



Legislation Text

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An Ordinance to Add a New Chapter 95 to Title VII (Medical Marijuana Licenses for Cultivation Facilities and Dispensaries) of the Code of the City of Ann Arbor (Ordinance No. ORD-11-04)
The attached ordinance amendment adds a new Chapter 95 to the Ann Arbor City Code, which would require medical marijuana cultivation facilities and dispensaries to be licensed by the City and to adhere to regulations contained in Chapter 95. Chapter 95 is recommended to complement the medical marijuana zoning ordinance amendment (Ordinance No. ORD-10-37), the second reading of which is scheduled to continue on April 19, 2011.

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Approved by: Roger Fraser, City Administrator

ORDINANCE NO. ORD-11-04

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BUSINESSES AND TRADES (MEDICAL MARIJUANA LICENSES)

AN ORDINANCE TO ADD A NEW CHAPTER 95 TO TITLE VII (BUSINESSES AND TRADES) OF THE CODE OF THE CITY OF ANN ARBOR.

The City of Ann Arbor Ordains:

Section 1. That a new Chapter 95 be added to Title VII of the Code of the City of Ann Arbor to read as follows:

CHAPTER 95. MEDICAL MARIJUANA LICENSES FOR MEDICAL MARIJUANA DISPENSARIES

7:500. Legislative Intent.

The City intends to license and regulate medical marijuana dispensaries to the extent they are permitted under the Michigan Medical Marihuana Act. The City does not intend that licensing and regulation under this chapter be construed as a finding that such businesses are legal under state or federal law. Although some specific uses of marijuana are allowed by the Michigan Medical Marihuana Act, marijuana continues to be classified as a Schedule 1 controlled substance under federal law making it unlawful under federal law to use, manufacture, distribute, or dispense marijuana, or to possess it with intent to manufacture, distribute, or dispense. By requiring a license and compliance with requirements as provided in this chapter, the City intends to protect to the extent possible the public health, safety and welfare of the residents of and visitors to the City, including but not limited to registered qualifying patients, from harm that may result from the activities of persons who unilaterally or on the advice of their own attorney determine that they may legally operate a medical marijuana dispensary.

7:501. Definitions.

Definitions. The following words and phrases shall have the following definitions when used in this chapter.

- a) Words and Phrases Contained in the Michigan Medical Marihuana Act (“MMMA”), MCL 333.26421 *et seq.* This subsection contains some words and phrases that are defined in the MMMA. As used in this chapter, they have the same meaning as provided in the MMMA, except that if at any time the definition of a word or phrase set forth below conflicts with the definition in the MMMA, then the definition in the MMMA shall apply. These words and phrases are as follows:
- i “Department” means the state department of community health.
 - ii “Marihuana” means that term as defined in section 7106 of the public health code, 1978 PA 368, MCL 333.7106.
 - iii “Medical use” means the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient’s debilitating medical condition or symptoms associated with the debilitating medical condition.
 - iv “Primary caregiver” means a person who is at least 21 years old and who has agreed to assist with a patient’s medical use of marihuana and who has never been convicted of a felony involving illegal drugs.
 - v “Qualifying patient” means a person who has been diagnosed by a physician as having a debilitating medical condition.
- b) Other Words and Phrases. The words and phrases in this subsection, as used in this chapter, shall have the following meanings:
- i “Marijuana” means “marihuana” as used in the MMMA.
 - ii “Medical marijuana cultivation facility” means a building or part of a building where marijuana plants are being grown in compliance with the MMMA, other than a medical marijuana home occupation or a dwelling unit in which marijuana is being cultivated for a qualifying patient who resides in the dwelling unit as permitted under subsection (7) of subsection 5:50.1 of Chapter 55 (Zoning) of this code.
 - iii “Medical marijuana dispensary” means a building or part of a building where one or more primary caregivers operate with the intent to transfer marijuana between primary caregivers and/or qualifying patients, other than a medical marijuana home occupation or a dwelling unit in which the transfer of marijuana occurs between a primary caregiver and qualifying patient who resides in the dwelling unit as permitted under subsection (7) of subsection 5:50.1 of Chapter 55 (Zoning) of this code.
 - iv “Medical marijuana home occupation” means an accessory use of a nonresidential nature that is conducted by a registered primary caregiver who resides in the dwelling and (A) is performed within a single-family dwelling or within an accessory building to that single-family dwelling; (B) is for the purpose of assisting one or more registered qualifying patients with the medical use of marijuana who do not reside in the dwelling and (C) complies with the MMMA.
 - v “Michigan Medical Marihuana Act” and “MMMA” mean the Michigan Medical Marihuana Act, MCL 333.26421 *et seq.*
 - vi “Authorized person” means:

- (a) an owner of a medical marijuana dispensary;
 - (b) the directors, officers, members, partners, and individuals of a medical marijuana dispensary that is a corporation, limited liability company, partnership, or sole proprietorship;
 - (c) any person who is in charge of and on the premises of the medical marijuana dispensary during business hours.
- vii “Registry identification card” means a document issued by the department that identifies a person as a registered qualifying patient or registered primary caregiver.

