

CITY OF KALAMAZOO, MICHIGAN

ORDINANCE NO. 2008

AN ORDINANCE AMENDING CHAPTER 20B BY RENAMING IT “MARIHUANA COMMERCIAL BUSINESSES” AND PROVIDING FOR THE REGULATION AND PERMITTING OF MEDICAL MARIHUANA FACILITIES AND ADULT-USE MARIHUANA ESTABLISHMENTS WITHIN THE CITY

THE CITY OF KALAMAZOO ORDAINS:

Section 1. Chapter 20B of the Kalamazoo City Code is renamed “Marihuana Commercial Businesses” and amended to read as follows:

**“Article I
General Provisions**

§ 20B-1 Title.

This chapter is to be known and may be cited as the "City of Kalamazoo Marihuana Commercial Business Ordinance."

§ 20B-2 Purpose and intent.

- A. Purpose. The purpose of this chapter is to implement the provisions of Public Act 281 of 2016, being the Michigan Medical Marihuana Facilities Licensing Act (MMFLA) and 2018 Initiated Law No. 1, being the Michigan Regulation and Taxation of Marihuana Act so as to protect the public health, safety, and welfare of residents of the City by setting forth the manner in which marihuana commercial businesses can be operated in the City. Further, the purpose of this chapter is to:
- (1) Authorize the establishment of marihuana businesses within the City and provide standards and procedures for the review, issuance, renewal, and revocation of City-issued permits for such businesses;
 - (2) Impose fees to defray and recover the cost to the City of the administrative and enforcement costs associated with marihuana businesses;
 - (3) Coordinate with State laws and regulations addressing marihuana businesses.
- B. Legislative intent. This chapter authorizes the establishment of marihuana businesses within the City of Kalamazoo consistent with the provisions of the Michigan Medical Marihuana Facilities Licensing Act and the Michigan Regulation and Taxation of Marihuana Act, subject to the following:
- (1) Use, distribution, cultivation, production, possession, and transportation of marihuana remains illegal under federal law, and marihuana remains classified as a "controlled substance" by federal law. Nothing in this chapter is intended to promote or condone the production, distribution, or possession of marihuana in violation of any applicable law. Nothing in this chapter is intended to grant immunity from any criminal prosecution under state or federal law. This chapter does not protect patients, caregivers, or the owners of properties on which a marihuana commercial operation is occurring from prosecution or having their property seized by federal law enforcement authorities.

- (2) This chapter is to be construed to protect the public health, safety and welfare over commercial marihuana business interests. The operation of a licensed marihuana business is a revocable privilege and not a right in the City. Nothing in this chapter is to be construed to grant a property right for an individual or business entity to engage, obtain, or have renewed a City-issued permit to engage in the use, distribution, cultivation, production, possession, transportation or sale of marihuana as a commercial enterprise in the City.
- (3) Any individual or business entity which purports to have engaged in the use, distribution, cultivation, production, possession, transportation or sale of marihuana as a commercial enterprise in the City without obtaining the required authorization required by this chapter is deemed to be an illegally established nuisance, and as such is not entitled to legal nonconforming status under this chapter, the City Zoning Code, or state statutory or common law.
- (4) Nothing in this chapter is intended to grant immunity from criminal or civil prosecution, penalty or sanction for the cultivation, manufacture, possession, use, sale, distribution or transport of marihuana in any form, that is not in strict compliance with the Michigan Medical Marihuana Act, the Medical Marihuana Facilities Licensing Act, the Marihuana Tracking Act, the Michigan Regulation and Taxation of Marihuana Act, and all applicable rules promulgated by the State of Michigan regarding the commercialization of marihuana. Strict compliance with all applicable state laws and regulations is deemed a requirement for the issuance or renewal of any permit issued under this chapter, and noncompliance with any applicable state law or regulation is grounds for the revocation or nonrenewal of any permit issued under the terms of this chapter.

C. Indemnification of City.

- (1) By accepting a permit issued pursuant to this chapter, the holder waives and releases the City, its officers, elected officials, and employees from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of marihuana business owners, operators, employees, clients or customers for a violation of state or federal laws, rules or regulations.
- (2) By accepting a permit issued pursuant to this chapter, the holder agrees to indemnify, defend and hold harmless the City, its officers, elected officials, employees, and insurers, against all liability, claims or demands arising on account of any claim of diminution of property value by a property owner whose property is located in proximity to a licensed operating marihuana business, arising out of, claimed to have arisen out of, or in any manner connected with the operation of a marihuana business or any claim based on an alleged injury to business or property by reason of a claimed violation of the federal Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1964(c).

D. Reservation of legislative prerogative.

- (1) The City Commission reserves the right to amend or repeal this chapter in any manner, including, but not limited to the complete prohibition of any type of marihuana business or limiting the number and types of marihuana businesses authorized to operate in the City.

- (2) Nothing in this chapter is to be construed to grant or grandfather any marihuana business a vested right, license, permit or privilege for continued operations within the City.
- (3) Given the adoption of 2018 Initiated Law No. 1, which legalized the possession and use of marihuana in Michigan by persons age 21 and older, Section 199 of the City Charter providing for the establishment of medical cannabis dispensaries, by its own terms, is null and void. Therefore, there is no rational basis to treat or make allowances for treating a medical cannabis dispensary apart from a provisioning center.

§ 20B-3 Definitions.

