

CHAPTER 68

AN ORDINANCE TO AUTHORIZE AND REGULATE THE ESTABLISHMENT OF MEDICAL MARIHUANA FACILITIES.

§ 68-01 Purpose

- A. It is the intent of this Ordinance to authorize the establishment of certain types of medical marihuana facilities in the City of Lapeer and provide for the adoption of reasonable restrictions to protect the public health, safety, and general welfare of the community at large; retain the character of neighborhoods; and mitigate potential impacts on surrounding properties and persons. It is also the intent of this Ordinance to help defray administrative and enforcement costs associated with the operation of a marihuana facility in the City of Lapeer through imposition of an annual, nonrefundable fee of not more than \$5,000.00 on each medical marihuana facility licensee. Authority for the enactment of these provisions is set forth in the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq.
- B. Nothing in this Ordinance is intended to grant immunity from criminal or civil prosecution, penalty, or sanction for the cultivation, manufacture, possession, use, sale, or distribution of marihuana, in any form, that is not in compliance with the Michigan Medical Marihuana Act, Initiated Law 1 of 2008, MCL 333.26421 et seq.; the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq.; the Marihuana Tracking Act, MCL 333.27901 et seq.; and all other applicable rules promulgated by the State of Michigan. This ordinance permits authorizations for activity based on the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq. Nothing in this Ordinance shall be construed as allowing persons to engage in conduct that endangers others or causes a public nuisance, or to allow marihuana uses and activities not in strict accordance with the express authorizations of the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq.
- C. As of the effective date of this Ordinance, marihuana remains classified as a Schedule 1 controlled substance under the Federal Controlled Substances Act, 21 U.S.C. Sec. 801 et seq., which makes it unlawful to manufacture, distribute, or dispense marihuana, or possess marihuana with intent to manufacture, distribute, or dispense marihuana. Nothing in this Ordinance is intended to grant immunity from any criminal prosecution under state or federal laws as they may be enforced by either the federal or state governments relative to such uses and activities. Thus, the authorization of activity and the approval of a license under this Ordinance shall not have the effect of superseding or nullifying federal or state law applicable to the cultivation, manufacture, possession, use, sale, or distribution of marihuana, in any form, and all applicants and grantees of licenses are on notice that they may be subject to prosecution and civil penalty, including forfeiture of property.

§ 68-02 Definitions

For the purposes of this ordinance:

- A. Any term defined by the Michigan Medical Marihuana Act, MCL 333.26421 et seq., shall have the definition given in the Michigan Medical Marihuana Act.
- B. Any term defined by the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq., shall have the definition given in the Medical Marihuana Facilities Licensing Act.
- C. Any term defined by the Marihuana Tracking Act, MCL 333.27901 et seq., shall have the definition given in the Marihuana Tracking Act.
- D. "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.
- E. "Licensee" means a person holding a State operating license issued under the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq.
- F. "Marijuana" or "marihuana" means that term as defined in the Public Health Code, MCL 333.1101 et seq.; the Michigan Medical Marihuana Act, MCL 333.26421 et seq.; the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq.; and the Marihuana Tracking Act, MCL 333.27901 et seq.
- G. "Marihuana facility" means an enterprise at a specific location at which a licensee is licensed to operate under the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq., including a marihuana grower, marihuana processor, marihuana provisioning center, marihuana secure transporter, or marihuana safety compliance facility. The term does not include or apply to a "primary caregiver" or "caregiver" as that term is defined in the Michigan Medical Marihuana Act, MCL 333.26421 et seq.
- 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. "Processor" means a licensee that is a commercial entity located in Michigan 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.
- J. "Provisioning center" means a licensee that is a commercial entity located in Michigan 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 in accordance with the Michigan Medical Marihuana Act, MCL 333.26421 et seq., is not a provisioning center for purposes of this article.

- K. "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.
- L. "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.

§ 68-03 Authorization of Facilities and Fee

- A. The following Medical Marihuana Facilities may be authorized to operate in the City of Lapeer by the holder of a state operating license, subject to compliance with PA 281 of 2016, as may be amended, the Rules promulgated thereunder and this ordinance:

<u>Facility</u>	<u>Number</u>
Provisioning Center	6
Grower	Unlimited
Processor	Unlimited
Safety Compliance Facility	Unlimited
Secure Transporter	Unlimited

Although the maximum number of each type of marihuana facility permitted in the City of Lapeer is established above, no Marihuana Facility of any type may be located within the Central Business District.