7:502. License Required, Number of Licenses Available, Eligibility.

- (1) No person shall operate a medical marijuana dispensary at a location for which an annual license as provided for in this chapter has not been issued.
- (2) A medical marijuana dispensary shall not be eligible for a license if any person required under this chapter to be named on the application has ever been convicted of a felony involving controlled substances as defined under the Michigan public health code, MCL 333.1101, et seq, the federal law, or the law of any other state.
- (3) The license requirement in this chapter applies to all medical marijuana dispensaries that exist on the effective date of this chapter or are established after the effective date of this chapter.
- (4) The first year’s licenses shall be capped at a number 10% higher than the number of complete applications for licenses submitted to the City in the first 60 days after the effective date of this chapter, but not more than 20 medical marijuana dispensary licenses shall be issued in the first year. Any license terminated during the license year returns to the City for possible reissuance.
- (5) The license requirement set forth in this chapter shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other state or local law.
- (6) The issuance of any license pursuant to this chapter does not create an exception, defense or immunity to any person in regard to any potential criminal liability the person may have for the production, distribution or possession of marijuana.
- (7) The City Council will establish a Medical Marijuana Licensing Board to consist of one member of Council, one physician, and three other Ann Arbor residents, these are Mayoral appointments. The Board shall annually send to City Council a proposed resolution recommending either approval or rejection of each complete license application. A recommended resolution may set conditions for approval. The determination of City Council as to each such application shall be final. The Board will annually review and recommend the licensing criteria, the number of licenses authorized, the license fee structure taking into consideration recommendations from staff, and recommend approval of license applications. While a medical marijuana dispensary shall not be eligible for a license if any person required under this chapter to be named on the application has been convicted of a felony involving controlled substances, evidence that a person required under this chapter to be named on the application has been convicted of any other type of felony, under the law of Michigan, the United States, or another state, may be used by the Board in its determination of whether or not to recommend the issuance of a license to the applicant. Among other things, the Board shall consider whether the substance of the offense would tend to indicate a likelihood that the person would be unable to serve the public in a fair, honest and open manner or to dispense or cultivate marijuana in compliance with the MMMA, whether there is evidence that the person has been rehabilitated, and the age of the conviction.
- (8) A license issued under this chapter shall expire one year after the date of issuance. To renew an existing

license, the licensee shall submit an application in the same manner as is required to apply for a new license no sooner than ninety (90) days before the expiration date and no later than sixty (60) days before the expiration date.

(9) Medical marijuana home occupations do not require licenses but may register with the City by providing the address of the home occupation and showing the registry number on the registry identification card that the department issued to the registered primary caregiver who is delivering the marijuana.

7:503. General Provisions.

(1) Except as otherwise provided for the amendment of existing licenses, no license issued under this chapter may be transferred or assigned, and no license is valid for any location other than the location specified in the license.

(2) A medical marijuana dispensary license issued by the City under this chapter, including the name and contact information for an authorized person and business manager(s), if any, shall be conspicuously posted in the medical marijuana dispensary where it is easily open to public view.

(3) Acceptance of a license from the City under this chapter constitutes consent by the licensee, owners, managers and employees to permit the city administrator or designee to conduct inspections of the licensed medical marijuana dispensary to ensure compliance with this chapter.

7:504. Application Requirements for New Annual License or Renewal of Existing License; License Requirements for New License and for Renewed License

(1) Application Submission. A medical marijuana dispensary that commenced operation prior to passage of the moratorium by City Council on August 5, 2010, shall have until sixty (60) days after the effective date of this chapter to submit an application for a new annual license. If the medical marijuana dispensary commenced operation prior to passage of the moratorium in a zoning district where its operation is not permitted under the zoning ordinance, the application shall be for a location in a zoning district where operation of a medical marijuana dispensary is permitted under the zoning ordinance. No other applications will be accepted by the City until seventy-five (75) days after the effective date of this chapter. The medical marijuana dispensary may continue to operate pending final action on the application unless the Building Official determines that it must be closed for safety reasons. Within 60 days after an application is denied, the medical marijuana dispensary shall discontinue all operation unless the Building Official determines it must be closed sooner for safety reasons.

