

ORDINANCE NO. 2017-19 (as amended 2/19/18)

AN ORDINANCE TO AMEND CHAPTER 30, OF BAY CITY CODE OF ORDINANCES THE CITY OF BAY CITY ORDAINS:

Section 1. The Code of Ordinances of the City of Bay City, Chapter 30, is amended by the addition of Article XV, Medical Marihuana, Facilities to read as follows:

Division I. General Provisions

Sec. 30-501. Purpose and Intent.

(a) The purpose of this Article is to implement the provisions of the Michigan Medical Marihuana Facilities Licensing Act, so as to protect the public health, safety, and welfare of the residents and patients of the City by setting forth the manner in which medical marihuana facilities can be operated in the City. Further, the purpose of this Article is to:

- (1) Provide for a means of cultivation, processing, and distribution of marihuana to patients who qualify to obtain, possess, and use marihuana for medical purposes under 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.);
 - (2) Protect public health and safety through reasonable limitations on marihuana commercial entity operations as they relate to noise, air and water quality, neighborhood and patient safety, security for the facility and its personnel, and other health and safety concerns;
 - (3) Protect residential neighborhoods by limiting the location and the concentration of types of marihuana commercial entities to specific areas of the City;
 - (4) Impose fees to defray and recover the cost to the City of the administrative and enforcement costs associated with medical marihuana facilities;
 - (5) Coordinate with laws and regulations that may be enacted by the State addressing medical marihuana; and
 - (6) To restrict the issuance of medical marihuana facility licenses only to individuals and entities that have demonstrated an intent and ability to comply with this Article without monitoring by City officials.
- (b) This Article authorizes the establishment of medical marihuana facilities within

the City of Bay City consistent with the provisions of the Michigan Medical Marihuana Facilities Act; and subject to the following:

(1) Medical marihuana cultivation and processing can have an impact on health, safety, and community resources, and this Article is intended to permit medical marihuana cultivation and processing where it will have a minimal impact;

(2) Use, distribution, cultivation, production, possession, and transportation of medical marihuana remains illegal under Federal law, and marihuana remains classified as a "controlled substance" by federal law;

(3) The regulations for medical marihuana commercial entities are not adequate at the state level to address the impacts on the City of the commercialization of medical marihuana, making it appropriate for local regulation of the impact of medical marihuana commercial entities;

(4) Nothing in this Article is intended to promote or condone the production, distribution, or possession of marihuana in violation of any applicable law.

(5) This Article is to be construed to protect the public over medical marihuana facility interests. Operation of a medical marihuana facility is a revocable privilege and not a right in the City. There is no property right for an individual or facility to engage or obtain a license to engage in medical marihuana as a commercial enterprise in the City; and

(6) Because medical marihuana is a heavily regulated industry in the City, all licensees are assumed to be fully aware of the law; the City shall not therefore be required to issue warnings before issuing citations for violations of this Article.

(c) As of the effective date of this ordinance, marihuana is classified as a Schedule 1 controlled substance under Federal law which makes it unlawful to manufacture, distribute, cultivate, produce, possess dispense or transport marihuana. Nothing in this ordinance is intended to grant immunity from any criminal prosecution under Federal law.

(d) Relationship to State Law.

(1) Except as otherwise provided by the MMFLA and this Article, a licensee and its employees and agents who are operating with the scope of a valid State-issued operating license are not subject to criminal or civil prosecution under City ordinances regulating marihuana.

(2) Except as otherwise provided by the MMFLA and this Article, a person who owns or leases real property upon which a marihuana facility is located and who has no knowledge that the licensee is violating or violated the MMFLA or a provision of this Article, is not subject to criminal or civil prosecution under

City ordinances regulating marihuana.

(3) Nothing in this ordinance 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, and all applicable rules promulgated by the State of Michigan regarding medical marihuana. Strict compliance with any applicable State law or regulation shall be deemed a requirement for the issuance or renewal of any license issued under this Article, and noncompliance with any applicable State law or regulation shall be grounds for revocation or nonrenewal of any license issued under the terms of this Article.

