

**CITY OF KALAMAZOO, MICHIGAN**

**ORDINANCE NO. 2007**

**AN ORDINANCE TO ADDRESS THE ZONING OF MARIHUANA BUSINESSES BY AMENDING CHAPTER 50 “ZONING ORDINANCE” AND REPEALING PORTIONS OF APPENDIX A OF THE CITY CODE OF ORDINANCES**

**THE CITY OF KALAMAZOO ORDAINS:**

**Section 1. Chapter 50, Section 50-1.3 Definitions,** is amended to add the following terms:

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

EQUIVALENT LICENSE. Any of the following when held by a single licensee:

- (1) grower license of any class under both the MRTMA and MMFLA;
- (2) processor licenses under both the MRTMA and MMFLA;
- (3) secure transporter licenses under both the MRTMA and MMFLA;
- (4) safety compliance facility licenses under both the MRTMA and MMFLA; and
- (5) a retailer license under the MRTMA and a provisioning center license under the MMFLA

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.

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:

- (1) the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from those stalks, fiber, oil, or cake, or any sterilized seed of the plant that is incapable of germination;
- (2) industrial hemp; or
- (3) any other ingredient combined with marihuana to prepare topical or oral administrations, food, drink, or other products.

**MARIHUANA ESTABLISHMENT, ADULT USE.** An adult use marihuana commercial business operation licensed pursuant to the MRTMA and permitted to operate by City ordinance.

**MARIHUANA FACILITY, MEDICAL.** A medical marihuana commercial business operation licensed pursuant to the MMFLA and permitted to operate by City ordinance.

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

**MMFLA.** The acronym for the Medical Marihuana Facilities Licensing Act, Public Act 281 of 2016, MCL 333.27101 et seq.

**MRTMA.** The acronym for the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, MCL 333.27051 et seq.

**PLAYGROUND** means any outdoor facility (including any parking lot appurtenant thereto) intended for recreation, open to the public, and with any portion thereof containing three or more separate apparatus intended for the recreation of children including, but not limited to, sliding boards, swingsets, and teeterboards.

**PROCESS or PROCESSING.** The activity to separate or otherwise prepare parts of the marihuana plant and to compound, blend, extract, infuse, or otherwise make or prepare marihuana concentrate or marihuana-infused products.

**YOUTH CENTER** means any recreational facility and/or gymnasium (including any parking lot appurtenant thereto), intended primarily for use by persons under 18 years of age, which regularly provides athletic, civic, or cultural activities.”

**Section 2. Chapter 50, Section 50-4.4 Use Definition and Standards,** is amended to add the following text:

“E. **Adult-Use Marihuana.** A category of uses permitting adult use establishments licensed pursuant to the MRTMA and Chapter 20B of the City ordinances.

(1) **General Provisions.** The following apply to all adult use marihuana establishments, unless otherwise noted.

(a) **General Requirements.**

[1] All location criteria and required separation distances apply to both new marihuana establishments and to any proposed change in the location of an existing marihuana establishment.

- [2] All location criteria and required separation distances apply to both marihuana establishments and similar protected uses located in adjacent governmental jurisdictions.
  - [3] A marihuana establishment is prohibited from operating in any residential zoning district or in a residential unit.
  - [4] A licensee may not operate a marihuana establishment at any place in the City other than the address provided in the application on file with the City Clerk.
  - [5] A licensee must operate the licensed establishment in compliance with all applicable State and City regulations for that type of establishment.
- (b) Location Criteria. All marihuana establishment types must meet the following location criteria, except Safety Compliance Operations:
- [1] Required Distance.
    - [a] A marihuana establishment must not operate within one thousand (1,000) feet of a pre-existing private or public school, providing education in kindergarten or any grades 1 through 12.
    - [b] A marihuana establishment must not operate within five hundred (500) feet of a pre-existing State-licensed childcare center, public playground, public pool, or youth center.
  - [2] Measuring the Required Distance. The required distance is measured in a straight line from the nearest property line of a protected use to the nearest portion of the building or unit in which the marihuana establishment is located.
- (c) Shared Location. Marihuana establishments may operate from a location shared with an equivalent licensed marihuana facility.
- (2) Grower Establishments. Growers are licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments. The three (3) grower license types are Class A (authorized to grow up to 100 plants); Class B (authorized to grow up to 500 plants); and Class C (authorized to grow up to 2000 plants). An Excess Grower holds five (5) Class C Adult Use Marihuana Grower & at least two (2) Class C Medical Marihuana Grower licenses. In the zoning districts where a Grower Establishment is Permitted with Development Standards, the following standards apply.