- A. Unless defined by this chapter, any term used in this chapter that is defined by the Michigan Medical Marihuana Act, the Medical Marihuana Facilities Licensing Act, Michigan Regulation and Taxation of Marihuana Act, or the Administrative Rules promulgated by the Michigan Department of Licensing and Regulatory Affairs addressing marihuana shall have the definition given in those Acts and Rules.
- B. As used in this chapter, the following terms shall have the meanings indicated:

APPLICANT

A person who applies for a City-issued permit to operate a marihuana commercial business in accordance with the terms of this chapter and the City Zoning Code. With respect to disclosures in an application and for purposes of ineligibility for a permit, the term "applicant" includes a managerial employee of the applicant, any person who holds any direct or indirect ownership interest of more than 10% in the marihuana commercial business, and the following for each type of applicant:

- (1) For an individual or sole proprietorship: the proprietor and spouse.
- (2) For a partnership and limited liability partnership: all partners and their spouses. For a limited partnership and limited liability limited partnership: all general and limited partners, not including a limited partner holding a direct or indirect ownership interest of 10% or less and who does not exercise control over or participate in the management of the partnership, and their spouses. For a limited liability company: all members and managers, not including a member holding a direct or indirect ownership interest of 10% or less and who does not exercise control over or participate in the management of the company, and their spouses.
- (3) For a privately held corporation: all corporate officers or persons with equivalent titles and their spouses, all directors and their spouses, and all stockholders, not including those holding a direct or indirect ownership interest of 10% or less, and their spouses.
- (4) For a publicly held corporation: all corporate officers or persons with equivalent titles and their spouses, all directors and their spouses, and all stockholders, not including those holding a direct or indirect ownership interest of 10% or less, and their spouses.
- (5) For a multilevel ownership enterprise: any entity or person that receives or has the right to receive more than 10% of the gross or net profit from the enterprise during any full or partial calendar or fiscal year.
- (6) For a nonprofit corporation: all individuals and entities with membership or shareholder rights in accordance with the articles of incorporation or the bylaws and their spouses.

CULTIVATE

To propagate, breed, grow, harvest, dry, cure, or separate parts of the marihuana plant by manual or mechanical means.

DEPARTMENT

The Michigan Department of Licensing and Regulatory Affairs, or its successor agency.

DESIGNATED CONSUMPTION LOUNGE

A licensed marihuana-related business authorized to permit individuals 21 years of age and older to consume marihuana products on the premises.

EQUIVALENT LICENSE

Any of the following State operating licenses when held by a single licensee:

- (1) Grower licenses of any class under both the MMFLA and MRTMA
- (2) Processor licenses under both the MMFLA and MRTMA
- (3) Secure Transporter licenses under both the MMFLA and MRTMA
- (4) Safety Compliance Facility licenses under both the MMFLA and MRTMA
- (5) A Provisioning Center license under the MMFLA and a Retailer license under the MRTMA

EXCESS GROWER

The holder of 5 Class C Grower licenses under the MRTMA and at least 2 Class C Grower licenses under the MMFLA.

GROWER

A licensee that cultivates, dries, trims, or cures and packages marihuana for sale or transfer to a processor, provisioning center or retailer, or another grower. The term also includes a licensed excess grower.

INDUSTRIAL HEMP

Any part of the plant, whether growing or not, Cannabis sativa L or the genus cannabis with a delta-9 tetrahydrocannabinol concentration that does not exceed 0.3% on a dry-weight basis, or per volume or weight of marihuana-infused product, or the combined percent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant regardless of moisture content. Industrial hemp includes industrial hemp commodities and products and topical or ingestible animal and consumer products with a delta-9-tetrahydrocannabinol concentration of not more than 0.3% on a dry weight basis.

INDUSTRIAL HEMP RESEARCH AND DEVELOPMENT ACT

Public Act 547 of 2014, as may be amended.

LICENSEE

A person holding a state license to operate a marihuana facility or marihuana establishment.

MARIHUANA

All parts of the plant Cannabis sativa L. or of the genus cannabis, growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including marihuana

concentrate and marihuana-infused products. For purposes of this ordinance, marihuana does not include industrial hemp.

MARIHUANA COMMERCIAL BUSINESS or MARIHUANA BUSINESS

- (1) Includes the following medical marihuana facilities, whether operated for profit or not for profit:
 - (a) A grower.
 - (b) A processor.
 - (c) A secure transporter.
 - (d) A provisioning center.
 - (e) A safety compliance facility.

- (2) Includes the following adult-use marihuana establishments, whether operated for profit or not for profit:
 - (a) A grower and excess grower.
 - (b) A processor.
 - (c) A secure transporter.
 - (d) A retailer.
 - (e) A safety compliance facility.
 - (f) A microbusiness.
 - (g) Any other type of marihuana-related business licensed by the Department and permitted by this Chapter.

MARIHUANA ESTABLISHMENT or ESTABLISHMENT

A location at which a licensee is licensed to operate under the MRTMA and this chapter.

MARIHUANA FACILITY or FACILITY

A location at which a licensee is licensed to operate under the MMFLA and this chapter.

MARIHUANA PLANT

Any plant of the species *Cannabis sativa* L. or genus *cannabis* but does not include industrial hemp.

MARIHUANA-INFUSED PRODUCT

A topical formulation, tincture, beverage, edible substance, or similar product containing any usable marihuana and other ingredients that is intended for human consumption in a manner other than smoke inhalation.

MARIHUANA-RELATED BUSINESS

An adult-use marihuana establishment operating pursuant to a special license issued by the Department and includes designated consumption lounges, excess marihuana growers, marihuana event organizers and temporary marihuana events.