(2) Application Requirements for New Licensee. An application for a new annual license for a medical marijuana dispensary shall be submitted to the City Clerk on a form provided by the City for preliminary review by City staff to confirm that the applicant has submitted a complete application, which shall fulfill all of the requirements indicated on the form, including but not limited to:

- (a) If the medical marijuana dispensary commenced operation prior to passage of the moratorium by City Council on August 5, 2010, then proof of the date on which the medical marijuana dispensary commenced operation shall be provided.
- (b) The name and address of the medical marijuana dispensary and any other contact information requested on the application form.
- (c) The name and address of all owners of the real property where the medical marijuana dispensary is located.

- (d) Name, street address, and other contact information of all owners of the medical marijuana dispensary and, if the owner is a corporation, limited liability company, partnership, or sole proprietor with an assumed name, of all directors, officers, members, partners, and individuals, all of whom are considered collectively to be the applicant for the license.
 - (e) Name and address of all business managers.
 - (f) A statement with respect to each person named on the application whether the person has:
 - (i) Ever been convicted of a felony involving controlled substances as defined under the Michigan public health code, MCL 333.1101, et seq, the federal law, or the law of any other state and, if so, the date of the conviction and the law under which the person was convicted;
 - (ii) Ever been convicted of any other type of felony under the law of Michigan, the United States, or another state, and, if so, the date of the conviction and the law under which the person was convicted.
 - (g) Proof of applicant's ownership or legal possession of the premises.
 - (h) A zoning compliance permit that shows the proposed medical marijuana dispensary is located in a zoning district that would permit its operation.
 - (i) A temporary certificate of occupancy that shows the structure for the proposed medical marijuana dispensary meets the requirements of the applicable use group under the Michigan Building Code.
 - (j) Payment of a non-refundable application fee, which shall be determined by resolution of the City Council. Fees for zoning compliance permits and certificates of occupancy shall be separate from the application fee, but shall be the same amount and shall be paid pursuant to the same procedures as applied to applications for zoning compliance permits and certificates of occupancy for other uses.
- (3) Renewal or Amendment of Existing Licenses.
- (a) The same procedures for application for and issuance of a new license shall apply to renewal or the amendment of existing licenses.
 - (b) An application for renewal of an existing license shall be submitted no sooner than 10 weeks (70 days) before the existing license expires.
 - (c) An amended application shall be submitted when there is a change in any information the applicant was required to provide in the most recent application on file with the City.
 - (d) An application to amend an existing license to change the location of the medical marijuana dispensary shall be submitted no later than 10 weeks (70 days) before the existing license expires. An application to amend an existing license to change any other information on the most recent application on file with the City may be submitted at any time.
 - (e) Applications for renewal or amendment of existing licenses shall be reviewed and granted or denied before applications for new licenses are considered.
- (4) License Requirements. Following official confirmation by staff that the applicant has submitted a complete

application, a new license shall not be issued to a medical marijuana dispensary until the applicant for the license complies with all of the following requirements:

- (a) The applicant has a valid and current certificate of occupancy.
- (b) The applicant has installed a sign in a location visible to all persons who enter the premise, which contains the following statement in letters that shall be no less than one inch high:

THE MICHIGAN MEDICAL MARIHUANA ACT ACKNOWLEDGES THAT “ALTHOUGH FEDERAL LAW CURRENTLY PROHIBITS ANY USE OF MARIHUANA EXCEPT UNDER VERY LIMITED CIRCUMSTANCES, STATES ARE NOT REQUIRED TO ENFORCE FEDERAL LAW OR PROSECUTE PEOPLE FOR ENGAGING IN ACTIVITIES PROHIBITED BY FEDERAL LAW. THE LAWS OF ALASKA, CALIFORNIA, COLORADO, HAWAII, MAINE, MONTANA, NEVADA, NEW MEXICO, OREGON, VERMONT, RHODE ISLAND, AND WASHINGTON DO NOT PENALIZE THE MEDICAL USE AND CULTIVATION OF MARIHUANA. MICHIGAN JOINS IN THIS EFFORT FOR THE HEALTH AND WEALTH OF ITS CITIZENS.” SEE, MCL 333.26422(c). IF YOU HAVE ANY QUESTIONS OR CONCERNS PLEASE CONSULT WITH YOUR ATTORNEY.