- B. The Lapeer City Commission, at any time, but no less frequently than once per year, shall review the maximum number of each type of Marihuana Facility allowed pursuant to this Ordinance and determine whether the number should be limited or changed, and if so, determine a maximum number for each type of Marihuana Facility. However, following each annual review, the Lapeer City Commission shall not limit the number of licenses for each classification of license to a number less than those currently approved, absent good cause shown, giving due consideration to the public health and welfare. The review and its findings shall be recorded in the minutes of the relevant meeting of the Lapeer City Commission.
- C. An annual nonrefundable fee shall be paid by each marihuana facility licensed under this Ordinance in an annual amount of not more than \$5,000.00 as set forth in the City of Lapeer Fee Schedule as approved by the City Commission.
 - (1) Should any person, for whatever reason, not receive a license under 68.04 C. (1) Application or (2) Provisional License, one half of the

application fee may be returned provided that no appeal process has occurred.

§ 68-04 Requirements and Procedure for Issuing License

- A. No person shall operate a marihuana facility in the City of Lapeer without a valid marihuana facility license issued by the City of Lapeer pursuant to the provisions of this Ordinance as authorized by the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq.
- B. A marihuana facility license issued under this Ordinance is valid for one year and is not transferable.
- C. The procedure in processing a request for a marihuana facility license will involve three steps as follows:
 - (1) Application.
 - (a) File an application with the City Clerk's office upon a form provided by the City of Lapeer and submittal of the annual nonrefundable fee.
 - (b) Upon the applicant's completion of the application form and furnishing all required information and documentation, the City Clerk's office shall accept the application. The City Clerk is authorized to develop a Policy that outlines the procedure to be used in determining the issuance of the provisional licenses for Provisioning Centers. Said Policy to be approved by the City Commission.
 - (c) The City Clerk's office shall refer the application to the Assessing Department to verify that the proposed site is outside the buffer zones stipulated in Section 7.13.12(i) of the Zoning Ordinance and to the Planning Department to verify that the property is located in a zoning district that allows the permitted use. The Assessing Department and the Planning Department shall respond to the City Clerk's office within 10 business days.
 - (d) The City Clerk's office shall act to approve or deny an application not later than fifteen (15) business days from the date the fully completed application was accepted.
 - (e) If approved, the City Clerk's office shall issue the applicant a provisional license.
 - (2) Standards for Issuance of Provisional License.

The Clerk shall issue a Provisional License under this Ordinance when, from a consideration of the application and from such other information as may otherwise be obtained, the Clerk determines that:

- (a) The application (including any required attachments and submissions) is complete and signed by the applicant;
- (b) The Applicant has paid the nonrefundable application fee and any other fees required;
- (c) The application does not contain a material falsehood or misrepresentation;
- (d) The proposed location of the Facility is permitted in the location sought to be approved as outlined in Section 68.04.C(3)(a).

(3) Provisional License.

- (a) A provisional license means only that the applicant has submitted a valid application for a marihuana facility license, that the proposed facility is located in a proper zoning district, that the proposed facility is not located in a required buffer zone and the applicant shall not locate or operate a marihuana facility without obtaining all other permits and approvals required by all other applicable ordinances and regulations of the City of Lapeer.
- (b) A provisional license will lapse and be void if such permits and approvals are not diligently pursued as follows:
 - (i) Existing structure with no site changes. 90 days
 - (ii) Existing structure with minimal site changes requiring an Administrative zoning review. 1 year
 - (iii) Proposed construction of a structure requiring Site Plan Review by the Planning Commission. 1 year
- (c) After submission of all other permits and approvals required under the provisional license, and payment of the annual nonrefundable fee the City Clerk's office shall approve or deny the marihuana facility license with fifteen (15) business days.

(4) Marihuana Facility License.

A permit issued pursuant to this Ordinance does not eliminate the need for the Applicant to obtain other required licenses and permits related to the operation of the facility(ies) sought to be approved hereunder, including, without limitation, any and all necessary business registration and licenses, building permits, mechanical permits, plumbing permits, or electrical permits. Before a Marihuana Facility License can be issued under this Ordinance, all requirements as listed below, including all other applicable provisions within the City of Lapeer's Ordinances must be met.