MICHIGAN MEDICAL MARIHUANA ACT or MMMA

2008 Initiated Law 1, MCL § 333.26421 *et seq.*, as may be amended.

MICHIGAN MEDICAL MARIHUANA FACILITIES LICENSING ACT or MMFLA

Public Act 281 of 2016, MCL § 333.27101 *et seq.*, as may be amended.

MICHIGAN REGULATION AND TAXATION OF MARIHUANA ACT or MRTMA

2018 Initiated Law 1, MCL § 333.27951 *et seq.*, as may be amended.

MICROBUSINESS

A marihuana establishment authorized to cultivate not more than 150 marihuana plants, process and package marihuana, and sell or transfer marihuana to individuals 21 years of age and older and to a safety compliance facility, but not to other marihuana establishments.

OPERATING PERMIT or PERMIT

The permit issued pursuant to this chapter authorizing the operation of a marihuana commercial business in the City.

PERMITTEE

A person who holds a permit issued by the City pursuant to this chapter to operate a marihuana business.

PERSON

An individual, corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or other legal entity and includes persons within the definition of "applicant" as that term is used in this chapter.

PROCESS OR PROCESSING

The separation or preparation of parts of the marihuana plant and to compound, blend, extract, infuse, or otherwise make or prepare marihuana concentrate or marihuana-infused products.

PROCESSOR

A licensee that purchases or obtains marihuana from a grower and processes the marihuana and sells or transfers it in packaged form to a provisioning center, retailer, or another processor. A processor is not prohibited from handling, processing, marketing or brokering industrial hemp pursuant to the Industrial Hemp Research and Development Act.

PROVISIONING CENTER

A licensee 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 and includes medical cannabis dispensaries. A noncommercial location used by a registered 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 chapter.

REGISTERED PRIMARY CAREGIVER or CAREGIVER

A primary caregiver who has been issued a current registry identification card under the MMMA.

REGISTERED QUALIFYING PATIENT or PATIENT

A qualifying patient who has been issued a current registry identification card under the MMMA or a visiting qualifying patient as that term is defined in the MMMA.

RETAILER

A licensee that obtains marihuana from marihuana establishments and sells or otherwise transfers marihuana to marihuana establishments and to individuals who are 21 years of age or older.

RULES

The general administrative rules promulgated and from time to time amended by the Department to implement the MMFLA and MRTMA.

SAFETY COMPLIANCE FACILITY

A licensee that receives marihuana from a marihuana business or from a registered primary caregiver, tests the marihuana and provides certification of the potency of tetrahydrocannabinol and other cannabinoids, and the presence of contaminants. A safety compliance facility may receive industrial hemp for testing pursuant to the Industrial Hemp Research and Development Act.

SECURE TRANSPORTER

A licensee that stores marihuana and transports marihuana between marihuana businesses for a fee.

SOCIAL EQUITY-QUALIFIED BUSINESS

A marihuana establishment operated by an applicant that qualifies for the benefits offered under the social equity program administered by either the Department or the City.

STATE OPERATING LICENSE or LICENSE

A license that is issued by the Department under the MMFLA or MRTMA that allows the licensee to operate a marihuana commercial business, as specified in the license.

**Article II
Licensing of Marihuana Businesses**

§ 20B-4 Number of permitted businesses.

A. The maximum number of each type of medical marihuana facility permitted in the City is as follows:

Type of Facility	Number
Grower	No limit
Processor	No limit
Secure transporter	No limit
Provisioning center	No limit
Safety compliance facility	

B. The maximum number of each type of adult-use marihuana establishment permitted in the City is as follows:

Type of Establishment	
Grower	No limit
Processor	No limit
Secure transporter	No limit
Retailer	No limit
Microbusiness	No limit
Safety compliance facility	No limit
Marihuana-related businesses	
Designated consumption lounge	No limit
Marihuana Event Organizer	Not presently permitted
Temporary Marihuana Event	Not presently permitted
Excess Grower	No limit

§ 20B-5 License and annual fee required; exception.

- A. No person shall establish or operate a marihuana commercial business in the City without first having obtained a permit from the City and a state operating license for each such marihuana business to be operated. Permit and license certificates shall be kept current and publicly displayed within the business. Failure to maintain or display current state and City certificates is a violation of this chapter.
- B. There shall be an annual nonrefundable fee to defray the administrative and enforcement costs associated with marihuana businesses located in the City of not more than \$5,000 per licensed business as set by resolution adopted by the City Commission.
- C. The annual nonrefundable fee required under this section is due and payable with the application for a permit and upon the application for renewal of any such permit under this chapter. The permit and fee requirements of this chapter apply to all marihuana commercial businesses, whether operated for profit or not for profit.
- D. The permit fee 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 state regulatory agency, or by City ordinance, including, by way of example, any applicable fees for site plan review, zoning review, inspections, or building permits.
- E. The issuance of any permit pursuant to this chapter does not create an exception, defense, or immunity to any person regarding any potential criminal liability the person may have for the production, distribution, or possession of marihuana under federal law.
- F. A separate permit is required for each marihuana business located at a premises from which a marihuana commercial business is operated. Operation of a grower and processor facility at the same location is authorized, provided that each facility is separately licensed and permitted. Operation of a provisioning center and/or retailer at the same location as a grower or processing facility is authorized when in conformance with the City Zoning Code.
- G. This chapter is not applicable to a registered primary caregiver operating a medical marihuana home occupation in accordance with the City Zoning Code.