- (c) The applicant has installed the following security measures on the premises:
 - (i) security cameras to monitor all areas of the licensed premises where persons may gain or attempt to gain access to marijuana or cash. Recordings from security cameras shall be maintained for a minimum of seventy-two hours. The Administrator may adopt regulations implementing this requirement, including but not limited to regulations on the design, location, maintenance, and access to the cameras and recordings. Those regulations shall take effect 30 days after being filed with the City Clerk unless modified or disapproved by the City Council.
 - (ii) A safe for overnight storage of any processed marijuana and cash on the premises, with the safe being incorporated into the building structure or securely attached thereto.
 - (iii) A monitored alarm system.
- (d) The applicant provides the City with a certificate signed by a qualified agent of an insurance company evidencing the existence of valid and effective policies of the following types of insurance, as well as a copy of an endorsement placed on each policy requiring ten days' notice by mail to the City before the insurer may cancel the policy for any reason:
 - (i) Workers' compensation insurance in accordance with Michigan statutory limits and Employers Liability Insurance with a minimum limit of \$100,000 each accident for any employee.
 - (ii) Public liability and personal injury insurance with minimum limits of \$500,000.00 for each occurrence as respect to bodily injury liability or property damage liability, or both combined.

Documentation must explicitly state the following: (a) the policy number; (b) name of insurance company; (c) name and address of the agent or authorized representative; (d) name and address of the insured; (e) location of coverage; (f) policy expiration dates; and (g) specific coverage amounts. An original certificate of insurance may be provided as an initial indication of the required insurance. Applicant shall be required to continue without interruption during the term of the license the above named insurance coverages. If any of the above coverages expire by their terms during the term of a license, the Applicant shall deliver proof of renewal and/or

new policies to the city clerk at least ten days prior to the expiration date.

Insurance companies, named insureds and policy forms shall be subject to the approval of the City Attorney, within five business days. Insurance policies shall not contain endorsements or policy conditions which reduce coverage required under the terms of the license.

- (e) The applicant has paid the non-renewable license fee, as determined by resolution of the City Council. Inspection fees shall be separate from the license fee, but shall be the same amount and shall be paid pursuant to the same procedures that apply to inspections for other uses.

(5) Time period within which applicant must comply with license requirements. The applicant shall demonstrate compliance with all requirements for issuance of a license by scheduling a final inspection to obtain a full certificate of occupancy, which shall occur within 8 weeks (56 calendar days) after the date of City staff's official confirmation that the application for a license was complete. All staff pertinent to determining whether the applicant has complied with all license requirements will be present at the final inspection. If it is determined that not all license requirements are satisfied, then the applicant shall schedule another inspection, to occur within 14 calendar days, at which time all license requirements shall be complete. If all requirements are not complete, then the license shall be denied.

7:505. Issuance of License.

If the applicant has successfully demonstrated compliance with all requirements for issuance of a license within 10 weeks (70 calendar days) after the date of City staff's official confirmation that the application for a license was complete, the city administrator or designee shall grant renewal of an existing license or issue a new license for a medical marijuana dispensary to the applicant if a license is available. An applicant who fails to demonstrate compliance with all requirements within the required time period or who is found to have submitted an application that contains any false or incomplete information is not eligible for issuance of a license.

7:506. Conduct of Business at a Medical Marijuana Dispensary.

(1) All marijuana in any form kept at the location of the medical marijuana dispensary shall be kept within an enclosed, secured building and shall not be visible from any location outside of the building.

(2) Medical marijuana dispensaries shall be closed for business, and no sale or other distribution of marijuana in any form shall occur upon the premises or be delivered from the premises, between the hours of 9:00 p.m. and 7:00 a.m.

(3) No more marijuana than is permitted under the MMMA shall be kept on the premises of a medical marijuana dispensary.

(4) All marijuana delivered to a registered qualifying patient shall be packaged and labeled as provided in this chapter. The label shall include:

- (a) a unique alphanumeric identifier for the person to whom it is being delivered;
- (b) a unique alphanumeric identifier for the registered primary caregiver who is delivering;
- (c) a unique alphanumeric identifier for the medical marijuana cultivation source of the marijuana;
- (d) that the package contains marijuana;

- (e) the date of delivery, weight, type of marijuana;
- (f) a certification that all marijuana in any form contained in the package was cultivated, manufactured, and packaged in the state of Michigan;
- (g) the warning that:

THIS PRODUCT IS MANUFACTURED WITHOUT ANY REGULATORY OVERSIGHT FOR HEALTH, SAFETY OR EFFICACY. THERE MAY BE HEALTH RISKS ASSOCIATED WITH THE INGESTION OR USE OF THIS PRODUCT. USING THIS PRODUCT MAY CAUSE DROWSINESS. DO NOT DRIVE OR OPERATE HEAVY MACHINERY WHILE USING THIS PRODUCT. KEEP THIS PRODUCT OUT OF REACH OF CHILDREN. THIS PRODUCT MAY NOT BE USED IN ANY WAY THAT DOES NOT COMPLY WITH THE MICHIGAN MEDICAL MARIHUANA ACT OR BY ANY PERSON WHO DOES NOT POSSESS A VALID REGISTRY IDENTIFICATION CARD.

