “Marijuana” means marijuana as defined by section 3719.01 of the Ohio Revised Code.
- G. “Medical marijuana” means marijuana that is cultivated, processed, dispensed, tested, possessed, or used for medical purpose.
- H. “Medical marijuana entity” means a medical marijuana cultivator, processor, or testing laboratory as authorized by Chapter 3796 of the Ohio Revised Code.
- I. “Person” means any natural or corporate person, business association or other business entity, including but not limited to a firm corporation, limited liability company, partnership, joint venture, sole proprietorship, or any other legal entity.
- J. “Processor: means a person, as defined in this Section, that manufactures medical marijuana products as authorized by Chapter 3796 of the Ohio Revised Code.
- K. “Testing Laboratory” means a person, as defined in this Section, that conducts medical and scientific research on marijuana as authorized by Chapter 3796 of the Ohio Revised Code.
- L. “Prohibited facility” means a school, church, public library, public playground, or public park.
- M. “Valid” means not expired, suspended, or revoked.
- N. For the purpose of this chapter the following definition shall apply unless the context clearly indicates or requires a different meaning: The word “lot” includes the word “plot” or “parcel”; the words “used” or “occupied” include the words “arranged,” “intended” or “designed to be used or occupied”; the words “building” or “structure” include the words “or portion thereof”; the word “located” includes the words “erected” and “altered.”

## **1255.20 Medical Marijuana Entities - Use Regulations**

- A. Medical Marijuana Entities may only be permitted as a Conditional Use in the following zoning Districts: C4 Highway Commercial; I-1 Light Industrial District; I-2 Medium Industrial Districts and I-3 Heavy Industrial District. **A Medical Marijuana Entity is NOT permitted in any other zoning district in the City of Barberton.**
- B. Medical Marijuana Dispensaries are **PROHIBITED** in the City of Barberton.
- C. In addition to the Conditional Use approval process outlined in Section 1310.03 [b] [3] of the Barberton Development Code the following Special Standards will be applicable to Medical Marijuana Facilities.

- 1. NO MEDICAL MARIJUANA FACILITY SHALL BE LOCATED WITHIN 500 FEET OF A SCHOOL, CHURCH, PUBLIC PARK, PUBLIC PLAYGROUND OR PUBLIC LIBRARY, CONSISTENT WITH STATE OF OHIO SPACING REQUIREMENTS, AS

PROVIDED IN ORC 3796.09 AND 3796.10 AND THE ANALOGOUS PROVISIONS IN THE OHIO ADMINISTRATIVE CODE.

2. PROHIBITED LOCATION: NO MEDICAL MARIJUANA FACILITY SHALL BE LOCATED IN RESIDENTIALLY ZONED AREA WITH THE EXCEPTION OF INSTITUTIONAL DISTRICTS (UHD).
3. IN ADDITION TO THE GENERAL STANDARDS APPLICABLE TO ALL CONDITIONAL USES UNDER SECTION 1310.03[b][3], THE PLANNING STAFF AND THE CITY PLANNING COMMISSION WHEN STUDYING A PETITION FOR A CONDITIONAL USE, SHALL CONSIDER THE FOLLOWING CRITERIA:
  - a. THE IMPACT OF THE PROPOSED USE ON PUBLIC SAFETY IN THE SURROUNDING COMMUNITY.
  - b. THE IMPACT OF THE PROPOSED USE ON THE ECONOMIC WELFARE OF THE SURROUNDING COMMUNITY.
  - c. THE IMPACT OF THE PROPOSED USE ON THE GENERAL WELFARE OF THE SURROUNDING COMMUNITY IN REGARD TO ANY ODOR EMANATING FROM THE PROPOSED USE.
  - d. THE IMPACT OF THE PROPOSED USE ON ANY DISPROPORTIONAL CONCENTRATION OF MEDICAL MARIJUANA CULTIVATION FACILITIES, PROCESSING FACILITIES, TESTING LABORATORIES OR DISPENSARIES IN THE SURROUNDING COMMUNITY.
  - e. REGARDING MEDICAL MARIJUANA DISPENSARIES, THE LOCATION OF THE PROPOSED USE IN RELATION TO MEDICAL OR PHARMACEUTICAL FACILITIES OF A COMPLIMENTARY NATURE (E.G. PHARMACIES, PHYSICIAN OFFICES, ETC.)
4. THE PETITIONER SHALL COMPLY WITH ALL LOCAL AND STATE LAWS PERTAINING TO MEDICAL MARIJUANA FACILITIES FOR CULTIVATION, PROCESSING, AND/OR TESTING, INCLUDING ALL LOCAL AND STATE LICENSING REQUIREMENTS. IF THE PETITIONER HAS NOT OBTAINED A STATE PROVISIONAL LICENSE WITHIN ONE YEAR OF THE BARBERTON PLANNING COMMISSION GRANTING A CONDITIONAL USE, THE CONDITIONAL USE SHALL EXPIRE AT THAT TIME.

