

ORDINANCE NO. ORD-19-31

First Reading: September 16, 2019
Public Hearing: October 7, 2019

Approved:
Published:
Effective:

MEDICAL MARIJUANA FACILITIES

AN ORDINANCE TO AMEND THE TITLE OF, ALL SECTIONS OF, AND TO ADD A NEW SECTION 7:613 TO CHAPTER 96 (MEDICAL MARIJUANA FACILITIES) OF TITLE VII OF THE CODE OF THE CITY OF ANN ARBOR.

The City of Ann Arbor Ordains:

Section 1. That Sections 7:601 through 7:612, being all sections of Chapter 96 of Title VII of the Code of the City of Ann Arbor, be amended to read as follows:

Chapter 96 - MEDICAL MARIJUANA FACILITIES AND MARIJUANA ESTABLISHMENTS

7:601. - Legislative Intent.

The city intends to issue permits for and regulate marijuana facilities and marijuana establishments to the extent they are permitted under the Michigan Medical Marijuana Facilities Licensing Act and the Michigan Regulation and Taxation of Marijuana Act. The city does not intend that permitting and regulation under this chapter be construed as a finding that such facilities comply with any law. By requiring a permit and compliance with the requirements of this chapter, the city intends to protect the public health, safety and welfare.

~~7:602. - Definitions.~~

~~(1) — Words and phrases contained in the Medical Marijuana Facilities Licensing Act ("MMFLA"). This chapter contains some words and phrases that are defined in the MMFLA. As used in this chapter, they have the same meaning as provided in the MMFLA, except that if at any time the definition of a word or phrase set forth in this section conflicts with the definition in the MMFLA, then the definition in the MMFLA shall apply. These words and phrases are as follows:~~

~~(a) — Grower means a commercial entity located in this state that cultivates, dries, trims, or cures and packages marijuana for sale to a processor or provisioning center.~~

~~(b) — Licensee means a person holding a state operating license.~~

~~(c) — Marijuana means that term as defined in Section 7106 of the Public Health Code, 1978 PA 368, MCL 333.7106.~~

~~(d) — *Marihuana facility* means a location at which a license holder is licensed to operate under the MMFLA.~~

~~(e) — *Marihuana plant* means any plant of the species *Cannabis sativa* L.~~

~~(f) — *Marihuana-infused product* means a topical formulation, tincture, beverage, edible substance, or similar product containing any usable marihuana that is intended for human consumption in a manner other than smoke inhalation. Marihuana-infused product shall not be considered a food for purposes of the Food Law, 2000 PA 92, MCL 289.1101 to 289.8111.~~

~~(g) — *Michigan Medical Marihuana Act* means the Michigan Medical Marihuana Act, 2008 IL 1, MCL 333.26421 to 333.26430.~~

~~(h) — *Person* means an individual, corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or other legal entity.~~

~~(i) — *Plant* means any living organism that produces its own food through photosynthesis and has observable root formation or is in growth material.~~

~~(j) — *Processor* means a licensee that is a commercial entity located in this state that purchases marihuana from a grower and that extracts resin from the marihuana or creates a marihuana-infused product for sale and transfer in packaged form to a provisioning center.~~

~~(k) — *Provisioning center* means a licensee that is a commercial entity located in this state that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualifying patients, directly or through the patients' registered primary caregivers. Provisioning center includes any commercial property where marihuana is sold at retail to registered qualifying patients or registered primary caregivers. A noncommercial location used by a primary caregiver to assist a qualifying patient connected to the caregiver through the department's marihuana registration process in accordance with the Michigan Medical Marihuana Act is not a provisioning center for purposes of this Act.~~

~~(l) — *Rules* means rules promulgated under the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328, by the Department in consultation with the Board to implement this Act.~~

~~(m) — *Safety compliance facility* means a licensee that is a commercial entity that receives marihuana from a marihuana facility or registered primary caregiver, tests it for contaminants and for tetrahydrocannabinol and other cannabinoids, returns the test results, and may return the marihuana to the marihuana facility.~~

~~(n) — *Secure transporter* means a licensee that is a commercial entity located in this state that stores marihuana and transports marihuana between marihuana facilities for a fee.~~

~~(o) — *State operating license* or, unless the context requires a different meaning, "license" means a license that is issued under this act that allows the licensee to operate as 1 of the following, specified in the license:~~