§ 20B-6 Location criteria.

- A. No marihuana business is eligible to receive a permit unless at the time the application for the marihuana business operating permit is submitted, the location of the proposed business operation complies with the requirements set forth in the City of Kalamazoo Zoning Ordinance as required for the specific type of marihuana commercial business for which the permit is being sought.
- B. Mobile marihuana businesses and drive-through operations are prohibited.
- C. A licensee shall not operate a marihuana business at any place in the City other than the address provided in the application on file with the City Clerk. A permit issued under this chapter may be transferred to a different location upon receiving written approval from the City Clerk. In order to request approval to transfer the location of a permit, the licensee must make a written request to the City Clerk, indicating the current license location and the proposed license location. Upon receiving the written request, the City Clerk will forward a copy of the request to affected service areas and departments of the City to determine whether the proposed location complies with all applicable laws, rules and regulations. No permit transfer will be approved unless the proposed location meets the standards identified in this chapter and the City Zoning Code.

§ 20B-7 General permit application requirements.

- A. A person seeking a permit pursuant to the Medical Marihuana Facilities Licensing Act or the Michigan Regulation and Taxation of Marihuana Act and the provisions of this chapter must submit an application in writing to the City Clerk on forms provided by the City. At the time of application, the application must be accompanied by a nonrefundable application fee to defray the costs incurred by the City for processing of the application. In addition, the applicant shall present a suitable copy of government-issued photographic identification to accompany the application.
- B. The applicant must also provide the following information, under the penalty of perjury, on the City-provided form for the applicant, the proposed manager of the marihuana facility, and all persons who are true parties of interest in the marihuana business that is the subject of the application:
- (1) If the applicant is an individual or sole proprietorship, the proprietor and their spouse, if any, shall provide their name, address, date of birth, business address, business telephone number, email address, social security number, and, if applicable, federal tax identification number;
 - (2) If the applicant is not an individual or sole proprietorship, information regarding the business entity, including, without limitation, the name and address of the entity, website address, (if any), type of business organization, proof of registration with, or a certificate of good standing from the State of Michigan, as applicable, and the names, dates of birth, addresses, email addresses, phone numbers of each applicant, and the federal tax identification number of the business entity;
 - (3) The identity of every person having a 10% or more ownership interest in the applicant with respect to which the license is sought, provided however a social equity-qualified business must be able to demonstrate 51% ownership by qualifying applicants;
 - (4) If the applicant is not the owner of the proposed licensed premises, a notarized statement from the owner of such property authorizing the use of the property for a marihuana business;
 - (5) A copy of any deed reflecting the applicant's ownership of, or lease reflecting the right of the applicant to possess, or an option reflecting the applicant's right to purchase or lease, the proposed licensed premises;
 - (6) A description of the type of the proposed marihuana commercial operation and its physical address;
 - (7) A to-scale diagram of the proposed licensed premises, no larger than 11 inches by 17 inches, showing, without limitation, building floor plan and layout, all entryways, doorways, or passageways, and means of public entry and exits to the proposed licensed premises, loading zones, available on-site parking spaces, fencing at the premises, and all areas in which marihuana will be stored, grown, manufactured or dispensed;
 - (8) A lighting plan showing the lighting outside of the marihuana business for security purposes and compliance with applicable City outdoor lighting requirements;

- (9) A staffing plan which describes the anticipated or actual number of employees, including an estimate of the number and type of jobs that the business is expected to create, the amount and type of compensation (including benefits) expected to be paid for such jobs;
 - (10) An explanation, with supporting factual data, of the economic benefits to the City and the job creation for local residents to be achieved by the facility, including plans for community outreach and worker training programs, through the grant of a marihuana business permit;
 - (11) A statement that no applicant is in default to the City for any property tax, special assessment, utility charges, fines, fees or other financial obligation owed to the City;
 - (12) A statement that the applicant has reviewed and agrees to conform its hiring and public accommodation practices to the City's Antidiscrimination Ordinance provisions;
 - (13) A social equity plan that (a) promotes and encourages participation in the marihuana industry by local residents that have been disproportionately impacted by marihuana prohibition and enforcement and (b) positively impacts local residents;
 - (14) A statement that no applicant is ineligible from holding a State license to operate a marihuana commercial business;
 - (15) Attestation that the applicant consents to inspections, examinations, searches and seizures required or undertaken pursuant to enforcement of this chapter; and
 - (16) Any additional information that the City Clerk or Public Safety Chief reasonably determines to be necessary in connection with the investigation and review of the application.
- C. Upon receipt of a completed application, the City Clerk may circulate the application to all affected service areas and departments of the City to determine whether the application is in full compliance with all applicable laws, rules and regulations.
 - D. If the City Clerk identifies or is informed of a deficiency in an application, the applicant has five business days to correct the deficiency after notification by the City Clerk.

§ 20B-8 Denial of application.

- A. The City Clerk shall reject any application that does not meet the requirements of the MMFLA, the MRTMA, the Rules, or this chapter. The City Clerk shall reject any application that contains any false, misleading or incomplete information.
- B. An applicant whose application is rejected or denied because of missing, incomplete, erroneous, false, or misleading information, or because of a lack of submission of the full amount of the fees due, does not have a right to appeal the decision of the City Clerk whose decision is final.

§ 20B-9 Issuance of provisional approval certificate.