(4) A registered qualifying patient or registered primary caregiver is not subject to criminal prosecution or sanctions for purchasing marihuana from a provisioning center if the quantity purchased is within the limits established under the Michigan medical marihuana act. A registered primary caregiver is not subject to criminal prosecution or sanctions for any transfer of 2.5 ounces or less of marihuana to a safety compliance facility for testing.

(5) In the event of any conflict, the terms of this Article are preempted and the controlling authority shall be the statutory regulations set forth by the MMFLA or the rules adopted by the Board to implement, administer or enforce the MMFLA.

(e) City liability and indemnification.

(1) By accepting a license issued pursuant to this Article, the licensee 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 medical marihuana facility owners, operators, employees, clients or customers for a violation of state or federal laws, rules or regulations.

(2) By accepting a license issued pursuant to this Article, all licensees, agree 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 bodily injury, sickness, disease, death, property loss or damage or any other loss of any kind, including, but not limited to, any claim of diminution of property value by a property owner whose property is located in proximity to a licensed operating facility, arising out of, claimed to have arisen out of, or in any manner connected with the operation of a medical marihuana facility or use of a product cultivated, processed, distributed or sold that is subject to the license, 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) .

(3) By accepting a license issued pursuant to the Article, a licensee agrees to indemnify, defend and hold harmless the City, its officers, elected officials, employees, and insurers, against all liability, claims, penalties, or demands arising on account any alleged violation of the federal Controlled Substances Act, 21 U.S.C. §801 et seq. or Article 7 of the Michigan Public Health Code, MCL 333.7101 et seq.

Sec. 30-502. Definitions.

The following words, terms and phrases when used in this Article shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicant means a person who applies for a state operating license. With respect to disclosures in an application, or for purposes of ineligibility for a license, the term applicant includes an officer, director, and managerial employee of the applicant and a person who holds any direct or indirect ownership interest in the applicant.

Board means the medical marihuana licensing board created pursuant to Part 3 of the MMFLA.

Cultivate or *cultivation* means all phases of marihuana growth from seed to harvest; and the preparation, packaging, and labeling of harvested usable marihuana.

Department means the Michigan department of licensing and regulatory affairs, or its successor agency.

Grower means a licensee that is a commercial entity that cultivates, dries, trims, or cures and packages marihuana for sale to a processor or provisioning center.

Licensee means a person holding a state operating license.

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

Marihuana commercial entity means any and all of the following marihuana facilities:

- (1) A grower,
- (2) A processor,
- (3) A secure transporter,
- (4) A provisioning center,
- (5) A safety compliance facility.

Marihuana facility means a location at which a licensee is licensed to operate under the MMFLA and this Article.

Marihuana plant means any plant of the species *Cannabis sativa* L.

Marihuana-infused product means a topical formulation, tincture, beverage, edible substance, or similar product containing any usable marihuana that is intended for human consumption in a manner other than smoke inhalation. Marihuana-infused product shall not be considered a food for purposes of the food law, 2000 PA 92, MCL 289.1101 et seq.

Michigan medical marihuana act or *MMMA* means 2008 IL 1, MCL 333.26421 et seq., as may be amended.

Michigan medical marihuana facilities licensing act or *MMFLA* means Public Act 281 of 2016, MCL 333.27101 et seq., as may be amended.

Michigan marihuana tracking act means Public Act 282 of 2016, MCL 333.27901 et seq., as may be amended.

Paraphernalia means any equipment, product, or material of any kind that is designed for or used in growing, cultivating, producing, manufacturing, compounding, converting, storing, processing, preparing, transporting, injecting, smoking, ingesting, inhaling, or otherwise introducing into the human body, marihuana.

Person means an individual, corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or other legal entity.

Plant means any living organism that produces its own food through photosynthesis and has observable root formation or is in growth material.

Processor means a licensee that is a commercial entity that purchases marihuana from a grower and that extracts resin from the marihuana or creates a marihuana-infused product for sale and transfer in packaged form to a provisioning center.