~~(i) — A grower.~~

~~(ii) — A processor.~~

~~(iii) — A secure transporter.~~

~~(iv) — A provisioning center.~~

~~(v) — A safety compliance facility.~~

~~(2) — *Other words and phrases.* The words and phrases in this chapter, as used in this chapter, shall have the following meanings:~~

~~(a) — *Applicant* means a person who applies for a city permit.~~

~~(b) — *Authorized person* means:~~

~~(i) — An owner of a medical marijuana facility;~~

~~(ii) — The directors, officers, members, partners, and individuals of a medical marijuana facility that is a corporation, limited liability company, partnership, or sole proprietorship;~~

~~(iii) — Any person who is in charge of and on the premises of the medical marijuana facility during business hours.~~

~~(c) — *Marijuana* means "marihuana" as defined in the MMFLA.~~

~~(d) — *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 1 or more registered qualifying patients with the medical use of marijuana who do not reside in the dwelling and (C) complies with the MMMA. As used in this subsection, "accessory use" has the same meaning as it does in Chapter 55 (Zoning) of the Ann Arbor City Code.~~

~~(e) — *Medical Marihuana Facilities Licensing Act* and *MMFLA* mean Public Act 281 of 2016, MCL 333.27101, et seq.~~

~~(f) — *Permittee* means a person holding a city permit under this chapter.~~

~~(g) — *Class A grower* means a grower of not more than 500 marijuana plants.~~

~~(h) — *Class B grower* means a grower of not more than 1,000 marijuana plants.~~

~~(i) Class C grower means a grower of not more than 1,500 marijuana plants.~~

~~(j) Facility means "marihuana facility" as defined in the MMFLA.~~

~~(k) Marijuana facility means "marihuana facility" as defined in the MMFLA.~~

~~(l) Person means the entities included in the definition of "person" in Chapter 1 of the Ann Arbor City Code, in addition to the entities included in the definition of "person" in the MMFLA.~~

~~(m) City permit or, unless the context requires a different meaning, permit means a permit that is issued under this chapter that allows the permittee to operate as 1 of the following, specified in the permit:~~

~~i. A grower.~~

~~ii. A processor.~~

~~iii. A secure transporter.~~

~~iv. A provisioning center.~~

~~v. A safety compliance facility.~~

7:602. - Definitions.

(1) Words and phrases contained in the Michigan Medical Marihuana Facilities Licensing Act, MCL 33327101 et seq., the Medical Marihuana Act, MCL 333.26421 et seq., the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951 et seq., and the rules or emergency rules promulgated pursuant to any of these acts, shall have the same meanings in this Chapter.

(2) For purposes of the requirements for obtaining a permit under this Chapter, the terms "facility" and "marihuana facility" are intended to include both a "marihuana facility" as defined in the MMFLA and a "marihuana establishment" as defined in the MRTMA.

(3) Additionally, the following words as used in this Chapter setting forth the requirements for obtaining a city permit have the following meanings:

(a) Applicant means a person who applies for a City permit.

(b) Authorized person means:

(i) An owner of a facility;

(ii) The directors, officers, members, partners, and individuals of a facility that is a corporation, limited liability company, partnership, or sole proprietorship;

(iii) Any person who is in charge of and on the premises of the facility during business hours.

(c) City permit or permit, unless the context requires a different meaning, means a valid permit that is issued under this chapter.

(d) Designated consumption establishment means a commercial space licensed by the state to permit adults 21 years of age and older to consume marijuana products at the location indicated in the license.

(e) Facility means a "marihuana facility" as defined in the MMFLA and a "marihuana establishment" as defined in the MRTMA.

(f) Grower means a person who cultivates and sells marijuana to other facilities, as permitted by the MMFLA and the MRTMA, which includes all of the following:

(i) Class A grower, which is a maximum of 500 plants under the MMFLA and 100 plants under the MRTMA.

(ii) Class B grower, which is a maximum of 1,000 plants under the MMFLA and 500 plants under the MRTMA.

(iii) Class C grower, which is a maximum of 1,500 plants under the MMFLA and 2,000 plants under the MRTMA

(iv) Excess marijuana grower, which is a person to whom the state has issued 5 class C marihuana grower licenses under the MRTMA (2,000 plants each).

(g) Marijuana means "marihuana" as defined in the MMFLA and as defined in the MRTMA.