- (a) Submit a photocopy of the applicant's valid and current license issued by the State of Michigan in accordance with the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq.
- (b) Maintaining a valid marihuana facility license by the State of Michigan is a condition for the issuance and maintenance of a marihuana facility license under this Ordinance and continued operation of any marihuana facility.
- (c) Site plan approval and/or other necessary approved permits per Chapter 7 (Zoning Ordinance) are required before the City Clerk is permitted to issue a license.
- (d) All City of Lapeer departments are required to sign-off on their review of the marihuana facility license once approval has been determined. The City of Lapeer Departments and licensed professionals that are part of the review and approval process are as follows:
 - (i) Planning Department, Planner/Planning Consultant.
 - (ii) Department of Public Works, Director of Public Works.
 - (iii) Building Department, Building Official.
 - (iv) Assessing Department, Assessor.
 - (v) Fire Department, Fire Chief.
 - (vi) Police Department, Police Chief.
 - (vii) City Engineering Consultant (site plan reviews only).

(Amd: 05-06-19)

- (e) Execute a statement to be initialed by the Applicant that the Applicant and the employees of the Facility(ies) may be subject to prosecution under federal marijuana laws.
- (f) Execute a statement to be initialed by the Applicant that the City of Lapeer accepts no legal liability in connection with the approval and subsequent operation of the Facility.

D. Extension of Expiration Dates.

Extension of an expiration date for those applicants who hold a Provisional License with the City of Lapeer due to the delay of issuance of a license at the State level may be considered as follows:

- (1) Applicant may provide a written request to the City for an extension of time prior to the expiration date of a City approved Provisional License when such request for extension is premised on either of the following:
 - (a) A State decision to deny a pre-qualification application or final application and the applicant is actively appealing such denial as provided under the Act or such other available appellate remedies as allowed by law.

- (b) State delay of issuance of a license for approval of a pre-qualification application or final application.
- (2) The written request shall contain the following:
 - (a) Explanation of the reason(s) for the extension.
 - (b) Whether the applicant has been denied by the State for a pre-qualification application or final application, and proof the applicant has filed an appeal with the State or as otherwise allowed by law.
- (3) The City Clerk will review the information provided and make a determination as to the accuracy of the information. After said review, the City Clerk may authorize an extension of the expiration date for up to six (6) months. A maximum of three (3) extensions may be awarded.
- (4) Upon determination and authorization by the City Clerk for an extension of the expiration date, the City Clerk shall provide the City Commission information relating to the request and length of extension.

(Added: 05-06-19)

§ 68-05 Denial or Revocation of License and Appeal Process

- A. Denial. An application may be denied by the City Clerk in writing setting forth the grounds for such denial for one or more of the following criteria:
 - (1) A failure to meet the conditions or maintain compliance with the standards and requirements established by this ordinance in reference to the operation of a licensed facility; or
 - (2) One or more violations of the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq., or any city ordinance on the premises; or
 - (3) Maintenance of a nuisance on the premises; or
 - (4) Nonpayment of real and/or personal property taxes, fines, liens, income tax, hydrant and sprinkler fees or any fees owed to the City; or
 - (5) A demonstrated history of excessive calls for public safety (police, fire and ambulance); or
 - (6) Applicant has made or provided false information in the application or has otherwise become disqualified for the issuance of a marihuana facility license within any part of the requirement and procedure for issuing a license.
- B. Revocation. A Marihuana Facility License may be revoked by the City Clerk based on the following:

- (1) Violation of the standards for approval in Section 68-05.A. of this ordinance.
- (2) Denial, suspension, revocation or restriction of license by the State of Michigan.
- (3) A violation of the Act, any state or local regulations, the provisions of this ordinance or the provisions of a license.
- (4)
 - (a) Conviction of or release from incarceration for a felony under the laws of this state, or any other state, or the United States of the Applicant or the Applicant's managerial employees within the past 10 years or has been convicted of a controlled substance-related felony within the past 10 years.
 - (b) Conviction of an Applicant or an Applicant's managerial employees of a misdemeanor involving a controlled substance, theft, dishonesty, or fraud in any state or has been found responsible for violating a local ordinance in any state involving a controlled substance, dishonesty, theft, or fraud that substantially corresponds to a misdemeanor in that state within the last 5 years.
- (5) Operations have ceased at the Facility for more than 90 days, including during a change of ownership of the Facility.
- (6) Ownership of the Facility has been transferred without the new owner obtaining a Marihuana Facility License pursuant this Ordinance.

