

ORDINANCE \_\_\_\_\_

AN ORDINANCE ENACTING CHAPTER 733 OF THE CODIFIED ORDINANCES OF THE CITY OF PORT CLINTON ENTITLED MEDICAL MARIJUANA ENTITIES, PERMITTING THE OPERATION OF MEDICAL MARIJUANA ENTITIES IN THE CITY SUBJECT TO CERTAIN LIMITATIONS AND CREATING A COMPREHENSIVE LICENSING SYSTEM FOR MEDICAL MARIJUANA ENTITIES IN THE CITY OF PORT CLINTON AND DECLARING THE SAME TO BE AN EMERGENCY

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, the city of Port Clinton has Home Rule police powers under Article XVIII of the Ohio Constitution to create zoning and licensing laws relating to these medical marijuana entities; and

WHEREAS, these medical marijuana entities should be able to locate within the city of Port Clinton in order to ensure that Port Clinton residents stricken with one of the specified medical conditions for which the use of medical marijuana has been authorized have access to this legalized medical relief in order to reduce or eliminate pain and suffering; and

WHEREAS, the local licensing laws will ensure that medical marijuana cultivators, processors, dispensaries, and testing laboratories located in the city of Port Clinton operate in a safe and secure manner; and it is reasonable to help defray administrative and enforcement costs associated with the operation of said facilities;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PORT CLINTON, STATE OF OHIO, THAT:

**Section 1.** Chapter 733 of the Codified Ordinances of the City of Port Clinton entitled Medical Marijuana Entities is hereby enacted to read as follows:

CHAPTER 733

**Medical Marijuana Entities**

**733.01 Definitions.**

As used in this chapter:

- (a) "Cultivator" means a person, 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, as defined in this Section, that sells medical marijuana as authorized by Chapter 3796 of the Ohio Revised Code.
- (c) **"License Technician" for the purposes of this Chapter, is the licensing authority and, pursuant to this chapter, shall consider the applications and renewal for licenses and issue, suspend, revoke, or deny issuance of licenses. The Licensing Technician shall be appointed by the Mayor with the advice and consent of the legislative authority of the City.**
- (d) "Local operating license" means a license issued by the city of Port Clinton to a medical marijuana entity. A medical marijuana entity may not operate within the city of Port Clinton without a valid local operating license.
- (e) "Local provisional license" means a temporary license issued by the city of Port Clinton 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 a medical purpose.
- (h) "Medical marijuana entity" means a medical marijuana cultivator, processor, dispensary, 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.

### **733.02 Licensing of Medical Marijuana Entities.**

- (a) No medical marijuana entity shall operate in the city of Port Clinton unless the entity possesses a valid local 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 Technician 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 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 a 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 for such use under the City's Planning and Zoning Code.

(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 rule 3796:5-5-01 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 Technician, except as otherwise provided in this Section. Within one year of receiving a 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 Technician 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 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 Port Clinton Police Department has inspected the facility and approved the security arrangements.

(5) Any other information requested by the License Technician.

(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 Technician, except as otherwise provided in this Section. No local operating license shall be issued by the License Technician 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 Technician 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 Technician.

(4) A non-refundable renewal fee of \$2,500.00 (Two Thousand Five Hundred Dollars).

(h) An application for a renewal license shall be granted on the approval of the License Technician, except as otherwise provided in this Section. No local operating license shall be renewed by the License Technician except upon presentation of a valid state certificate of operation for the renewal period.

(i) Both local provisional licenses and local operating licenses 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 Technician, 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 for such use under the City's Planning and Zoning Code.

(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 rule 3796:5-5-01 of the Ohio Administrative Code.

(5) Any other information requested by the License Technician.