**1255.30 – Medical Marijuana Entities – Penalties**

- A. WHOEVER VIOLATES ANY PROVISION OF THIS CHAPTER SHALL BE GUILTY OF A MISDEMEANOR OF THE FIRST DEGREE.

**1255.40 – Medical Marijuana Entities – Licensing**

- A. No medical marijuana entity shall operate in the City of Barberton unless the entity possesses a valid operating license pursuant to this chapter and a valid state certificate of operation from the Ohio Department of Commerce, except as otherwise provided in this Section.
- B. A medical marijuana entity seeking to obtain a local operating license under this chapter must first apply for a local provisional license. A medical marijuana entity may not receive a building permit or certificate of occupancy unless, at the time such documents are issued, the entity possesses a valid local provisional license.

- C. An application for a local provisional license shall be made to the License Clerk and shall include:
1. The legal name of the applicant
  2. The type of business organization of the applicant, such as an individual, corporation, partnership, limited liability company, association, cooperative, joint venture, or any other business organization.
  3. Confirmation that the applicant is registered with the Ohio Secretary of State as the type of business submitted pursuant to this rule, a certificate of good standing issued by the Ohio Secretary of State, and a copy of the applicable business documents governing the operations and administration of the business.
  4. The mailing address, email address, and phone number of the applicant, if the applicant is an individual, or the name, mailing address, email address, and phone number of designated representative of the applicant, if the applicant is not an individual.
  5. If the applicant is currently, was previously, or has applied to be licensed or authorized in another state or jurisdiction to cultivate, produce, test, dispense or otherwise deal in the distribution of medical marijuana in any form, the following:
    - a. A copy of each such licensing/authorizing document verifying licensure in that state or jurisdiction;
    - b. A statement granting permission to contact the regulatory agency that granted the license, accompanied by the contact information, to confirm the information contained in the application; and
    - c. If the applicant was ever warned, fined, denied, suspended, revoked or otherwise sanctioned, a copy of documentation so indicating, or a statement that the applicant was so licensed and was never warned, fined, denied, suspended, revoked or otherwise sanctioned. This includes notification of any pending proceedings regarding warnings, fines, denials, suspensions, revocations, or other sanctions.
  6. With respect to any person presently or previously associated with the applicant, any instance in which such person managed or served on the board of a business and was convicted, fined, censured, or had a registration or license suspended or revoked in any administrative or judicial proceeding in connection with such management or service, as well as information regarding the association between such person and the applicant;
  7. The proposed physical address of the applicant's medical marijuana entity and confirmation that the property is properly zoned.
  8. A location area map of the area surrounding the proposed medical marijuana entity that establishes that the parcel of real estate on which the proposed facility will be located is at least five hundred feet from the boundaries of a parcel of real estate having situated on it a prohibited facility, as measured under Chapter 3796:5-01 of the Ohio Administrative Code.
  9. Any other information requested by the License Clerk.
  10. A non-refundable application fee of \$250.00 (Two Hundred Fifty Dollars).
- D. An application for a local provisional license shall be granted on the approval of the License Clerk at his/her discretion, except as otherwise provided in this Section. Within one year of receiving local provisional license, a medical marijuana entity may apply for a local operating license. If a medical marijuana entity possessing a local provisional license has not applied for a local operating license within one year, the local provisional license will

expire and a medical marijuana entity seeking a local operating license will need to first submit a new application for a local provisional license.