- (a) Class A Grower Establishments are permitted as follows:
  - [1] In Zones Community Commercial (CC), Limited Manufacturing (M-1), and General Manufacturing (M-2).
  - [2] In Zone CC, all grow operations must be conducted within an enclosed building.
- (b) Class B and Class C Grower Establishments are permitted in Zones Limited Manufacturing (M-1), and General Manufacturing (M-2).
- (c) Excess Grower Establishments are permitted in Zone General Manufacturing (M-2).
- (d) Permitted Outdoor Activities. All Grower facilities and operations must be within an enclosed building, except cultivation may occur in an outdoor area under the following conditions.
  - [1] Area is contiguous with the facility building.
  - [2] Area is fully enclosed by fences or barriers that block outside visibility of the marihuana plants from public view.
  - [3] Marihuana plants cannot grow above the height of the fence or barrier.
  - [4] The fence is secured and only accessible to authorized persons and emergency personnel.
  - [5] Area is located at least five hundred (500) feet from a residential zone district.
- (3) Processor Establishments. Processors are licensed to obtain marihuana from marihuana establishments; process and package marihuana; and sell or otherwise transfer marihuana to marihuana establishments. In the zoning districts where a Processor Establishment is Permitted with Development Standards, the following standards apply:
  - (a) Permitted in Limited Manufacturing (M-1), and General Manufacturing (M-2).
  - (b) All processing operations must be conducted within an enclosed building.
- (4) Safety Compliance Operations Establishment. Safety Compliance Establishments are licensed to test marihuana, including certification for potency and the presence of contaminants. Safety Compliance Operations are permitted in in Zones Community Commercial (CC), Live Work 1 (LW-1), Live Work 2 (LW-2),

Business Technology, and Research (BTR), Limited Manufacturing (M-1), and General Manufacturing (M-2).

- (5) Secure Transporter Establishment. Secure Transporter Establishments are licensed to obtain marihuana from marihuana establishments in order to transport marihuana to marihuana establishments. In the zoning districts where Secure Transporter Establishment is Permitted with Development Standards, the following standards apply:
  - (a) Permitted in Zones Community Commercial (CC), Limited Manufacturing (M-1), and General Manufacturing (M-2).
  - (b) In Zone CC warehousing activity is only permitted as an accessory use to the principal permitted Secure Transporter use.
  
- (6) Retailer Establishment. Retailer Establishments are licensed to obtain marihuana from marihuana establishments and to sell or otherwise transfer marihuana to marihuana establishments and to individuals who are 21 years of age or older. In the zoning districts where a Retailer Establishment is Permitted with Development Standards, the following standards apply:
  - (a) Permitted in Zones Live Work 1 (LW-1) when located on a SubUrban, Connector, or Main Street, and Community Commercial (CC).
  - (b) Permitted in Zones Limited Manufacturing (M-1) and General Manufacturing (M-2) when operated as part of a single establishment engaged in Grower and Processor operations.
  - (c) All Retailer activities must be conducted within an enclosed building.
  - (d) A Retailer is not permitted on the same property or parcel or within the same building where any of the following are located:
    - [1] A package liquor store.
    - [2] A convenience store that sells alcoholic beverages.
    - [3] A fueling station that sells alcoholic beverages.
  - (e) A separation distance of one thousand (1000) feet is required from any other Retailer or Provisioning Center with the following exceptions.
    - [1] A separation distance of five hundred (500) feet is permitted when an applicant or a group of applicant-owners with 51% or more ownership in the Retailer Establishment is one of the following

- [a] A City of Kalamazoo resident living within Census Tracts 1, 2.02, 3, 9, and 10 for the past three (3) years
- [b] A City of Kalamazoo resident with a marihuana conviction that does not involve distribution of a controlled substance to a minor.

