

ORDINANCE NO. 17-035

AN ORDINANCE TO CREATE SECTION 46-500 OF CHAPTER 46, OF THE ADRIANCODE, ENTITLED "COMMERCIAL MEDICAL MARIHUANA FACILITIES"

ARTICLE XI

DIVISION 1. GENERALLY

Section 46-500. Legislative Intent. The purpose of this ordinance is to implement the provisions of the Michigan Marihuana Facilities Licensing Act, Public Act 281 of 2016, which authorizes the licensing and regulation of Commercial Medical Marihuana Facilities and affords the City the option of whether or not to allow Commercial Medical Marihuana Facilities; to regulate Commercial Medical Marihuana Facilities by requiring a Permit and compliance with requirements as provided in this Ordinance, in order to maintain the public health, safety and welfare of the public.

Section 46-501. Definitions. The following words, terms, and phrases when used in this article shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning.

"*Department*" means the Michigan State Department of Licensing and Regulatory Affairs or any authorized designated Michigan agency authorized to regulate, issue or administer a Michigan License for a Commercial Medical Marihuana Facility.

"*Grower*" or "*Grower Facility*" means a commercial entity that cultivated, dries, trims, or cures and packages Marihuana for sale to a Processor or Provisioning Center. Grower facilities are divided into classes. A Class A facility can have up to 500 plants; a Class B facility can have up to 1,000 plants and a Class C facility can have up to 1,500 plants.

"*License*" means a current and valid License for a Commercial Medical Marihuana Facility issued by the State of Michigan.

"*Licensee*" means a person holding a current and valid Michigan License for a Commercial Medical Marihuana Facility.

"*Marihuana*" means that termed as defined in section 7106 of the public health code, 1978 PA 368, MCL 333.7106.

"*Medical Marihuana Facility(s)*" means any facility, establishment and/or center that is required to be licensed under this Chapter including a Provisioning Center, Grower, Processor, Safety Compliance Facility, and Secure Transporter.

"*Marihuana Plant(s)*" means any plant of the species *Cannabis sativa* L.

"*Processor*" or "*Processor Facility*" means a commercial entity 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.

"*Provisioning Center*" means a commercial entity 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 MMMA is not a Provisioning Center for the purposes of this Ordinance.

"*Permit*" means a current and valid Permit for a Commercial Medical Marihuana Facility issued pursuant to this Ordinance, which shall be granted to a Permit Holder only for and limited to a specific Permitted Premises and a specific Permitted property.

"*Permit Holder*" means the person that holds a current and valid Permit under this Ordinance.

"*Permitted Premises*" means the particular building or buildings within which the Permit Holder will be authorized to conduct the Facility's activities pursuant to the permit.

"*Permitted Property*" means the real property comprised of the lot, parcel or other

designated unit of real property upon which the Permitted Premise is situated.

"Person" means a natural person, company, partnership, profit or non-profit corporation, limited liability company, or any joint venture for a common purpose.

"Safety Compliance Facility" means a commercial entity that receives Marihuana from a Medical 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 Medical Marihuana Facility.

"Secure Transporter" means a commercial entity that stores Marihuana and transports Marihuana between Medical Marihuana Facilities for a fee.

DIVISION 2. Permits

Section 46-502. Required.

- a. No person shall operate a Commercial Medical Marihuana Facility in the City of Adrian without first obtaining a permit from the City Clerk.

Section 46-503. Commercial Medical Marihuana Facilities authorized to operate in the City.

- a. Growers, Class A, B and C
- b. Processors
- c. Provisioning Centers
- d. Safety Compliance Facilities
- e. Secure Transporters.

Section 46-504. Number of Facilities authorized by City

- a. Growers:
 - Class A: unlimited
 - Class B: unlimited
 - Class C: unlimited
- b. Processors: unlimited
- c. Provisioning Centers: 5 permits in the B-1 and B-2 districts combined, unlimited in the Industrial overlay district.
- d. Safety Compliance Facilities: unlimited
- e. Secure Transporters: unlimited

Section 46-505. Application.