(h) Marijuana event organizer means a person licensed to apply for a temporary marihuana event license under these rules.

(i) Medical Marihuana Facilities Licensing Act or MMFLA means the Michigan Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq., and the rules or emergency rules promulgated pursuant to the MMFLA.

(j) Medical marijuana home occupation has the same meaning in this Chapter as it does in the City Code of Ordinances, Chapter 55 (Unified Development Code).

(k) Michigan Medical Marihuana Act or MMMA means the Michigan Medical Marihuana Act, MCL 333.26421 et seq., and the rules or emergency rules promulgated pursuant to the MMMA.

(l) Michigan Regulation and Taxation of Marihuana Act or MRTMA means the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951 et seq., and the rules or emergency rules promulgated pursuant to the MRTMA.

(m) Marijuana Microbusiness means a business that cultivates not more than 150 plants; processes and packages it; and sells it to individuals who are 21 years of age or older or to a safety compliance facility but not to other businesses.

(n) Permittee means a person holding a city permit under this chapter.

(o) Person means the entities included in the definition of "person" in Chapter 1 of the Ann Arbor City Code, in addition to the entities included in the definition of "person" in the MMFLA and the MRTMA.

(p) Processor means a person who operates as a "processor" as defined in the MMFLA or a "marihuana processor" as defined in the MRTMA or as both at the same location under common ownership.

(q) Provisioning Center/Retailer means a person who operates as a "provisioning center" as defined in the MMFLA or as a "marihuana retailer" as defined in the MRTMA or as both at the same location under common ownership.

(r) Safety compliance facility means a a person who operates as a "safety compliance facility" as defined in the MMFLA or a "marihuana safety compliance facility" as defined in the MRTMA or as both at the same location under common ownership.

(s) Secure transporter means a person who operates as a "secure transporter" as defined in the MMFLA or a "marihuana secure transporter" as defined in the MRTMA or as both at the same location under common ownership.

(t) State license means a valid state operating license issued under the MMFLA or a valid state license issued under the MRTMA or both .

(u) Temporary marijuana event (a license held by a marijuana event organizer for an event where the onsite sale or consumption of marihuana products, or both, are authorized at the location indicated on the state license during the dates indicated on the state license)

7:603. - Marijuana facilities authorized.

Pursuant to the MMFLA and the MRTMA, the City of Ann Arbor authorizes the operation in the city of the following ~~marijuana~~ facilities, provided they possess a ~~state operating license issued under the MMFLA~~ state license or licenses and they comply with the additional requirements of this chapter, Chapter 55 (Zoning Unified Development Code), and all other applicable laws and ordinances:

- (1) Grower, ~~including Class A grower; Class B grower, and Class C grower.~~
- (2) Processor.
- (3) ~~Provisioning center~~ Provisioning Center/Retailer.
- (4) Secure transporter.
- (5) Safety compliance facility.
- (6) Marijuana microbusiness.
- (7) Designated consumption establishment.

7:604. - City permit required, number of permits available.

(1) No person shall operate a facility for which an annual permit as provided for in this chapter has not been issued. The maximum number of permits available for each type of facility is as follows:

- (a) Grower permits — no maximum.
- (b) Processor permits — no maximum.
- (c) Secure transporter permits — no maximum.
- (d) ~~Provisioning center~~ Provisioning Center/Retailer — 28 permits.
- (e) Safety compliance facility permits — no maximum.
- (f) Marijuana microbusiness permits — ~~no maximum~~ 28 permits
- (g) Designated consumption establishment permits — ~~no maximum~~ 28 permits

~~(2) The permit requirement in this chapter applies to all facilities that exist on the effective date of this chapter or are established after the effective date of this chapter. This includes all persons who engage or have engaged in any of the activities that are included in the definitions in the MMFLA of the types of entities that may obtain a state operating license, without regard to whether they called or call their businesses "dispensaries," "cultivation facilities," "clubs," "cooperatives," or any other similar label. A person who engaged in any of the activities that are included in the definitions in the MMFLA of the types of entities that may obtain a state operating license before the effective date of the MMFLA or before obtaining a state operating license does not have a vested right to obtain a city permit~~

(2) As of the effective date of the ordinance amendment that adds references to the MRTMA to this Chapter, an existing permit to operate a provisioning center as defined in the MMFLA is deemed to be one of the maximum number of provisioning center/retailer permits available. An existing permit to operate a provisioning center as defined in the MMFLA, when properly renewed will be designated as a provisioning center/retailer permit.