[2] A location shared with a licensed Provisioning Center

- (f) A Retailer is not allowed within six hundred sixty (660) feet of the following intersections: E. Cork St. and S. Burdick St., the intersection of E. Cork St. and Portage St., and the intersection of W. Ransom St. and N. Westnedge Ave.

(7) Microbusiness Establishment. Microbusiness Establishments are licensed to cultivate not more than one hundred and fifty (150) marihuana plants; process and package marihuana; and sell or otherwise transfer marihuana to individuals who are 21 years of age or older or to a marihuana safety compliance establishment, but not to other marihuana establishments. In the zoning districts where a Microbusiness Establishment is Permitted with Development Standards, the following standards apply:

- (a) Permitted in Zones Community Commercial (CC), Live Work 2 (LW-2), Limited Manufacturing (M-1), and General Manufacturing (M-2).

(b) In Zones CC and LW-2 the following requirements apply:

- [1] All business activities must be conducted within an enclosed building.
- [2] The use of any substances with a flashpoint below one hundred (100) degrees Fahrenheit for processing is prohibited.

(c) A separation distance of five hundred (500) feet is required from another Microbusiness Establishment with the following exceptions:

[1] A separation distance of two hundred and fifty (250) feet is permitted when an applicant or a group of applicant-owners with 51% or more ownership in the Microbusiness Establishment is one of the following.

- [a] A City of Kalamazoo resident living within Census Tracts 1, 2.02, 3, 9, and 10 for the past three (3) years.
- [b] A City of Kalamazoo resident with a marihuana conviction that does not involve distribution of a controlled substance to a minor.

[2] No separation distance is required within Zones Limited Manufacturing (M-1) or General Manufacturing (M-2).

(8) Designated Consumption Establishment. A designated Consumption Establishment is a commercial space that is licensed for the consumption of marihuana products by persons 21 and older. Designated Consumption Establishments are permitted in Zone Community Commercial (CC).

F. Medical Marihuana. A category of uses permitting medical marihuana facilities licensed to operate pursuant to the MMFLA and Chapter 20B of the City ordinances.

(1) General Provisions. The following apply to all medical marihuana facilities, unless otherwise noted.

(a) General Requirements.

[1] All location criteria and required separation distances apply to both new medical marihuana facilities and to any proposed change in the location of an existing medical marihuana facility.

[2] All location criteria and required separation distances apply to both medical marihuana facilities and similar protected uses located in adjacent governmental jurisdictions.

[3] A medical marihuana facility must not operate in any residential zoning district or in a residential unit.

(b) Location Criteria. All marihuana facility types must meet the following location criteria from protected uses, except Safety Compliance Facilities.

[1] Required Distance.

[a] A marihuana facility must not operate within one thousand (1,000) feet of the following:

i.) A pre-existing private or public preschool, elementary, secondary, vocational or trade school, college or university.

ii.) A public library.

iii.) A housing facility owned by a public housing authority.

[b] A marihuana facility must not operate within five hundred (500) feet of the following.

i.) A state-licensed childcare center.

ii.) Religious assembly.

iii.) A public pool, recreation facility, park or playground.

iv.) A public or private youth center.

v.) A transitional residence, correctional facility or substance abuse rehabilitation or treatment center.

- [2] Measuring the Required Distance. The required distance is measured in a straight line from the nearest property line of a protected use to the nearest portion of the building or unit in which the marihuana facility is located.
- (c) Shared Location. Marihuana facilities may operate from a location shared with an equivalent licensed marihuana establishment.
- (2) Grower Facility. 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. The three (3) grower license types are Class A (authorized to grow up to 500 plants); Class B (authorized to grow up to 1,000 plants); and Class C (authorized to grow up to 1,500 plants). In the Districts where Grower Facility is Permitted with Development Standards, the following standards apply.
  - (a) Grower Facilities are permitted in Limited Manufacturing (M-1) and General Manufacturing (M-2).
  - (b) Permitted Outdoor Activities. All Grower facilities and operations must be within an enclosed building, except cultivation may occur in an outdoor area under the following conditions.
    - [1] Area is contiguous with the facility building.
    - [2] Area is fully enclosed by fences or barriers that block outside visibility of the marihuana plants from public view.
    - [3] Marihuana plants cannot grow above the height of the fence or barrier.
    - [4] The fence is secured and only accessible to authorized persons and emergency personnel.
    - [5] Area is located at least five hundred (500) feet from a residential zone district.
  - (c) Multiple Facilities on a Lot. The following applies for multiple facilities on one lot.
    - [1] Except as permitted by State regulatory rules for Class C growers, only one (1) Medical Marihuana Grower facility license is allowed per parcel or lot.
    - [2] Licensees may occupy the same premises if holding separate Grower and Processor licenses for the premises.