C. Notice of Decision.

The Clerk shall notify the Applicant of the decision to deny an application for or the revocation of a Marihuana Facility License under the terms and provisions of this Ordinance within three business days of rendering the decision. Notice shall be given by mailing a copy of the Clerk's decision to the Applicant or License holder by certified mail and/or personal service postage prepaid, at the address shown in the application. Notice is deemed to have been properly given upon mailing by certified mail and/or personal service.

D. Appeal Process.

An Applicant or Licensee has the right to appeal the Clerk's denial of an application for or the revocation of a Marihuana Facility License to the Lapeer City Commission.

- (1) Any person whose application or license has been denied, suspended, revoked or restricted by the State of Michigan has no recourse through the appeal process with the City of Lapeer.
- (2) Any person whose application or license has been denied or revoked under 68-05 A. or 68-05 B. by the City of Lapeer will have thirty (30) days

from the date of the notice to provide a written response to the City of Lapeer.

- (3) The Applicant or Licensee shall be provided with not less than ten (10) days' prior written notice of the appeal hearing to be held by the City Commission.
- (4) The burden of proof in an appeal filed under this section shall be on the Applicant or Licensee.
- (5) If the Lapeer City Commission finds by a preponderance of the evidence that the decision of the Clerk was correct, the Lapeer City Commission shall uphold the decision of the Clerk. If the Lapeer City Commission finds by a preponderance of the evidence that the decision of the Clerk was incorrect, the Clerk's decision shall be set aside and the Marihuana Facility License issued (if it was previously denied) or reinstated (if it was previously revoked).
- (6) Any decision made by the Lapeer City Commission pursuant to this section shall be a final decision and may be appealed to a court of competent jurisdiction by any person within thirty (30) days of the date of the City Commission decision. The Applicant's or Licensee's failure to timely appeal the decision is a waiver the Applicant's or Licensee's right to contest the denial of the application or the revocation of the Marihuana Facility License.
- (7) Any person whose license has been denied or revoked shall not be able to reapply for any type of license allowed under this Ordinance for one year from the date a denial or revocation became effective.

§ 68-06 License Renewal

- A. A marihuana facility license shall be valid for one year from the date of issuance, unless revoked as provided by law.
- B. A valid marihuana facility license shall be renewed on an annual basis by submitting a renewal application upon a form provided by the City of Lapeer and payment of the annual license fee. Application to renew a marihuana facility license shall be filed at least thirty (30) days prior to the date of its expiration.

§ 68-07 Applicability

The provisions of this Ordinance shall be applicable to all persons and facilities described herein, whether the operations or activities associated with a marihuana facility were established without authorization before the effective date of this Ordinance.

§ 68-08 Penalties and Enforcement

- A. Any person who violates any of the provisions of this Ordinance shall be responsible for a municipal civil infraction and subject to the payment of a civil fine as outlined in the City Ordinance, Chapter 62, Section 62.04. A violator of this Ordinance shall also be subject to such additional sanctions, remedies and judicial orders as are authorized under Michigan law.
- B. A violation of this Ordinance is deemed to be a nuisance per se. In addition to any other remedy available at law, the City of Lapeer may bring an action for an injunction or other process against a person to restrain, prevent, or abate any violation of this Ordinance.
- C. This Ordinance shall be enforced and administered by the City of Lapeer Police Department or such other City of Lapeer official as may be designated from time to time by resolution of the Lapeer City Commission.

§ 68-09 Severability

In the event that any one or more sections, provisions, phrases or words of this Ordinance shall be found to be invalid by a court of competent jurisdiction, such holding shall not affect the validity or the enforceability of the remaining sections, provisions, phrases or words of this Ordinance.

§ 68-10 Effective Date

This Ordinance shall take effect on April 1, 2018.

Date of Publication: February 22, 2018.

**(HISTORY: 02-05-18 intro; 02-19-18 adopt; 04-01-18 effective date;-)
(Amended 05-06-19, effective 05-09-19)**