



Legislation Text

File #: 17-0994, Version: 1

An Ordinance to Amend Title VII of the Code of the City of Ann Arbor by Repealing Chapter 95 (Medical Marijuana Licenses for Medical Marijuana Dispensaries) of Title VII of the Code of the City of Ann Arbor and By Adding a New Chapter 96 (Medical Marijuana Facilities) to Title VII of the Code of the City of Ann Arbor (Ordinance No. ORD-17-19)

At the direction of Council, staff and the appointed Medical Marijuana Advisory Committee held several public meetings to develop a revised permitting ordinance for medical marijuana facilities in the City. The Committee met on four separate occasions, completed its work on June 15, 2017 and unanimously recommends adoption of the attached ordinance.

Sponsored by: Councilmembers Smith and Frenzel

Prepared by: Kristen Larcom, City Attorney

Reviewed by: Derek Delacourt, Community Services Area Administrator

Approved by: Howard S. Lazarus, City Administrator

ORDINANCE NO. ORD-17-19

First Reading: July 17, 2017 &
October 16, 2017

Approved: November 9, 2017
Published: November 16, 2017

Public Hearing: November 9, 2017

Effective: November 26, 2017

MEDICAL MARIJUANA

AN ORDINANCE TO AMEND TITLE VII OF THE CODE OF THE CITY OF ANN ARBOR BY REPEALING CHAPTER 95 (MEDICAL MARIJUANA LICENSES FOR MEDICAL MARIJUANA DISPENSARIES) OF TITLE VII OF THE CODE OF THE CITY OF ANN ARBOR AND BY ADDING A NEW CHAPTER 96 (MEDICAL MARIJUANA FACILITIES) TO TITLE VII OF THE CODE OF THE CITY OF ANN ARBOR

The City of Ann Arbor ordains:

Section 1. That Chapter 95 (Medical Marijuana Licenses for Medical Marijuana Dispensaries) of Title VII of the Code of the City of Ann Arbor be repealed.

Section 2. That a new Chapter 96 (Medical Marijuana Facilities) be added to Title VII of the Code of the City of Ann Arbor to read as follows:

CHAPTER 96. MEDICAL MARIJUANA FACILITIES

7:601. Legislative Intent.

The city intends to issue permits for and regulate marijuana facilities to the extent they are permitted under the Medical Marijuana Facilities Licensing 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 Marihuana 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 licensee that is a commercial entity located in this state that cultivates, dries, trims, or cures and packages marihuana for sale to a processor or provisioning center.
- (b) "Licensee" means a person holding a state operating license.
- (c) "Marihuana" 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 Marijuana 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 “marijuana facility” as defined in the MMFLA.
- (k) “Marijuana facility” means “marijuana 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.

7:603. Marijuana Facilities Authorized.

Pursuant to the MMFLA, 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 and they comply with the additional requirements of this Chapter, Chapter 55 (Zoning), 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.
- (4) Secure transporter.

(5) Safety compliance facility.

7:604. City Permit Required.

- (1) No person shall operate a facility for which an annual permit as provided for in this Chapter has not been issued.
- (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.
- (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 license and a copy of the valid current license and application for license has been provided to the City Clerk by the license holder and is in compliance with all other requirements in this chapter.

- (3) The revocation, suspension, and placement of restrictions by the state on a state operating license apply equally to a permit issued by the City.
- (4) The expiration date of the state operating 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 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.

- (h) 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 one application fee for a grower's license shall apply without regard to the class of state operating license the permit application seeks.
 - (i) 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 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 copies of the applicant's application for a state operating license and the 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 one 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.
- (c) 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 10 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 \$100,000.00 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 permit the above named insurance coverages. If any of the above coverages expire by their terms during the term of a permit, the applicant shall deliver proof of renewal and/or new policies to the City Clerk at least 10 days prior to the expiration date.

Insurance companies, named insureds and policy forms shall be subject to the approval of the City Attorney, within 5 business days. Insurance policies shall not contain endorsements or policy conditions which reduce coverage required under the terms of the permit.

7:608. Conduct of business at a facility.

- (1) A facility shall be conducted in compliance with the MMFLA, the rules promulgated pursuant to

the MMFLA, the MMMA, 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 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 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 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 a public nuisance action or any other legal action in a court of competent jurisdiction.

7:612. Penalty for violations.

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 3. In the event any court of competent jurisdiction shall hold any provision of this Ordinance invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision thereof.

Section 4. This ordinance shall take effect on the tenth day following legal publication.

CERTIFICATION

I hereby certify that the foregoing ordinance was adopted by the Council of the City of Ann Arbor, Michigan at its regular session of November 9, 2017.

(Date)

Jacqueline Beaudry, Ann Arbor City Clerk

Christopher Taylor, Mayor

I hereby certify that the foregoing ordinance received legal publication on the City Clerk's webpage on November 16, 2017.

Jacqueline Beaudry, Ann Arbor City Clerk