- A. Beginning June 1, 2020, the City Clerk will begin to accept permit applications for City-issued marihuana commercial business permits. A marihuana business whose inspection, background checks, and all other information available to the City verifies that the applicant has submitted a full and complete application, has made or has secured permits for making improvements to the business location consistent with the type of facility applied for, complies with applicable zoning and location requirements, and is prepared to operate the business as set forth in the

application, will be reviewed by the office of the City Clerk for completeness and compliance with the requirements of this chapter.

- B. The City Clerk shall issue a provisional marihuana business approval certificate to each applicant whose application is complete and if the inspection, background checks, and all other information available to the City verify that the applicant complies with applicable zoning and location requirements, and is prepared to operate the business as set forth in the application, and in compliance with the City Code of Ordinances and any other applicable law, rule, or regulation.
- C. A provisional marihuana business approval certificate only means that the applicant has submitted a valid application for a marihuana business operating permit and is eligible to receive the appropriate marihuana business license from the Department. The applicant shall not locate or operate a marihuana business in the City without obtaining a State operating license approved by and issued by the Department. A provisional certificate issued by the City will expire and be void after one year if State approval is not diligently pursued to completion by the applicant, or on the date that State approval is denied by a final order to the applicant, whichever first occurs; provided, however, that due to the deliberateness of the State in issuing operating licenses, provisional certificates issued by the City Clerk prior to June 1, 2020 and which would have otherwise expired after March 24, 2020 will be extended for a period of 91 days due to the issuance of Executive Orders by the Governor suspending activities not necessary to sustain or protect life due to the COVID-19 health crisis. For the purposes of this section, a provisional medical marihuana facility approval certificate issued prior to June 1, 2020 is deemed to be a provisional marihuana business approval certificate.
- D. Within 30 days from the issuance of a provisional marihuana business approval certificate by the City Clerk, the applicant must submit proof to the City Clerk that the applicant has submitted a partial application with the Department for prequalification for a state operating license or has submitted full application for such license. If the applicant fails to submit such proof, then the provisional approval will be canceled by the City Clerk.
- E. If the Department issues a final determination either denying an applicant prequalification for a state operating license or denying a full application for a state operating license, then the provisional approval certificate will be canceled by the City Clerk.
- F. Provisional certificates are not transferable to another person or entity without the submission of an application by the person or entity to whom the certificate is to be transferred and the approval of the City Clerk.

§ 20B-10 Issuance of City marihuana business operating permit.

- A. An applicant holding an unexpired provisional certificate issued pursuant to this chapter and for which a marihuana facility or marihuana establishment state operating license has been issued shall provide proof of same to the City Clerk.
- B. An inspection of the proposed marihuana business by the City is required prior to issuance of the City operating permit. Such inspection shall occur after the premises are ready for operation, but prior to the stocking of the business with any marihuana or marihuana-infused product, and prior to the opening of the business or commencement of operations, unless the applicant holds a State operating license and is seeking a permit for an equivalent license. The inspection is to verify that the business premises are constructed and can be operated in accordance with the application submitted and the applicable requirements of this chapter and any other applicable law, rule, or regulation.

- C. After verification that the business premises are constructed and can be operated in accordance with the application submitted and the applicable requirements of this chapter and any other applicable law, rule, or regulation, and the issuance of a permanent certificate of occupancy for the building, the City Clerk shall issue a City marihuana business operating permit for a term of one year. The City-issued permit must be prominently displayed within the business.
- D. Maintaining a valid state operating license is a condition for the issuance and maintenance of the City marihuana business operating permit issued under this chapter and the continued operation of any marihuana business.
- E. Proof of insurance.
 - (1) A permittee shall at all times maintain full force and effect for duration of the permit, worker's compensation insurance as required by state law, and general liability insurance with minimum limits of \$1,000,000 per occurrence and an aggregate limit of \$2,000,000 issued from a company licensed to do business in Michigan having an AM Best rating of at least B++. A permittee shall provide proof of insurance to the City Clerk in the form of a certificate of insurance evidencing the existence of a valid and effective policy which discloses the limits of each policy, the name of the insurer, the effective date and expiration date of each policy, the policy number, and the names of the additional insureds. The policy shall name the City of Kalamazoo and its officials and employees as additional insureds to the limits required by this section. A permittee or its insurance broker shall notify the City of any cancellation or reduction in coverage within seven days of receipt of insurer's notification to that effect. The permittee shall obtain and submit proof of substitute insurance to the City Clerk within five business days in the event of expiration or cancellation of coverage.
 - (2) A secure transporter must provide proof of no-fault automobile insurance with a company licensed to do business in Michigan with limits of liability not less than \$1,000,000 per occurrence combined single limit for bodily injury and property damage, vehicle registration, and registration as a commercial motor vehicle for all vehicles used to transport marihuana or marihuana-infused product.
 - (3) Any failure to maintain or lapse in the insurance coverage required by this chapter is grounds for revocation of the City-issued operating permit.
- F. A condition of the issuance of a marihuana business operating permit includes, at a minimum, operation of the business in compliance with all the plans and the information provided to the City as part of the application. A permittee must update any change in the information provided to the City as part of the application within five business days of such change during the term of the permit. The failure to timely update a change in information will be grounds for suspension or revocation of the operating permit.

§ 20B-11 Permit forfeiture.

In the event that a marihuana business does not commence and maintain operations within one year of issuance of a City operating permit, the permit will be deemed forfeited; the business may not recommence operations and the permit is not eligible for renewal.

§ 20B-12 Permit renewal.