(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 Technician, 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 3796:2-1-08 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 3796:2-1-08, 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 3796:2-1-08(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 Port Clinton or the Port Clinton 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 Port Clinton or the Port Clinton Police Department may:

A. Review and make copies of all records maintained in accordance with rules 3796:2-2-08, 3796:3-2-08, 3796:6-318, 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 of any medical marijuana at the facility, media used to grow medical marijuana, chemicals and ingredients used in the cultivation process, any labels 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 Port Clinton 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 \$100.00 has occurred, the medical marijuana entity must immediately notify the Port Clinton 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 Port Clinton.

**(n) The License Technician 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, pursuant to the criteria established by this Chapter.**

(o) 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 Technician** 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 actions(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.

(p) Notice

(1) A **denial**, 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, or 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.

(q) A medical marijuana entity must immediately cease operations 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.

(r) 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 Director of Safety-Service, 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 Safety-Service Director 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 the suspension will take place within five days of the suspension.

(3) The suspension will remain in effect, unless lifted by the Safety-Service Director, pending the results of the hearing. If the Safety-Service Director 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 a suspended license, the Safety-Service Director may require any violations to be resolved and reasonable corrective actions to be taken.

### **733.03 Medical Marijuana Review Board.**

**(1) There is hereby created a Medical Marijuana Review Board (hereafter, the “Board”) consisting of the Chairperson of the Laws, Rules and Ordinances Committee of Council, the Safety Service Director or his/her designee, and the City Auditor or his/her designee.**

**(2) The presence of two (2) members of the Board shall constitute a quorum. Any action of the Board shall require two affirmative votes.**

### **733.04 Hearing Before the Medical Marijuana Board**

**(1) Any person issued a denial, revocation or denial of a renewal license pursuant to this Chapter may request a hearing before the board. A hearing request must be made in writing and received by the License Technician within fifteen (15) calendar days of the date of personal delivery or mailing of the notice of denial, revocation or denial of renewal.**

**(2) The hearing shall be held within a reasonable time from receipt of the request to appeal. The Person requesting the appeal shall be given at least fourteen (14) calendar days notice of the date, time and location of the hearing and shall have the opportunity to present sworn evidence to the board and cross-examine any sworn witnesses presented by the City. The hearing shall proceed in a manner prescribed by the board.**

**(3) After said hearing the Board shall render a written decision affirming, reversing or modifying the license denial, revocation or denial of renewal.**

### **733.05 Revocation of license**

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 Port Clinton and the Ohio Department of Commerce in the closing of the facility as provided for in the Ohio Administrative Code.

**733.99 PENALTY.**

**Whoever violates any provision of this Chapter shall be guilty of a misdemeanor of the first degree, with penalties as provided by Section 501.99 of the Codified Ordinances.**

**Section 2.** The Clerk of Council is authorized to correct any typographical errors discovered herein during or after the pendency or passage of this ordinance. The Clerk of Council is further authorized, in conjunction with the Law Department and the President of Council, to correct any ministerial or deminimis errors that do not substantially alter the intended results or numerical total sums of this ordinance, during or after the pendency or passage of this ordinance. Corrected copies are to be sent to all official recipients.

**Section 3.** As of the effective date of this ordinance, marijuana 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 marijuana, or possess marijuana with intent to manufacture, distribute, or dispense marijuana. Nothing in this ordinance is intended to grant immunity from any criminal prosecution under federal laws.

**Section 4.** In the event that any one or more sections, provisions, phrases or words of this Ordinance shall be found to be invalid by a court of competent jurisdiction, such holding shall not affect the validity or the enforceability of the remaining sections, provisions, phrases or words of this Ordinance.

**Section 5.** This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council or committees, and that all deliberations of this Council, and any of its committees, that resulted in those actions were in meetings open to the public, in compliance with the law.

**Section 6.** This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health or safety of the citizens of the city of Port Clinton; the emergency being to immediately enact and prescribe local licensing laws relating to state legalized medical marijuana entities, and provided it receives the affirmative vote of two-thirds of the elected and/or appointed members to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

Passed: \_\_\_\_\_, 2017

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

Attest: \_\_\_\_\_  
Clerk of Council

Approved: \_\_\_\_\_, 2017

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Mayor