Provisioning center means a licensee that is a commercial entity that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualifying patients, directly or through the patients' registered primary caregivers. Provisioning center includes any commercial property where marihuana is sold at retail to registered qualifying patients or registered primary caregivers. A noncommercial location used by a primary caregiver to assist a qualifying patient connected to the caregiver through the Department's marihuana registration process in accordance with the Michigan medical marihuana act is not a provisioning center for purposes of this Article.

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

Registered qualifying patient means 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.

Registry identification card means that term as defined in the MMMA.

Rules mean rules promulgated by the Department in consultation with the Board to implement this act.

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.

Secure transporter means a licensee that is a commercial entity that stores marihuana and transports marihuana between marihuana facilities for a fee.

State operating license or, unless the context requires a different meaning, *license* means a license that is issued under the MMFLA and this Article that allows the licensee to operate as 1 of the following marihuana commercial entities, as specified in the license:

- (1) A grower,
- (2) A processor,
- (3) A secure transporter,
- (4) A provisioning center,
- (5) A safety compliance facility.

Statewide monitoring system or, unless the context requires a different meaning, *system* means an internet-based, statewide database established, implemented, and maintained by the Department under the marihuana tracking act, that is available to licensees, law enforcement agencies, and authorized state departments and agencies on a 24-hour basis for all of the following:

- (1) Verifying registry identification cards.
- (2) Tracking marihuana transfer and transportation by licensees, including transferee, date, quantity, and price.
- (3) Verifying in commercially reasonable time that a transfer will not exceed the limit that the patient or caregiver is authorized to receive under section 4 of the Michigan medical marihuana act, MCL 333.26424.

True party of interest means:

- (1) For an individual or sole proprietorship: the proprietor and spouse.
- (2) For a partnership and limited liability partnership: all partners and heir spouses. For a limited partnership and limited liability limited partnership: all general and limited partners and their spouses. For a limited liability company: all members, managers, and their spouses.
- (3) For a privately held corporation: all corporate officers or persons with equivalent titles and their spouses and all stockholders and their spouses.
- (4) For a publicly held corporation: all corporate officers or persons with equivalent titles and their spouses.
- (5) For a multilevel ownership enterprise: any entity or person that receives or has the right to receive a percentage 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.
- (7) For a trust: the names of the beneficiaries.

However, *true party of interest* does not mean:

- (1) A person or entity receiving reasonable payment for rent on a fixed basis under a bona fide lease or rental obligation, unless the lessor or property manager exercises control over or participates in the management of the business.
- (2) A person who receives a bonus as an employee if the employee is on a fixed wage or salary and the bonus is not more than 25% of the employee's pre-bonus annual compensation or if the bonus is based on a written incentive or bonus program that is not out of the ordinary for the services rendered.

Usable marihuana means the dried leaves, flowers, plant resin, or extract of the marihuana plant, but does not include the seeds, stalks, and roots of the plant.

Division II. Licensing of Medical Marihuana Facilities

Sec. 30-503. Number of permitted facilities.

The maximum number of each type of medical marihuana commercial entity

permitted in the City is as follows:

<u>Type of Facility</u>	<u>Designation</u>	<u>Number</u>
Grower	A	25
Grower	B	25
Grower	C	25
Processor		25
Secure Transporter		25
Provisioning Center		25
Safety Compliance Facility		25

Sec. 30-504. Location eligibility.

- (a) No medical marihuana facility shall be eligible to be issued a city operating license unless the applicant complies with Division III of this Article.
- (b) A licensee shall not operate a marihuana facility at any place in the City other than the address provided in the application on file with the City Clerk.

Sec. 30-505. License and annual fee required.

- (a) No person shall establish or operate a medical marihuana commercial entity in the City without first having obtained from the City and the State a license for each such facility to be operated. License certificates shall be kept current and publically displayed within the facility. Failure to maintain or display a current license certificate shall be a violation of this Article.
- (b) The annual nonrefundable fee to defray the administrative and enforcement costs associated with medical marihuana facilities located in the City is \$5,000 per licensed facility.
- (c) The annual nonrefundable fee required under this section shall be due and payable with the application for a license and upon the application for renewal of any such license under this Article.
- (d) The license fee requirement set forth in this Article shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other federal, state, or City ordinance, including, by way of example any applicable zoning or building permits.
- (e) The issuance of any license pursuant to this Article does not create

an exception, defense, or immunity to any person in regard to any potential criminal liability the person may have for the production, distribution, or possession of marihuana under federal law.

