

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 CULTIVATION FACILITIES AND DISPENSARIES

6:413. Legislative Intent.

The City intends to license and regulate medical marijuana cultivation facilities and dispensaries to the extent they are permitted under the Michigan Medical Marijuana 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 medical marijuana are allowed by the Michigan Medical Marijuana 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 medical marijuana 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 cultivation facility or dispensary.

6:414. Definitions.

- (a) All words and phrases used in this chapter shall have the same meaning as defined in Chapter 55 (Zoning), Section 5:50.1 (Regulations Concerning Medical Marijuana).
- (b) *Medical marijuana cultivation facility* means a structure or each space in a structure that is separately owned or leased by a person other than the owner of the structure, in which marijuana plants are being cultivated in compliance with the Michigan Medical Marijuana Act. For purposes of this chapter, a medical marijuana home occupation as defined in Chapter 55 (Zoning) is not considered to be a medical marijuana cultivation facility.
- (c) *Medical marijuana dispensary* means one or more caregivers operating at a fixed location, in compliance with the Michigan Medical Marijuana Act, for the purpose of transferring marijuana at that location to one or more persons whose medical use of marijuana is protected under the Michigan Medical Marijuana Act. For purposes of this chapter, a medical marijuana home

occupation as defined in Chapter 55 (Zoning) is not considered to be a medical marijuana dispensary.

- (d) *Physician* means an individual licensed as a physician under Part 170 of the public health code, 1978 PA 368, MCL 333.17001 to 333.17084, or an osteopathic physician under Part 175 of the public health code.
- (e) *Authorized person* means:
 - (i) an owner of a dispensary or cultivation facility;
 - (ii) the directors, officers, members, partners, and individuals of a dispensary or cultivation 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 dispensary during business hours.
- (f) *MDCH* means the Michigan Department of Community Health.

6:415. License Required, Number of Licenses Available, Eligibility.

- (1) No person shall operate a cultivation facility or dispensary at a location for which an annual license as provided for in this chapter has not been issued.
- (2) A cultivation facility or 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 cultivation facilities or 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 licenses applied for in the first 60 days, but not more than 20 dispensaries and 10 cultivation facility licenses. Any license terminated during the license year returns to the City for possible reissuance. A business that is a combined dispensary and cultivation facility shall require two separate licenses.
- (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 federal, 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 licensing board to consist of one member of Council, one physician, and three other Ann Arbor residents, these are Mayoral appointments. 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 cultivation facility or 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 medical 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 caregiver registry identification card that the MDCH issued to the caregiver who is delivering the marijuana.

6:416. General Provisions.

(1) 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 cultivation facility or 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 cultivation facility or 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 routine inspections of the licensed cultivation facility or dispensary to ensure compliance with this chapter.

6:417. Application Requirements for New Annual License or Renewal of Existing License; License Requirements for New License and for Renewed License

(1) Application Acceptance. A dispensary or cultivation facility 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. No other applications will be accepted by the City until seventy-five (75) days after the effective date of this chapter. The cultivation facility or 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 cultivation facility or dispensary shall discontinue all operation unless the Building Official determines it must be closed sooner for safety reasons.

(2) Application Requirements. An application for a new annual license or the renewal of an existing license for a cultivation facility or dispensary, 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) If the cultivation facility or dispensary commenced operation prior to passage of the moratorium by City Council on August 5, 2010, then proof of the date on which cultivation facility or dispensary commenced operation shall be provided.
- (b) The address of the cultivation facility or 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 cultivation facility or dispensary is located.
- (d) Name, street address, and other contact information of all owners of the dispensary or cultivation facility 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 and, if the applicant does not own the premises, the signatures of all owners on the application indicating that the owners support issuance of a license.
- (h) Payment of a non-refundable application fee, which shall be determined by resolution of the City Council.

(3) License Requirements. A new license shall not be issued to a dispensary or cultivation facility until the applicant for the license complies with all of the following requirements:

- (a) The applicant has submitted a complete application and the application fee.
- (b) The proposed dispensary or cultivation facility is located in a zoning district that permits its operation.
- (c) The applicant has a valid and current certificate of occupancy.
- (d) 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.

- (e) 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.
- (f) For medical marijuana cultivation facilities, a certificate signed by a qualified professional indicating that equipment necessary to handle heating, ventilation, and air balance requirements has been installed to prevent the growth of harmful mold or other conditions harmful to individuals inside the facility.
- (g) 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.

- (h) The applicant has paid the non-renewable license fee, as determined by resolution of the City Council.

6:418. Issuance of License.

The city administrator or designee shall issue a license for a cultivation facility or dispensary to the applicant if a license is available for issuance and if all requirements of this Chapter have been met. The city administrator or designee shall deny any application that does not meet the requirements of this chapter or any other applicable law, rule or regulation or that contains any false or incomplete information.

6:419. Conduct of Business at Cultivation Facility or Dispensary.

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

(2) Cultivation facilities and 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 Michigan Medical Marijuana Act shall be kept on the premises of a cultivation facility or dispensary.

(4) All marijuana delivered to a 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 cultivation source of the marijuana;
- (c) that the package contains marijuana;
- (d) the date of delivery, weight, type of marijuana and dollar amount or other consideration being exchanged in the transaction;
- (e) a certification that all marijuana in any form contained in the package was cultivated, manufactured, and packaged in the state of Michigan;
- (f) 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 MARIJUANA ACT OR BY ANY PERSON WHO DOES

NOT POSSESS A VALID MEDICAL MARIJUANA PATIENT REGISTRATION CARD.

- (f) The name, address, e-mail address, and telephone number of an authorized representative of the dispensary whom a patient can contact with any questions regarding the product.
 - (g) The name, address, e-mail address, and telephone number of at least one governmental or non-profit organization that may be contacted by a patient who has concerns about substance abuse of drugs, including marijuana.
- (5) All of the required labeling information, including coded patient and caregiver information shall be maintained and available for inspection at a cultivation facility or dispensary for no less than one year after dispensing.
- (6) A cultivation facility or 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 cultivation facility or 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 patients at or by a dispensary or cultivation facility shall have been cultivated, manufactured, and packaged in the state of Michigan.
- (10) A cultivation facility or dispensary shall keep records of the caregivers from whom they receive marijuana in any form, 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.

6:420. 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 medical marijuana than allowed by any applicable state or local law.

- (c) Produce, distribute or possess medical 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 cultivation facility or 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.

6:421. 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 business;
- (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 cultivation facility or 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 MDCH 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 dispensary or cultivation facility is determined by the City to have become a public nuisance.

6:422. 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 section 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, and March 21, 2011