(3) The permit requirement in this chapter applies to all facilities whether operated for profit or not for profit.

(4) The permit requirement in this chapter shall be in addition to any other requirements imposed by any other state or local law, including but not limited to state or local laws applicable to commercial entities performing functions similar to the functions performed by marijuana facilities.

(5) The issuance of any permit pursuant to this chapter does not create an exception, defense or immunity to any person with regard to any potential criminal or civil liability the person may have under any federal or state law or city ordinance.

(6) A permit issued under this chapter shall be valid for 1 year after the date of issuance. To renew an existing permit, the permittee shall submit an application in the same manner as is required to apply for a new permit no sooner than 90 days before the expiration date and no later than 60 days before the expiration date.

(7) Medical marijuana home occupations do not require permits.

7:605. - General provisions.

(1) A permit issued under this chapter is valid only for the location of the facility and type of facility that is listed on the permit application and is valid only for the operation of the facility at that location by the permit applicant.

(2) A permit issued under this chapter is valid only if the permit holder also holds a valid current ~~state operating~~ state license and a copy of the valid current state license has been provided to the City Clerk by the state license holder and is in compliance with all other requirements in this chapter.

(3) The revocation of, suspension of, and placement of restrictions by the state on a ~~state operating~~ state license apply equally to a permit issued by the city.

(4) The expiration date of the ~~state operating~~ state license that corresponds to a permit issued under this chapter constitutes the expiration date of the permit, however, operation of the facility under the expired permit is permitted to the extent that operation under the expired ~~state operating~~ state license is permitted under the MMFLA.

(5) A permit issued by the city under this chapter, shall be conspicuously posted in the facility where it is easily open to public view.

(6) Acceptance of a permit from the city under this chapter constitutes consent by the permittee, owners, managers and employees to permit the City Administrator or designee to conduct inspections of the facility to ensure compliance with this chapter.

7:606. - Application requirements for and issuance of city permit.

(1) Application for new annual permit. An application for a new annual permit for a marijuana facility shall be submitted to the City Clerk on a form provided by the city, which shall fulfill all of the requirements indicated on the form, including but not limited to:

(a) The name and address of the facility and any other contact information requested on the application form.

(b) The name and address of all owners of the real property where the facility is located.

(c) Name and address of all business managers of the facility.

(d) 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.

(e) Proof of applicant's ownership or legal possession of the premises.

(f) A zoning ~~compliance~~ permit.

(g) A certificate of occupancy or temporary certificate of occupancy.

(h) The type of facility for which a permit is requested at the location specified in the application, which, for purposes of obtaining a permit under this Chapter, shall be one of the following:

(i) Grower.

(ii) Processor.

(iii) Provisioning Center/Retailer.

(iv) Secure transporter.

(v) Safety compliance facility.

(vi) Marijuana microbusiness as defined in the MRTMA.

(vii) Designated consumption establishment as defined in the MRTMA.

For purposes of obtaining a City permit, only one permit application is required for each type of facility listed above at one location, regardless of whether the applicant intends to apply for or has applied for a state license under the MMFLA, the MRTMA or both, at the same location under common ownership. For

purposes of this Chapter, a permit issued for a facility at the location indicated in the application form authorizes the operation of the facility in compliance with the MMFLA, the MRTMA or both, as applicable.

~~(h)(i)~~ If the application is for a grower's permit, the maximum number of plants that the applicant intends to grow. ~~However, the application form for a grower's permit is the same regardless of whether the grower is applying for a state operating license for a Class A, Class B, or Class C license and 1 application fee for a grower's license shall apply without regard to the class of state operating license the permit application seeks.~~

~~(i)(j)~~ Payment of a non-refundable application fee, which shall be determined by resolution of the City Council.

(2) Renewal or amendment of existing permits.

(a) The same procedures that apply to applying for a new permit shall apply to the renewal or amendment of existing permits.

(b) An application for renewal of an existing permit shall be submitted no sooner than 90 days before the existing permit expires.

(c) An amended application shall be submitted under both of the following circumstances:

(i) When there is a change in any information the permit applicant was required to provide in the most recent application on file with the city; and,

(ii) When there is a change in any information the permit applicant was required to provide in the most recent application for a ~~state operating~~ state license on file with the state of Michigan.