- (3) Processor Facility. A licensee that is a commercial entity located in this state that purchases marihuana from a grower and that extracts resin from the marihuana or creates a marihuana-infused product for sale and transfer in packaged form to a provisioning center. In the Districts where Processor Facility is Permitted with Development Standards, the following standards apply.
  - (a) Processor Facility is permitted in Limited Manufacturing (M-1) and General Manufacturing (M-2)
  - (b) Only one Medical Marihuana Processor facility license permitted per parcel or lot
  - (c) All Processing operations must be conducted within an enclosed building
  - (d) Licensees may occupy the same premises if holding a separate Grower and Processor licenses for the premises.
- (4) Secure Transporter Facilities. A licensee that is a commercial entity located in this state that stores marihuana and transports marihuana between marihuana facilities for a fee. In the Districts where Secure Transporter Facility is Permitted with Development Standards, the following standards apply.
  - (a) Secure Transporter Facility is permitted in Community Commercial (CC), Limited Manufacturing (M-1), and General Manufacturing (M-2).
  - (b) In Zone CC, warehousing activity is only permitted as an accessory use to the principal permitted Secure Transporter use.
- (5) Safety Compliance Facility. 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. Safety Compliance Facility is permitted in Community Commercial (CC), Live Work 1 (LW-1), Live Work 2 (LW-2), Business Technology, and Research (BTR), Limited Manufacturing (M-1), and General Manufacturing (M-2).
- (6) Provisioning Center. A licensee that is a commercial entity located in this state that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualifying patients, directly or through the patients' registered primary caregivers. Provisioning Center includes any commercial property where marihuana is sold at retail to registered qualifying patients or registered primary caregivers. A noncommercial location used by a primary caregiver to assist a qualifying patient connected to the caregiver in accordance with the Michigan Medical Marihuana Act, MCL 333.26421 et seq., is not a provisioning center for purposes of this article. In the Districts where Provisioning

Center Facility is Permitted with Development Standards, the following standards apply.

- (a) Provisioning Center Facility is permitted in the Community Commercial District.
- (b) Only one Provisioning Center license is permitted per parcel or lot.
- (c) All Provision Center activities must be conducted within an enclosed building.
- (d) A Provisioning Center is not allowed within six hundred sixty (660) feet of the following intersection: E. Cork St. and S. Burdick St., the intersection of E. Cork St. and Portage St., and the intersection of W. Ransom St. and N. Westnedge Ave.
- (e) A separation distance of one thousand (1000) feet is required from any other Provisioning Center or Retailer, except when operating from a shared location.
- (f) A Provisioning Center is not permitted on the same property or parcel or within the same building where any of the following are located:
  - [1] A package liquor store.
  - [2] A convenience store that sells alcoholic beverages.
  - [3] A fueling station that sells alcoholic beverages.
- (g) The sale, consumption, or serving of food to visitors is prohibited on Provisioning Center premises.”

**Section 3.** Use Table 4.1-1 in Chapter 50 is amended to reflect:

**Section 4. Chapter 50, Section 50.4-5 Accessory Uses and Structures,** Subsection C. Use Definition and Standards, paragraph (5)(k) addressing Medical Marihuana as a Home Occupation, is amended to read:

“(k) Medical Marihuana. Medical Marihuana is a permitted home occupation when a primary caregiver who has agreed and is registered with the State of Michigan to assist with a qualifying patient’s use of medical marihuana. In the districts where medical marihuana is Permitted with Development Standards, the following standards apply:

- [1] Michigan Medical Marihuana Act Compliance. The medical use of marihuana and marihuana-infused products shall comply at all times and in all circumstances with the Michigan Medical Marihuana Act, 2008 Initiated Law #1, MCL 333.26421 et seq. (“Act”) and the Administrative Rules promulgated by the State of Michigan

(“Administrative Rules”) pursuant to the Act, as they may be amended from time to time.