- a. Application for a permit shall be made annually on forms provided by the City Clerk.
- b. The permit requirements 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.
- c. Upon receipt of a completed application and payment of the required fee, the city clerk shall forward a copy of the application to each of the following departments for their approval: the Fire Department, the Building Department, the Police Department, the Zoning Administrator, and the City Treasurer.
- d. No application shall be approved unless:
 - 1) The Fire Department and Building Department have inspected the proposed location for compliance with all laws for which they are charged with enforcement and for compliance with this ordinance.
 - 2) The Zoning Administrator has confirmed that the proposed location complies with the zoning code and issues a zoning compliance permit.
 - 3) The City Treasurer has confirmed that the applicant and the proposed location are not in default to the City.
 - 4) The Police Department has determined that the applicant has met the requirements of this chapter with respect to the background check and security plan.
- e. Each year, any pending applications for renewal or amendment of existing permits shall be reviewed and granted or denied before applications for new permits are

considered.

- f. The issuance of any permit 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 marihuana.
- g. A permit and a renewal permit shall not confer any vested rights or reasonable expectation of subsequent renewal on the applicant or permit holder and shall remain valid only for one year immediately following its approval. A completed application or renewal application must be received by the City Clerk no later than 90 days prior to the expiration of the current permit.
- h. No permit issued under this section may be transferred or assigned and no license is valid for any location other than the location specified in the license.
- i. All inspections, review and processing of the application shall be completed within 90 days of receipt of a complete application and all required fees.
- j. Any denial of a permit shall be in writing and shall state the reason for denial.
- k. A denial of a permit may be appealed to the Zoning Board of Appeals.
- l. If more qualified applications are received than the number of permits allowed for provisioning centers in the B-1 and B-2 districts under this ordinance, the approved applications shall be assigned a number and will be entered into a drawing for the available permits. The specific procedures for the drawing shall be adopted by the city commission by resolution. The Commission may also adopt a policy by resolution to give preference to local businesses and to businesses legally operating at the time this ordinance is adopted.
- m. Any applicant for a commercial medical marihuana facility permit whose building is not yet in existence at the time of city commission approval shall have one year immediately following the date of approval to complete construction of the building, in accordance with applicable zoning ordinances, building codes and other applicable state or local laws, rules or regulations, and to commence business operations.

Section 46-506. Conditions of Issuance.

The City Clerk shall not issue a permit until all of the following conditions have been met:

- a. The address of the facility and any other contact information shall be listed on the application form.
- b. The name and address of the owners of all real property where the facility is located shall be listed on the application form.
- c. All documentation showing the proposed permit holder's valid tenancy, ownership or other legal interest in the proposed permitted property and permitted premises.
- d. If the proposed permit holder is not the owner of the property, a notarized statement from the owner of such property authorizing the use of the property for a commercial medical marihuana facility.
- e. If the proposed permit holder is a corporation, non-profit organization, limited liability company or any other entity other than a natural person it must state its legal status, attach a copy of all company formation documents (including amendments), proof of registration with the State of Michigan and a certificate of good standing along with the articles, resolutions and by-laws/operating agreements.
- f. The name and addresses of all owners and managers of the facility shall be listed on the application form.
- g. A copy of a valid unexpired driver's license or state issued ID for all owners, directors, officers and managers of the proposed facility.
- h. Evidence of a valid sales tax license for the business if such a license is required by state law or local regulations.
- i. A signed release shall be provided, on a form included with the application, permitting the City of Adrian police department to perform a criminal background

check to ascertain whether any person named on the application has been convicted of any felony or any controlled-substance-related misdemeanor under Michigan law or the law of any other state or the United States.