(d) An application to amend an existing permit to change the location of the facility shall be submitted no later than 90 days before the existing permit expires. An application to amend an existing permit 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 permits shall be reviewed and granted or denied before applications for new permits are considered.

7:607. - Issuance of permit and authorization to operate facility under permit.

(1) If the permit applicant has successfully demonstrated compliance with all requirements for issuance of a permit the City Administrator shall issue a new permit to the permit applicant if a permit is available or grant renewal of an existing permit.

(2) The issuance of a permit under this chapter authorizes operation of the facility only after the following additional requirements are met:

(a) The applicant has provided the City Clerk with a copy of the applicant's ~~state operating state~~ license.

(b) The applicant has installed the following security measures on the premises:

(i) Security cameras to monitor all areas of the 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 72 hours. The City 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 monitored alarm system.

(iii) A storage room for overnight storage of any marijuana product and cash on the premises. The storage room shall have only 1 door for entry and no other potential means of entry, lawful or unlawful, such as a window or crawl space. The door shall be equipped with a locking mechanism that is different from other locks on any door within the facility.

7:608. - Conduct of business at a facility.

(1) A facility shall be conducted in compliance with the MMFLA, ~~the MRTMA, the MMMA,~~ the rules promulgated pursuant to ~~the MMFLA, the MMMA,~~ any of these acts, and all other laws, rules, and regulations of the state of Michigan and the City of Ann Arbor.

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

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

(4) An authorized person shall consent to the entry into a ~~marijuana~~ facility 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 2 or more days before the date of the inspection or sent by first class mail to the address of the premises 4 or more calendar days before the date of the inspection.

(5) All security measures required in this chapter shall be maintained in good working order. The premises shall be monitored and secured 24 hours per day.

(6) All marijuana in any form on the premises of a marijuana facility shall be marijuana cultivated, manufactured, and packaged in the State of Michigan.

7:609. - Prohibited acts.

It shall be unlawful for any person to:

(1) Violate any provision of this chapter or any condition of any permit granted pursuant to this chapter.

(2) Produce, distribute or possess more marijuana than allowed by any applicable state or local law.

(3) Produce, distribute or possess marijuana in violation of this chapter or any other applicable state or local law.

(4) Make any changes or allow any changes to be made in the operation of the ~~marijuana~~ facility as represented in the permit application, without first notifying the city by amending its application.

7:610. - Permit revocation.

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

(1) Any person ~~required to be named~~ whose name is on or is required to be on the permit application is convicted of or found responsible for violating any provision of this chapter;

(2) A permit 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 facility;

(3) Any person ~~required to be named~~ whose name is on or is required to be on the permit 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 permit 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 facility is operated or is operating in violation of the specifications of the permit application, any conditions of approval by the city or any other applicable state or local law, rule or regulation.

(6) The city, the county, or any other governmental entity with jurisdiction, has closed the facility temporarily or permanently or has issued any sanction for failure to comply with health and safety provisions of this chapter or other applicable state or local laws related to public health and safety.

(7) The facility is determined by the city to have become a public nuisance.

(8) The facility's ~~state operating~~ state license has been suspended or revoked.

7:611. - Revocation not exclusive penalty.

Nothing in this chapter shall be deemed to prohibit the City Administrator or designee from imposing other penalties authorized by the Ann Arbor City Code or other ordinance ~~of the city, including filing or to file~~ a public nuisance ~~action- lawsuit~~ or ~~to take~~ any other legal action ~~in a court of competent jurisdiction~~ authorized by law.

7:612. - Penalty for violations of Chapter 96.

Any person who violates a provision of this chapter shall be responsible for a civil infraction punishable by a civil fine of not more than \$500.00, plus costs and all other remedies available by statute. Each day of violation shall be a separate violation.

Section 2. That a new section 7:613 be added to Chapter 96 of Title VII of the Code of the City of Ann Arbor to read as follows:

7:613. – Applications to State for Special Licenses.

A persons who applies for a state license as a marihuana event organizer or for a temporary marihuana event, as those terms are defined in the MRTMA, shall comply with all City ordinances applicable to the type of activity for which a state license is sought.

Section 3. This Ordinance shall take effect ten days after passage and publication.

As Amended and Approved at First Reading by Ann Arbor City Council on September 16, 2019.