- A. A valid marihuana business operating permit may be renewed on an annual basis by submission of a renewal application upon a form provided by the City Clerk and payment of the annual license fee set by City Commission resolution. An application to renew a marihuana business

operating permit shall be filed no sooner than 90 days and at least 60 days prior to the date of its expiration. The failure to timely file for renewal is sufficient grounds to deny renewal of a permit to operate a marihuana business in the City and is not subject to appeal.

- B. Prior to the issuance of a renewed marihuana business operating permit by the City, the premises must be inspected to assure that it and its systems comply with the requirements of this chapter.
- C. In determining whether to grant a renewal of a permit, the members of the City's Economic Development Corporation Board will evaluate the permit holder's compliance with the statements it provided with its initial application and submission with its request for renewal of the following information:
 - (1) The staffing plan for the business which describes the actual number of employees, including the number and type of jobs that the facility has created, and the amount and type of compensation (including benefits) paid for such jobs;
 - (2) An explanation, with supporting factual data, of the economic benefits to the City and the job creation for local residents achieved by the business, results of efforts for community outreach and worker training programs;
 - (3) An explanation, with supporting factual data, of the efforts and success achieved by the social equity plan of the business to promote and encourage participation in the marihuana industry by local residents that have been disproportionately impacted by marihuana prohibition and enforcement, and the positive impact of the social equity plan on local residents;
 - (4) A statement that the business is not in default to the City for any property tax, special assessment, utility charges, fines, fees or other financial obligation owed to the City;
 - (5) A statement that the hiring and public accommodation practices of the facility conforms to the City's Antidiscrimination Ordinance provisions;
- D. If a licensee demonstrates compliance with the requirements for renewal of an operating permit, the City Clerk shall renew the existing permit for a period of one year, on the condition that the state operating license for the facility is renewed.

§ 20B-13 Transfer of permit.

- A. A marihuana business permit is valid only for the owner named thereon, the type of business disclosed on the application for the permit, and the location for which the permit is issued.
- B. Each operating permit is exclusive to the permittee and a permittee or any other person must apply for a permit with the City Clerk before a permit is transferred, sold, or purchased. The attempted transfer, sale, or other conveyance of an interest in a permit without prior application for a City operating permit with the City Clerk is grounds for suspension or revocation of the existing permit.

§ 20B-14 Permit as revocable privilege.

An operating permit granted by this chapter is a revocable privilege granted by the City and is not a property right. Granting a permit does not create or vest any right, title, franchise, or other property interest.

§ 20B-15 Nonrenewal, suspension or revocation of permit.

- A. The City may, after notice and hearing, suspend, revoke or refuse to renew a permit for any of the following reasons:
- (1) The permit holder, or his or her agent, manager or employee, has violated, does not meet, or has failed to comply with any of the terms, requirements, conditions or provisions of this chapter or with any applicable state or local law or regulation;
 - (2) The permit holder, or its agent, manager or employee, has failed to comply with any special terms or conditions of its license pursuant to an order of the state or local licensing authority, including those terms and conditions that were established at the time of issuance of the license and those imposed as a result of any disciplinary proceedings held subsequent to the date of issuance of the license;
 - (3) The Economic Development Corporation Board determined that the permit holder did not meet or failed to comply with one or more of the requirements set forth at § 20B-12C.
 - (4) The marihuana commercial business has been operated in a manner that adversely affects the local public health, safety or welfare; or
 - (5) The permit holder failed to timely submit all necessary documents and or fees to renew the City-issued permit or state operating license.
- B. Evidence to support a finding under this section may include, without limitation, a continuing pattern of conduct, a continuing pattern of drug-related criminal conduct within the premises of the marihuana business or in the immediate area surrounding such business, a continuing pattern of criminal conduct directly related to or arising from the operation of the marihuana business, or an ongoing nuisance condition emanating from or caused by the marihuana business. Criminal conduct is limited to the violation of a state law or regulation or City ordinance.
- C. Except as otherwise provided in this chapter, the Planning Commission shall hear and decide questions that arise in the administration of this chapter, including appeals of suspension and revocations of City operating permits. The concurring vote of a majority of the members of the Planning Commission is necessary to reverse an order, requirement, decision, or determination of an administrative official in the application of this chapter. The decision of the Planning Commission is final. This section is not to be construed to grant the Planning Commission authority to hear any matter that is within the powers and duties of the Zoning Board of Appeals.

Article III

Specific Marihuana Business Requirements

§ 20B-16 Grower classes.

A grower may not hold more than one class of grower state operating license. A grower may hold more than one Class C grower license at a single location. A qualifying grower may hold an excess grower license.

§ 20B-17 Separation of licensed premises.

A grower, processor, and retailer or an equivalent license in the same location are separate marihuana commercial businesses requiring separate licenses and separate permits. In addition to all other application requirements for separate businesses, each business, if sharing a building or structure, shall

be distinctly partitioned from each other from floor to roof, have separate operations, ventilation, security and fire suppression systems, and separate entrances and exits.

§ 20B-18 Secure transporter.

- A. A secure transporter which operates from a premises located within the City shall secure a permit from the City. A state-licensed secure transporter which does not have a facility located in the City may, without securing a license from the City, operate on public streets and highways within the City.
- B. A driver transporting marihuana or marihuana-infused products must possess a valid operator's license issued by the state.
- C. Each vehicle engaged in the transportation of marihuana or marihuana-infused products must always be operated by a two-person crew with at least one individual remaining with the vehicle.
- D. A secure transporting vehicle must not bear any markings or any other indication that it is carrying marihuana or marihuana-infused products.