- j. Proof that a valid and current certificate of occupancy has been issued by the building official indicating that all necessary inspections have been conducted, which may include but are not limited to electrical inspection, plumbing inspection and mechanical inspection.
- k. Where the application identifies electrical devices are being used or intended to be used in conjunction with a permit, proof that the fire department has inspected and approved the use or proposed use and that any necessary permits for electrical alterations have been obtained.
- l. Where the application identifies structural modifications have been made or are intended in conjunction with the permit, proof that the building code officials have inspected the property and issued the necessary permits.
- m. A copy of the Business and Operations plan showing in detail the commercial medical marihuana facility's proposed plan of operation, including without limitation, the following:
 - 1) A description of the type of facility proposed and the anticipated or actual number of employees.
 - 2) A security plan which shall include a general description of security system, current centrally alarmed and monitored security system service agreement for the proposed permitted premises, and confirmation that those systems will meet state requirements and be approved by the state prior to commencing operations.
 - 3) A general description by category of all products to be sold.
 - 4) A list of material safety data sheets for all nutrients, pesticides and other chemicals proposed for use in the commercial medical marihuana facility.
 - 5) A description and plan for all equipment and methods that will be employed to stop any impact to adjacent uses, including enforceable assurances that no odor will be detectable from outside the permitted premises.
 - 6) A plan for disposal of marihuana and related byproducts that will be used at the facility.
 - 7) A technology plan that includes the plan for data collection and data security.
- n. Identify any business that is directly involved in the growing, processing, testing, transporting or sale of marihuana for the facility.
- o. State whether applicant has ever applied for and been denied any commercial license or certificate by a licensing authority in Michigan or any other jurisdiction or whether any commercial license has been restricted, suspended, revoked or not renewed. Describe the facts and circumstances concerning the application, denial, restriction, suspension, revocation or nonrenewal including the licensing authority, the date each action was taken, and the reason for each action.
- p. Provide a signed and sealed (by a Michigan registered architect, surveyor or professional engineer) site plan and interior floor plan of the permitted premises and the permitted property.
- q. List any other commercial medical marihuana facility that the licensee is authorized to operate in any other jurisdiction within the state, or another state and the applicant's involvement in each facility.
- r. Provide any other information reasonably requested by the City regarding the processing or consideration of the application.

- s. An affidavit that the applicant is not in default to the City. Specifically, that the applicant has not failed to pay any property taxes, special assessments, fines, fees or other financial obligation to the City.
- t. For provisioning centers, a proposed patient recordkeeping plan that will track quantities sold to individual patients and caregivers, and will monitor inventory.
- u. A description of procedures for testing of contaminants including mold and pesticides.
- v. An estimate of the number and types of jobs that the facility is expected to create, the amount and type of compensation expected to be paid for such jobs, and the projected annual budget and revenue of the facility.
- w. A signed acknowledgement that the applicant is aware and understands that all matters related to marihuana, growing, cultivation, possession, dispensing, testing, safety compliance, transporting, distribution, and use are currently subject to state laws, rules and regulations, and that the approval or granting of a permit hereunder does not exonerate or exculpate the applicant from abiding by the provisions and requirements and penalties associated with those laws, rules and regulations or exposure to any penalties associated therewith; and further the applicant waives and forever releases any claim demand, action, legal redress or recourse against the City of Adrian, its elected and appointed officials and its employees and agents for any claims, damages, liabilities, causes of action, and attorney fees that applicant may incur as a result of a violation by applicant, its officials, members, partners, shareholders, employees and agents, of those laws, rules and regulations and hereby waives and assumes the risk of any such claims and damages and lack of recourse against the City of Adrian, its elected and appointed officials, employees, attorneys, and agents.
- x. As it relates to Grower Facilities:
 - 1).A cultivation plan that includes at a minimum, a description of the cultivation methods to be used, including plans for the growing mediums, treatments, and/or additives.
 - 2).A production testing plan that includes, at a minimum, a description of how and when samples for laboratory testing will be selected, what type of Testing will be requested and how the test results will be used.
 - 3).An affidavit that all operations will be conducted in conformance with the MMFLA and all other applicable state laws.
 - 4).A chemical and pesticide storage plan that states the names of the pesticides to be used in cultivation and where and how pesticides and chemicals will be stored, along with a plan for the disposal of unused pesticides.
 - 5).The applicant shall acknowledge that all cultivation must be performed in Building.
- y. Proof of an insurance policy covering the facility in the amount of at least one million dollars for property damage; one million dollars for injury to one person; and at least two million dollars for two or more persons resulting from the same occurrence. The City shall be notified by the insurance carrier 30 days in advance of any cancellation.
- z. Proof of a surety bond in the amount of \$100,000 with the City listed as the obligee to guarantee the performance by applicant of the terms, conditions and obligations of this ordinance or in the alternative applicant can create an escrow account for the benefit of the City at a city approved financial institution in the amount of \$20,000.
- aa. Proof of liquid assets that equal or exceed the state's capitalization requirements.

Section 46-507. Conduct of Permit Holder.