- [2] Location Criteria. Medical Marihuana as a home occupation must comply with the following location criteria.
  - [a] A primary caregiver must be located 1000’ from an existing public or private elementary, vocational, or secondary school; public or private college, junior college, or university; playground; housing facility owned by a public housing authority; or public library or private library open to the public.
  - [b] A primary caregiver must be 100’ from an existing public or private youth center, public swimming pool, or video arcade facility to ensure community compliance with State and Federal “Drug-Free School Zone” requirements.
- [3] Number of Caregivers. One primary caregiver is permitted within a dwelling unit to service qualifying patients, who do not reside with the primary caregiver.
- [4] Number of Patients Permitted. A primary caregiver is permitted up to five qualifying patients.
- [5] Consent of the Property Owner. If the primary caregiver is not the owner of the property in which they live and operate from, written consent must be obtained from the property owner to ensure the owner’s knowledge of the use of the premises as permitted and the primary caregiver shall maintain written proof that the use of the property as a home occupation under this section is not prohibited by the property owner.
- [6] Growing. All medical marihuana plants shall be secured in one of the following ways.
  - [a] Contained within a structure that is an enclosed, locked facility inaccessible on all sides and equipped with locks or other security devices that permit access only by the primary caregiver or qualifying patient.
  - [b] Plants cultivated outdoors must be fully enclosed by fences or barriers that blocks the plants from public view, with no plants visibly growing above the fence or barrier, and the fence or barrier is locked or otherwise secured to limit access only to the primary caregiver or qualifying patient engaged in cultivating the plants.
- [7] Processing. The separation of plant resin from a marihuana plant using any substances with a flashpoint below one hundred (100) degrees Fahrenheit for processing is prohibited.
- [8] Lighting. If a room with windows is utilized as a marihuana-growing location, any lighting methods that exceed usual residential use between the hours of 11:00 p.m. and 6:00 a.m. shall employ shielding methods, without alteration to the exterior of

the residence, to prevent ambient light spillage that causes or creates a distraction or nuisance to adjacent residential properties

- [9] Required Permits. All necessary building, electrical, plumbing and mechanical permits shall be obtained for any portion of the residential structure in which electrical wiring lighting, and/or watering devices are located, installed or modified that support the cultivation, growing or harvesting of marihuana.
- [10] Nothing in this subsection, or in any companion regulatory provision adopted in any other provision of this Code, is intended to grant, nor shall they be construed as granting, immunity from criminal prosecution for growing, sale, consumption, use, distribution, or possession of marihuana not in strict compliance with that Act and the Administrative Rules and this subsection. Also, since federal law is not affected by that Act or the Administrative Rules, nothing in this chapter, or in any companion regulatory provision adopted in any other provision of this Code, is intended to grant, nor shall they be construed as granting, immunity from criminal prosecution under federal law. Neither this ordinance nor the Michigan Medical Marihuana Act protects users, caregivers or the owners of properties on which the medical use of marihuana is occurring from federal prosecution, or from having their property seized by federal authorities under the Federal Controlled Substances Act.”

**Section 5.** Section 4.2 AA “Marihuana Facilities” in Appendix A “Zoning Ordinance” is repealed.

**Section 6.** Section 4.3 G (16) in Appendix A “Zoning Ordinance” addressing Medical Marihuana as a Home Occupation is repealed.

**Section 7.** Use Table (Attachment 3) in Appendix A “Zoning Ordinance” is amended by the deletion of those entries addressing “Medical Marihuana Facilities”

**Section 8. Repealer.**

All former ordinances or parts of ordinances conflicting or inconsistent with the provisions of this ordinance are repealed.

**Section 9. 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 10. 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 a resolution 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, being Act 267, Public Acts of Michigan, 1976, as temporarily modified by Governor Whitmer's Executive Order No. 2020-75 (COVID-19). Minutes of the meeting will be available as required by said Act.

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David F. Anderson, Mayor

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Scott A. Borling, City Clerk