§ 20B-19 Provisioning centers and retailers.

- A. The licensee, manager, operator and employees of a provisioning center or retailer shall strictly comply with all rules addressing security (including but not limited to an operating video surveillance system), storage of marihuana and marihuana-infused products to prevent direct customer access and use of a separate room as a point of sale area.
- B. It is unlawful for the licensee, manager, operator or employees of a provisioning center or retailer to:
 - (1) Permit the sale, consumption, or use of alcohol beverages or tobacco products on the licensed premises or engage in food service on the licensed premises (As used in this paragraph, "food service" means the preparation of food or drink for direct consumption by members of the public through service on the premises.);
 - (2) Sell, give, dispense or otherwise distribute marihuana, marihuana-infused products, or marihuana paraphernalia from any outdoor location on the licensed premises;
 - (3) Offer or distribute samples of marihuana or marihuana-infused products to a consumer free of charge.
 - (4) Permit the use or consumption of marihuana or marihuana-infused products on the licensed premises.
 - (5) Operate a licensed provisioning center or retailer at any time other than between the hours of 7:00 a.m. and 10:00 p.m. daily.
 - (6) Keep or grow marihuana plants within the provisioning center or retailer.
- C. Registered patients and registered primary caregivers with valid registry cards and persons 21 years of age and older are permitted in a dedicated point of sale area; a separate waiting area may be created for visitors not authorized to enter the marihuana business. Provisioning centers and retailers shall be wheelchair accessible, and disability accommodations shall be provided upon request.

- D. Provisioning centers and retailers may engage in the home delivery of marihuana and marihuana-infused products in strict compliance with Department-approved procedures and rules.
- E. Provisioning centers and retailers shall prominently display a sign near the point of sale area which carries the following warning:

WARNING: Marihuana use by pregnant or breastfeeding women, or by women planning to become pregnant, may result in fetal injury, preterm birth, low birth weight, or developmental problems for the child.

§ 20B-20 Other Marihuana-Related Businesses

- A. A microbusiness is subject to all applicable provisions in this chapter related to growers, processors, and retailers.
- B. A designated consumption lounge shall:
 - (1) Install and maintain an operable ventilation and filtration system to remove smoke to the outside of the building and eliminate odor at the property line of the premises if consumption of marihuana by inhalation is permitted;
 - (2) Prominently display a sign near the entrance of the business which carries the following warning:

WARNING: Marihuana use by pregnant or breastfeeding women, or by women planning to become pregnant, may result in fetal injury, preterm birth, low birth weight, or developmental problems for the child.

**Article IV
General Requirements**

§ 20B-21 Compliance with rules; inspections.

- A. A permittee shall strictly comply with the rules that may from time to time be promulgated by the Department.
- B. All marihuana commercial business shall obtain all other required permits or licenses related to the operation of the marihuana business, including, without limitation, any development approvals or building permits required by any applicable code or ordinance.
- C. Any failure by a permittee to comply with Department rules or the provisions of this chapter is a violation of this chapter, and any infraction or violation, however slight, is sufficient grounds for suspension and revocation of the permit issued under this chapter.

§ 20B-22 Signage and advertising.

- A. All signage and advertising for a marihuana business shall comply with all applicable provisions of this Code and the City Zoning Code. In addition, it shall be unlawful for any licensee to:
 - (1) Use advertising material that is misleading, deceptive or false or

- (2) As evidenced by the content of the advertising material or by the medium or the manner by which the advertising material is disseminated, is designed to appeal to individuals aged 20 or younger;
- B. Only one sign per street frontage, which complies with the size restrictions set forth in the City Zoning Code, is permitted for a provisioning center, retailer, microbusiness, or safety compliance center. Neon or gas-lighted, and flashing signs are prohibited.

§ 20B-23 Security requirements.

- A. Security measures at all licensed premises must comply with the requirements of all applicable rules and regulations promulgated by the Department.
- B. Prior to commencing operations, a description of the security plan for the business must be submitted to the Department of Public Safety. The security plan shall include details of the video surveillance system to be employed at the business and procedures that meet or exceed applicable state rules addressing security.
- C. The security system is required to be maintained in good working order and provide continuous twenty-four-hour-per-day recorded coverage. A separate security system is required for each business.

§ 20B-24 Fire suppression; hazardous materials.

- A. A marihuana business is required to install a fire suppression system and fire alarm system for the premises which meets the requirements imposed by applicable law, rule, or regulation. Unless a higher standard is required by applicable law or regulation, there must be a minimum of a one-hour fire separation between a marihuana business and any adjacent business.
- B. A description of all toxic, flammable, or other materials, including all chemical compounds and pesticides used for cultivation, processing or testing of marihuana that will be used or kept at the premises, specifying the location of such materials on the premises, and how such materials will be stored and disposed of shall be filed with the Fire Marshal prior to the marihuana business commencing operations.

§ 20B-25 Waste management.

- A. A marihuana business is required to institute and employ waste management protocols and practices that comply with applicable rules and regulations that includes a plan for disposal of any marihuana or marihuana-infused product that is not sold, and any portion of a plant or the residue from any grow, production or testing process that precludes any portion being disposed of from being possessed or ingested by any person or animal.
- B. If determined as being necessary by the Director of Public Services, wastewater generated from the cultivation or processing of marihuana or marihuana-infused products may require pretreatment before introduction in the City wastewater system.

§ 20B-26 Visibility of activities.