- E. An application for a local operating license shall be made to the License Clerk and shall include:
  - 1. A copy of the provisional license application by the medical marijuana entity to the Ohio Department of Commerce under Chapter 3796 of the Ohio Revised Code
  - 2. A copy of the provisional license granted by the Ohio Department of Commerce under the Chapter 3796 of the Ohio Revised Code to the medical marijuana entity at the address at which the facility is to be located.
  - 3. Confirmation that the medical marijuana entity is conforming to all requirements under this Chapter, Chapter 3796 of the Ohio Revised Code, and Chapter 3796 of the Ohio Administrative Code.
  - 4. Confirmation that the Barberton Police Department has inspected the facility and approved the security arrangements.
  - 5. Any other information requested by the License Clerk.
  - 6. A non-refundable application fee of \$2,500.00 (Two Thousand Five Hundred Dollars).
- F. An application for a local operating license shall be granted on the approval of the License Clerk at his/her discretion, except as otherwise provided in this Section. No local operating license shall be issued by the License Clerk except upon presentation of a valid state certificate of operation.
- G. Every local operating license issued by the City shall expire one year after the date on which it was issued. A renewal application for a medical marijuana entity shall be submitted to the License Clerk at least 90 days prior to the expiration date of the local operating license. The renewal application shall include:
  - 1. Confirmation that the medical marijuana entity is conforming to all requirements under this Chapter, Chapter 3796 of the Ohio Revised Code, and Chapter 3796 of the Ohio Administrative Code.
  - 2. A copy of a valid certificate of operation issued by the Ohio Department of Commerce to the medical marijuana entity for the same address.
  - 3. Any other information requested by the License Clerk.
  - 4. A non-refundable renewal fee of \$2,500.00 (Two Thousand Five Hundred Dollars).
- H. An application for a renewal of a local operating license shall be granted on the approval of the License Clerk at his/her discretion, except as otherwise provided in the Section. No local operating license shall be issued by the License Clerk except upon presentation of a valid certificate of operation.
- I. Both local provisional licenses and local operating license are only valid as to the particular address listed in the initial local provisional license application. A medical marijuana entity which has obtained a local operating license may submit an application for a location change to the License Clerk, which shall include:
  - 1. Confirmation that the medical marijuana entity is conforming to all requirements under this Chapter, Chapter 3796 of the Ohio Revised Code, and Chapter 3796 of the Ohio Administrative Code.
  - 2. A copy of a valid certificate of operation issued by the Ohio Department of Commerce to the medical marijuana entity for the current address.
  - 3. The new proposed physical address of the applicant's medical marijuana entity and confirmation that the property is properly zoned and a conditional use permit is approved as provided in Chapter 1320, criteria as provided in Table 1310D and Chapter 1255.
  - 4. A location area map of the area surrounding the newly proposed medical marijuana entity location that establishes that the parcel of real estate on which the facility will be located is at least five hundred feet from the boundaries of a parcel of real estate having situated on it a prohibited facility, as measured under Chapter 3795:5-5-01 of the Ohio Administrative Code.
  - 5. Any other information requested by the License Clerk.

6. A non-refundable application fee of \$2,500.00 (Two Thousand Five Hundred Dollars).
- J. An application for a location change for a local operating license may be granted on the approval of the License Clerk at his/her discretion, except as otherwise provided in this Section. If approval for the location change is granted, a new local operating license will be issued.
- K. Both local provisional licenses and local operating licenses are only valid as to the particular medical marijuana entity listed in the initial local provisional license application. If the ownership of a medical marijuana entity changes, requiring a transfer of ownership application to the State of Ohio under Chapter 3976:2-1-08 of the Ohio Administrative Code, the medical marijuana entity must notify the City. If the State of Ohio determines that the proposed ownership change complies with Chapter 3976:2-1-08, the ownership change will be permitted by the City under the existing local provisional license or local operating license, if the State of Ohio determines that a new state license application is required under Chapter 3976:2-1-08(B)(1)(d) of the Ohio Administrative Code, then the ownership change will not be permitted by the City without a new local provisional license and a new local operating license.
- L. As part of the submission of an application that results in the issuance of a local provisional license or local operating license, a medical marijuana entity irrevocably consents to the following:
  1. Any inspection by the City of Barberton or Barberton Police Department that is deemed necessary to ensure compliance by the medical marijuana entity with this Chapter, Chapter 3796 of the Ohio Revised Code, and Chapter 3796 of the Ohio Administrative Code. An inspection may be conducted with or without notice. During an inspection, a representative of the City of Barberton or the Barberton Police Department may:
    - a. Review and make copies of all records maintained in accordance with rules 3796:2-2-08, 3796:3-2-08, 3796:6-3-18, and 3796:4-2-09 of the Ohio Administrative Code;
    - b. Enter any area in the facility;
    - c. Inspect facility vehicles;
    - d. Review the policies and procedures of the medical marijuana entity, including methods of operating;
    - e. Survey the premises and any off-site facilities;
    - f. Inspect all equipment, instruments, tools, materials, machinery, or any other resource used to cultivate, process, dispense, or test medical marijuana;
    - g. Request access to locked areas in the facility;
    - h. Question licensed employees at the location; and
    - i. Obtain samples for testing any medical marijuana at the facility, media used to grow medical marijuana, chemicals and ingredients used in the cultivation process, any label or containers for marijuana, or any raw packaged medical marijuana.