(f) Licenses shall be allowed to be stacked for multiple uses per premise. Two or more commercial marihuana entities may be located on one premise. Unless higher performance is required by applicable law, there must be a minimum of a one-hour fire separation wall between a medical marihuana facility and any adjacent business. A separate license shall be required for each entity.

Sec. 30-506. General license application requirements.

(a) A person seeking a license pursuant to the Medical Marihuana Facilities Licensing Act and the provisions of this Article shall submit an application to the City on forms provided by the City. At the time of application, each applicant shall pay a nonrefundable application fee to defray the costs incurred by the City for background investigations and inspection of the proposed premises, as well as any other costs associated with the processing of the application. In addition, the applicant shall present a suitable form of identification.

(b) The applicant shall also provide the following information, under the penalty of perjury, on the City-issued form. Such information is required for the applicant, the proposed manager of the marihuana commercial entity, and all persons who are true parties of interest in the marihuana commercial entity that is the subject of the application:

(1) The name, address, date of birth, business address, business telephone number, driver's license, and, if applicable, federal tax identification number;

(2) If the applicant is a business entity, information regarding the entity, including, without limitation, the name and address of the entity, its legal status, and proof of registration with, or a certificate of good standing from, the State of Michigan, as applicable;

(3) The identity of every person having any ownership interest in the applicant with respect to which the license is sought.

(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 facility;

(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 stamped or sealed 24 inch by 36 inch drawing of the proposed licensed premises showing, without limitation, building layout, all entryways and exits to the proposed licensed premises, loading zones and all areas in which

medical marihuana will be stored, grown, manufactured or dispensed;

(7) A comprehensive facility operation plan for the marihuana commercial entity which shall contain, at a minimum, the following:

- a. A security plan indicating how the applicant will comply with the requirements of this Article and any other applicable law, rule, or regulation. The security plan shall include details of security arrangements and will be protected from disclosure as provided under the Michigan Freedom of Information Act, MCL 15.231 et seq. If the City finds that such documents are subject to disclosure, it will attempt to provide at least 2 business days' notice to the applicant prior to such disclosure.
- b. For grower and processing facilities, a plan that specifies the methods to be used to prevent the growth of harmful mold and compliance with limitations on discharge into the wastewater system of the City;
- c. A lighting plan showing the lighting outside of the medical marihuana facility for security purposes and compliance with applicable City requirements;
- d. A plan for disposal of any medical marihuana or medical marihuana-infused product that is not sold to a patient or primary caregiver in a manner that protects any portion thereof from being possessed or ingested by any person or animal.
- e. A plan for ventilation of the medical marihuana facility that describes the ventilation systems that will be used to prevent any odor of medical marihuana off the premises of the business. For medical marihuana facilities that grow medical marihuana plants, such plan shall also include all ventilation systems used to control the environment for the plants and describe how such systems operate with the systems preventing any odor leaving the premises. For medical marihuana businesses that produce medical marihuana-infused products, such plan shall also include all ventilation systems used to mitigate noxious gases or other fumes used or created as part of the production process.
- f. A description of all toxic, flammable, or other materials regulated by a federal, state, or local authority that would have jurisdiction over the business if it was not a marihuana business, that will be used or kept at the medical marihuana business, the location of such materials, and how such materials will be stored.
- g. For grower and processing facilities, an applicant must submit electrical plans for load review to Bay City Electric Light & Power for a primary/secondary load study. Applicant must prepay all costs associated

with overbuilds that are necessary to meet the applicants required load before construction begins. Associated costs may include:

1. Overbuild of primary/secondary utility lines and their supporting structures.
2. KVA cost (Transformer(s))
3. All labor and equipment cost.