- A. All activities of marihuana commercial operations shall be conducted indoors and out of public view, except cultivation may occur in an outdoor area, provided that the area is contiguous with the building containing the marihuana business operations, fully enclosed by fences or barriers that block outside visibility of the marihuana plants from public view, with no marihuana plants growing above the height of the fence or barrier and the fences are secured and only accessible to authorized persons and emergency personnel.

- B. No marihuana, marihuana-infused product, or paraphernalia shall be displayed or kept in a business so as to be visible from outside the licensed premises.

§ 20B-27 Odor control.

- A. Growers, processors, and safety compliance facilities are required to install and maintain in operable condition an appropriate exhaust ventilation system which precludes the emission of detectable marihuana odor resulting from any grow or production process or operations from the premises. Exhaust and ventilation equipment must be installed, operated, and maintained in compliance with the Michigan Mechanical Code, R.408.30901 et seq.
- B. No marihuana business shall permit the emission of marihuana odor resulting in detectable odors that leave the business premises upon which they originated and interfere with the reasonable and comfortable use and enjoyment of another's property.
- C. Whether a marihuana odor emission interferes with the reasonable and comfortable use and enjoyment of a property shall be measured against the objective standards of a reasonable person of normal sensitivity.

§ 20B-28 Reports of crime.

Reports of all criminal activities or attempts of violation of any law at the marihuana business or related thereto shall be reported to the Kalamazoo Department of Public Safety within 24 hours of occurrence, or its discovery, whichever is sooner. The failure to timely report criminal activity is a violation of this chapter and may result in sanctions up to and including the suspension, revocation or nonrenewal of the business' City operating permit.

§ 20B-29 Inspection of licensed premises.

- A. During all business hours and other times when the premises are occupied by the licensee or an employee or agent of the licensee, all licensed premises shall be subject to examination and inspection by the Department of Public Safety and all other City departments for the purpose of investigating and determining compliance with the provisions of this chapter and any other applicable state and local laws or regulations.
- B. Consent to inspection. Application for a marihuana business permit or operation of a marihuana business, or leasing property to a marihuana business constitutes consent by the applicant, and all owners, managers, and employees of the business, and the owner of the property to permit the City Manager or the designee thereof to conduct routine examinations and inspections of the medical marihuana business to ensure compliance with this chapter or any other applicable law, rule, or regulation. For purposes of this chapter, examinations and inspections of marihuana businesses and recordings from security cameras in such businesses are part of the routine policy of enforcement of this chapter for the purpose of protecting the public safety, individuals operating and using the services of the marihuana business, and the adjoining properties and neighborhood.
- C. Application for a marihuana business permit constitutes consent to the examination and inspection of the business as a public premises without a search warrant, and consent to seizure of any surveillance records, camera recordings, reports, or other materials required as a condition of a marihuana business permit without a search warrant.
- D. A licensee, or an employee or agent of the licensee, shall not threaten, hinder or obstruct a law enforcement officer or a City inspector or investigator in the course of making an examination or inspection of the licensed premises and shall not refuse, fail, or neglect to cooperate with a law enforcement officer, inspector, or investigator in the performance of his or her duties to enforce this chapter, the MMFLA, MRTMA, or applicable state administrative rules.

§ 20B-30 Other laws remain applicable.

To the extent the state adopts in the future any additional or stricter law or regulation governing the sale or distribution of marihuana, the additional or stricter regulation shall control the establishment or operation of any marihuana commercial business in the City. Compliance with any applicable state law or regulation shall be deemed an additional requirement for issuance or denial of any permit under this chapter, and noncompliance with any applicable state law or regulation shall be grounds for revocation or suspension of any permit issued hereunder.

§ 20B-31 Grant of administrative authority.

The City Clerk is granted the power and duty to fully and effectively implement and administer the permit application process and issuance of provisional approval certificates and operating permits issued by the City under this chapter. The City Clerk, after consultation with other City departments, shall promulgate such rules as necessary to implement and administer this chapter.

§ 20B-32 Violations and penalties.

- A. Any person, including, but not limited to, any licensee, manager or employee of a marihuana commercial operation, or any customer of such business, who violates any of the provisions of this chapter shall be responsible for a municipal civil infraction punishable by a civil fine of \$500, plus court-imposed costs and any other relief that may be imposed by the court.
- B. In addition to any civil fine imposed for a municipal civil infraction violation, a violation of this chapter shall also be sufficient grounds for the suspension, revocation or nonrenewal of the City operating permit.
- C. In addition to the possible denial, suspension, revocation or nonrenewal of the permit issued under the provisions of this chapter, the City Attorney is authorized to seek such other relief that may be available and provided by law or equity, including filing a public nuisance action or seeking injunctive relief against a person alleged to be in violation of this chapter or the City Zoning Code.

Section 2. Repealer.

Chapter 20C “Adult Use Marihuana Establishments” is repealed.

Section 3. Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, said portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

Section 4. Effective Date.

Pursuant to Section 13(a) of the City Charter, this ordinance shall take effect from and after 10 days from the date of its passage.

CERTIFICATE

The foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Kalamazoo at a regular meeting held on May 18, 2020. Public notice was given and the meeting was conducted in full compliance with the Open Meetings Act, (PA 267,1976) as temporarily modified by Governor Whitmer's Executive Order No. 2020-48 (COVID-19). Minutes of the meeting will be available as required by the Act, and the ordinance was duly recorded, posted and authenticated by the Mayor and City Clerk as required by the Charter of said City.

David F. Anderson, Mayor

Scott A. Borling, City Clerk