- (h) The name of an authorized representative of the medical marijuana dispensary whom a registered qualifying patient can contact with any questions regarding the product and address, e-mail address, and telephone number of the medical marijuana dispensary.
- (i) The name, address, e-mail address, and telephone number of at least one governmental or non-profit organization that may be contacted by a registered qualifying patient who has concerns about substance abuse of drugs, including marijuana.

(5) All of the required labeling information, including coded registered qualifying patient information shall be maintained by a medical marijuana dispensary for not less than 30 days after dispensing, and available to any registered qualifying patient complaining of the quality of the marijuana dispensed.

(6) A medical marijuana dispensary shall report all criminal activities to the Ann Arbor Police Department immediately upon discovery.

(7) An authorized person shall consent to the entry into a medical marijuana dispensary by the Building Official and zoning inspectors for the purpose of inspection to determine compliance with this chapter pursuant to a notice posted in a conspicuous place on the premises two (2) or more days before the date of the inspection or sent by first class mail to the address of the premises four (4) or more calendar days before the date of the inspection.

(8) All security measures required in this chapter shall be maintained in good working order. The premises shall be monitored and secured twenty-four hours per day.

(9) All marijuana in any form provided to registered qualifying patients at or by a medical marijuana dispensary shall have been cultivated, manufactured, and packaged in the state of Michigan.

(10) A medical marijuana dispensary shall keep records of the cultivation source from whom it received marijuana in any form for not less than 60 days after dispensing, and shall make the records available to the City upon request to promote health, safety and welfare or to otherwise verify compliance with this chapter.

7:507. Prohibited Acts.

It shall be unlawful for any person to:

- (a) Violate any provision of this chapter or any condition of an approval granted pursuant to this chapter.

- (b) Produce, distribute or possess more marijuana than allowed by any applicable state or local law.
- (c) Produce, distribute or possess marijuana in violation of this chapter or any other applicable state or local law.
- (d) Make any changes or allow any changes to be made in the operation of the medical marijuana dispensary as represented in the license application, without first notifying the City by amending its application.
- (e) Make any changes or allow any changes to be made to the structure in which the business is operating without applying for and being issued appropriate permits and obtaining final inspection approval.

7:508. License Revocation.

A license issued under this chapter may be suspended or revoked for any of the following violations:

- (1) Any person required to be named on the application of the license is convicted of or found responsible for violating any provision of this chapter;
- (2) The application contains any misrepresentation or omission of any material fact, or false or misleading information, or the applicant has provided the City with any other false or misleading information related to the medical marijuana dispensary;
- (3) Any person required to be named on the application is convicted of a crime which, if it had occurred prior to submittal of the application, could have been cause for denial of the license application;
- (4) Marijuana is dispensed on the business premises in violation of this chapter or any other applicable state or local law, rule or regulation;
- (5) The medical marijuana dispensary is operated or is operating in violation of the specifications of the license application, any conditions of approval by the City or any other applicable state or local law, rule or regulation.
- (6) The City, or the County or the department or any other governmental entity with jurisdiction, has closed the business temporarily or permanently or issued any sanction for failure to comply with health and safety provisions of this chapter or otherwise applicable to the business or any other applicable state or local law.
- (7) The medical marijuana dispensary is determined by the City to have become a public nuisance.

7:509. Revocation Not Exclusive Penalty.

Nothing in this chapter shall be deemed to prohibit the city administrator or designee from imposing other penalties authorized by this code or other ordinance of the city, including filing a public nuisance action or any other legal action in a court of competent jurisdiction.

Section 2. The medical marijuana licensing board shall review the operation of the provisions of this chapter and recommend changes, if any, to City Council that the board deems appropriate on or before January 31, 2012, or such other date as Council may set by resolution.

Section 3. That this Ordinance shall take effect on the sixtieth day following legal publication.

As Amended by Ann Arbor City Council on January 3, 2011, February 7, 2011, March 7, 2011, March 21, 2011, May 2, 2011, June 6, 2011 and June 20, 2011.