- a. Each Permit Holder shall, as a condition of obtaining and maintaining a permit, agree to comply at all times with applicable local and state building, zoning, fire, health and sanitation statutes, ordinances and regulations.
- b. The premises shall be operated and maintained at all times consistent with responsible business practices and so that no excessive demands will be placed upon public health or safety services, nor any excessive risk of harm to the public health, safety or sanitation.
- c. Permit Holder shall immediately notify the City Clerk and update as required the information provided on the application and the permit. Further, the Permit Holder shall notify the City Clerk of any other changes that that may materially affect the state license or the permit.
- d. An applicant or permit holder has a duty to notify the City Clerk in writing of any pending criminal charge, and any criminal conviction or other offense, including but not limited to, Michigan Medical Marihuana Act (MCL 333.26421 et seq) violations, Medical Marihuana Facilities Licensing Act (MCL 333.27101 et seq) violations, building, fire, zoning violations by the applicant, permit holder, any owner, principal, officer, director, manager or employee relating to the cultivation, processing, manufacture, storage, sale, distribution, testing or consumption of any form of marihuana within 10 days of the event.
- e. The permit holder may not operate any other commercial medical marihuana facility in the permitted premises or on the permitted property, or in its name at any other location within the City without first obtaining a separate permit.
- f. The permit holder may not transfer the permit to any other individual or entity.
- g. Failure to comply with the requirements contained in this section is a civil infraction.

Section 46-508. Operational Requirements: a commercial medical marihuana facility issued a permit under this ordinance and operating in the City shall at all times comply with the following operational requirements, which the city commission may review and amend from time to time as it determines reasonable.

- a. Commercial medical marihuana facilities shall comply with the zoning code, the building code, and the property maintenance code at all times.
- b. The facility must hold a valid local permit and state medical marihuana facility license for the type of commercial medical marihuana facility carried out at the permitted property.
- c. Each commercial medical marihuana facility shall be operated from the permitted premises on the permitted property. No commercial medical marihuana facility shall be permitted to operate from a moveable, mobile or transitory location, except for a permitted and licensed secure transporter when engaged in the lawful transport of marihuana.
- d. No person under the age of 18 shall be permitted to enter into the permitted premises without a parent or legal guardian.
- e. Medical marihuana facilities shall be closed for business and no sale or other distribution of marihuana 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.
- f. Permit holders shall at all times maintain a security system that meets state law requirements, and shall also include:
 - 1). Security surveillance cameras installed to monitor all entrances, along with the interior and exterior of the permitted premises;
 - 2). Burglary alarm systems which are professionally monitored and

operated 24 hours a day, 7 days a week;

3). A locking safe permanently affixed to the permitted premises that shall store all marihuana and cash remaining at the facility overnight;

4). All marihuana in whatever form stored at the permitted premises shall be kept in a secure manner and shall not be visible from outside the Permitted premises, nor shall it be grown, processed, exchanged, displayed or dispensed outside the permitted premises;

5). All security recordings and documentation shall be preserved for at least 48 hours by the permit holder and made available to law enforcement upon request for inspection.

- g. No commercial provisioning center shall be located within 500 feet from any educational institution or school, college or university, or public or private park, with the minimum distance measured horizontally between the nearest property lines.
- h. The amount of marihuana on the permitted property and under the control of the permit holder, owner or operator of the facility shall not exceed the amount permitted by the state license.
- i. The marihuana offered for sale and distribution must be packaged and labeled in accordance with state law. The facility is prohibited from selling, soliciting or receiving orders for marihuana or marihuana products over the internet.
- j. No pictures, photographs, drawings, or other depictions of marihuana or marihuana paraphernalia shall appear on the outside of any permitted premises nor be visible outside of the permitted premises on the permitted property. The words "marihuana," "cannabis" and any other words used or intended to convey the presence or availability of marihuana shall not appear on the outside of the permitted premises nor be visible outside of the permitted premises on the permitted property.
- k. The sale, consumption, or use of alcohol or tobacco products on the permitted premises is prohibited. Smoking or consumption of controlled substances, including marihuana, on the permitted premises is prohibited.
- l. All activities of commercial medical marihuana facilities, including without limitation, distribution, growth, cultivation, or the sale of marihuana, and all other related activity permitted under the permit holder's license or permit must occur indoors. The facility's operation and design shall minimize any impact to adjacent uses, including the control of any odor by maintaining and operating an air filtration system so that no odor is detectable outside the permitted premises.
- m. A patient may not grow his or her own marihuana at a commercial medical marihuana facility.
- n. No person operating a facility shall provide or otherwise make available marihuana to any person who is not legally authorized to receive marihuana under state law.
- o. All necessary building, electrical, plumbing and mechanical permits must be obtained for any part of the permitted premises in which electrical, wiring, lighting or watering devices that support the cultivation, growing, harvesting or testing of marijuana are located.
- p. The permit holder, owner and operator of the facility shall use lawful methods in controlling waste or by-products from any activities allowed under the license or permit.
- q. Marihuana may be transported by a secure transporter within the City under this ordinance, and to effectuate its purpose, only:

- 1) By persons who are otherwise authorized by state law to possess marihuana for medical purposes;
 - 2) In a manner consistent with all applicable state laws and rules, as amended;
 - 3) In a secure manner designed to prevent the loss of the marihuana;
 - 4) No vehicle used for transportation or delivery of marihuana under this ordinance shall have for markings the words "marihuana," "cannabis," or any similar words; pictures or other renderings of the marihuana plant; advertisements for marihuana or for its sale, transfer, cultivation, delivery, transportation or manufacture, or any other word, phrase or symbol indicating or tending to indicate that the vehicle is transporting marihuana.
 - 5) No vehicle may be used for the ongoing or continuous storage of marihuana, but may only be used incidental to, and in furtherance of, the transportation of marihuana.
- r. The City Commission may impose such reasonable terms and conditions on a commercial medical marihuana facility special use as may be necessary to protect the public health, safety and welfare, and to obtain compliance with the requirements of this ordinance and applicable law.
 - s. No facility shall be operated in a manner creating noise, dust, vibration, glare, fumes, or odors beyond the boundaries of the property on which the facility is operated; or creating any other nuisance that hinders the public health, safety and welfare of the residents of the City of Adrian.

Section 46-509. Effective permit; suspension; daily violation.

- a. A permit is valid only for the location identified on the permit and cannot be transferred to another location in the City without a new application.
- b. A permit is valid for one year from the date of issuance.
- c. The permit shall be prominently displayed at the permitted premises in a location where it can be easily viewed by the public, law enforcement and administrative authorities.
- d. Acceptance by the permit holder of the permit constitutes consent by the permit holder and its owners, officers, managers, agents and employees for any state, federal or local law enforcement to conduct random and unannounced examinations of the facility and all articles of property in that facility at any time to ensure compliance with this ordinance, any other local regulations and with the permit.
- e. A permit does not prohibit prosecution by the federal government for violation of its laws or prosecution by state authorities for violations of the Act or other violations not protected by the Act.
- f. Compliance with city ordinance and state statutes is a condition of maintenance of a permit and a permit may be suspended for failure to comply with any of the provisions of this section.
- g. Suspension of a permit is not an exclusive remedy and nothing contained herein is intended to limit the City's ability to prosecute code violations that may have been the cause of the suspension or any other code violations not protected by this Act.
- h. Violations of the provisions of this ordinance or failure to comply with any of the requirements of this ordinance is a civil infraction. The fine for this civil infraction is \$500.00 and abatement costs of each violation together with all remedies available under MCLA 600.8701, et seq. Each day a violation continues shall be deemed a separate civil infraction.

- i. Operating a medical marihuana facility without a valid permit or assisting in the operation of a medical marihuana facility without a valid permit for that property is a civil infraction. The fine for this civil infraction shall be \$500.00. Each day that a person shall operate a medical marihuana facility without a permit or assist in the operation of a medical marijuana facility without a valid permit in effect for that property shall constitute as a separate offense.
- j. In addition to any other remedies, the City may institute proceedings for injunction, mandamus, abatement or other appropriate remedies to prevent, enjoin, abate or remove any violations of this ordinance. The rights and remedies provided herein are civil in nature. The imposition of a fine shall not exempt the violator from compliance with the provisions of this ordinance.

Section 46 -510. Fees for licenses. The fees for the permit herein defined shall be set by resolution of the city commission. The fee shall defray the costs incurred by the City for inspection, administration and enforcement of this ordinance and shall not exceed any limitations imposed by Michigan law.

Section 46-511. Severability. The provisions of this ordinance are hereby declared severable. If any part of this ordinance is declared invalid for any reason by a court of competent jurisdiction, that declaration does not affect or impair the validity of all other provisions that are not subject to that declaration.

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SUMMARY PUBLISHED.....December 6, 2017
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Chuck Jacobson
Mayor

Pat Baker
City Clerk