M. Notification

1. If at any time, a medical marijuana entity is subject to any enforcement action by the State of Ohio under Ohio Administrative Code Chapter 3796:5-6-01, the medical marijuana entity must immediately notify the City of Barberton and provide any relevant information or documentation requested by the City.
2. If, at any time, a medical marijuana entity or an employee thereof has a reasonable belief that an actual loss, theft, or diversion of medical marijuana or currency over \$100 has occurred, the medical marijuana entity must immediately notify the Barberton Police Department, and such notification shall be provided no later than 24 hours after discovery of the loss, theft, or diversion.
3. If, at any time, any information in a medical marijuana entity's local provisional license application changes, the medical marijuana entity must immediately notify the City of Barberton.

- N. If, at any time, the City becomes aware that a medical marijuana entity possessing a local provisional license or a local operating license has engaged in, is engaged in, or is about to engage in any act or practice declared to be prohibited by this Chapter, Chapter 3796 of the Ohio Revised Code, Chapter 3796 of the Ohio Administrative Code, or any other local, state, or federal law, with the exception of acts that are permitted under state law but are federal law violations stemming from the classification of marijuana as a controlled substance under 21 U.S.C. §812(c), the License Clerk may do any of the following:
1. Refer such violations to the Ohio Department of Commerce;
  2. Issue a warning to the medical marijuana entity, which may include possible corrective action(s);
  3. Suspend the license and require any violations to be resolved and corrective actions to be taken as conditions to the reinstatement of the suspended license;
  4. Revoke the license.
- O. Notice
1. A warning, suspension, or revocation issued by the City under this Section shall be served upon the medical marijuana entity at the address for which a local provisional license and local operating license was granted, by personal service, by certified and regular mail, or by posting in a conspicuous location.
  2. Notice by certified mail shall be effective upon delivery. In the event that notice by certified mail is returned unclaimed or refused, mailing of the notice by regular mail shall be deemed effective upon mailing. Notice by personal service or by posting shall be deemed effective at the time of personal service or posting, respectively.
- P. A medical marijuana entity must immediately cease operation upon suspension, revocation, or expiration of a local provisional license or local operating license, unless otherwise instructed by the city, until the suspension is lifted or a new, valid license is obtained.
- Q. Suspension of licenses
1. Suspension of licenses shall only be accomplished through the procedures outlined in this subsection. Suspension shall be accomplished after a public hearing is held thereon by the License Clerk, which hearing shall be held within thirty days after notice is given to the licensee of such hearing, by certified mail and regular mail. The licensee shall have the right to appear at such a hearing, to be represented by counsel, and to have the right to examine and cross examine witnesses.
  2. Suspension may take place without a prior hearing if the License Clerk finds clear and convincing evidence that the continued distribution of medical marijuana presents a danger of immediate and serious harm to others. Notice of the suspension shall be made as provided in this Section and a hearing on the merits of suspension will take place within five days of the suspension.
  3. The suspension will remain in effect, unless lifted by the License Clerk, pending the results of the hearing. If the License Clerk does not issue an order within 90 days after the hearing, the suspension shall be lifted on the ninety-first day following the hearing.
  4. As a condition of the reinstatement of suspended license, the License Clerk may require any violations to be resolved and reasonable corrective actions to be taken.
- R. Revocation of licenses
1. Revocation of licenses shall only be accomplished through the procedures outlined in this subsection. Revocation shall be accomplished only after a public hearing is held thereon by the License Clerk, which hearing shall be held within thirty days after notice is given to the licensee of such hearing, by certified mail and regular mail. The licensee shall have the right to appear at such a hearing, to be represented by counsel, and to have the right to examine and cross examine witness.

- 2. If a medical marijuana entity's local provisional license or local operating license is revoked, the medical marijuana entity will coordinate with the City of Barberton and the Ohio Department of Commerce in the closing of the facility as provided for in the Ohio Administrative Code.
- S. In the event of a decision or ruling adverse to a licensee or license applicant regarding a denial, revocation, or suspension of a license, the licensee or license applicant shall have the right to appeal such decision and ruling to a court of competent jurisdictions, under authority of and pursuant to the provisions of Chapter 2506 of the Ohio Revised Code. A notice of appeal in such action shall be filed with the Office of the Mayor, as well as with the court to which the action is appealed, within appropriate time limits, as provided in Chapter 2505 of the Ohio Revised Code.
- T. The Mayor shall have the authority to deny any application for a local provisional license, local operating license, license renewal, or a location change, at his/her discretion.

**SECTION 2.** That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were taken in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were meetings open to the public in compliance with the law.

**SECTION 3.** That this ordinance shall be in full force and effect from and after the earliest period allowed by law.

Passed \_\_\_\_\_ 2017

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Clerk of Council

\_\_\_\_\_  
President of Council

Approved \_\_\_\_\_ 2017

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Mayor