Bay City Electric Light & Power reserve the right to deny electric service to any applicant based on failure to meet load acceptance review or load requirements that are not conducive to the location.

(8) Prior to making a modification to a structure that would require a building permit or which would alter or change items required by this subsection, the licensee shall submit to the City and have approved a completed application for modification of premises in the form provided by the City.

(9) Proof of Insurance. A licensee shall at all times maintain full force and effect for duration of the license, worker's compensation insurance as required by state law, and general liability insurance with minimum limits of \$1,000,000 per occurrence and a \$2,000,000 aggregate limit issued from a company licensed to do business in Michigan. A licensee shall provide evidence to the City Clerk of the ability to obtain a certificate of insurance for a valid and effective policy which discloses the limits of each policy, the name of the proposed insurer, the effective date and expiration date of each policy, the policy number, and the names of the additional insureds. When issued, the policy shall name the City of Bay City and its officials and employees as additional insureds to the limits required by this section. A licensee 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 licensee, permittee, or lessee shall forthwith obtain and submit proof of substitute insurance to the City Clerk within 5 business days in the event of expiration or cancellation of coverage.

(10) Whether an applicant has been indicted for, charged with, arrested for, or convicted of, pled guilty or nolo contendere to, forfeited bail concerning any criminal offense under the laws of any jurisdiction, either felony or controlled-substance-related misdemeanor, not including traffic violations, regardless of whether the offense has been reversed on appeal or otherwise, including the date, the name and location of the court, arresting agency, and prosecuting agency, the case caption, the docket number, the offense, the disposition, and the location and length of incarceration.

(11) Whether an applicant has ever applied for or has been granted any commercial license or certificate issued by a licensing authority in Michigan or

any other jurisdiction that has been denied, restricted, suspended, revoked, or not renewed and a statement describing the facts and circumstances concerning the application, denial, restriction, suspension, revocation, or nonrenewal, including the licensing authority, the date each action was taken, and the reason for each action.

(12) Whether an applicant has filed, or been served with, a complaint or other notice filed with any public body, regarding the delinquency in the payment of, or a dispute over the filings concerning the payment of, any tax required under federal, state, or local law, including the amount, type of tax, taxing agency, and time periods involved.

(13) A description of the type of marihuana facility; and the anticipated or actual number of employees.

(14) An acknowledgment and consent that the City may conduct a background investigation, including a criminal history check for each true party of interest and each proposed employee, and that the City will be entitled to full and complete disclosure of all financial records of the marihuana commercial entity, including records of deposit, withdrawals, balances and loans; and

(15) Any additional information that the Community Development Department or Public Safety Department reasonably determines to be necessary in connection with the investigation and review of the application.

(c) Consistent with the MMFLA and Freedom of Information Act, MCL 15.231 *et seq.* the information provided to the City Clerk pursuant to this section relative to licensure is exempt from disclosure.

(d) All marihuana commercial entities shall obtain all other required permits or licenses related to the operation of the marihuana commercial entity, including, without limitation, any development approvals or building permits required by any applicable code or ordinance.

(e) If a deficiency is identified in an application, the applicant shall have five (5) business days to correct the deficiency after notification.

(f) Upon an applicant's completion of the above-provided form and furnishing of all required information and documentation, the City Clerk shall accept the application and assign it an application number by facility type.

(g) Upon receipt of a completed application, the City Clerk shall circulate the application to the Community Development Department, Public Safety Department, Assessing Department, Department of Public Works, and the Electric Department to determine whether the application is in full compliance with all applicable laws, rules and regulations.

Sec. 30-507. Denial of application.

(a) The City Clerk, following recommendations from following departments, shall reject any application that does not meet the requirements of the Medical Marihuana Facilities Licensing Act or this Article. The City Clerk shall reject any application that contains any false, misleading or incomplete information.

(b) An applicant is ineligible to receive a license under this Article if any of the following circumstances exist regarding a true party of interest of the applicant:

(1) Conviction of or release from incarceration for a felony under the laws of this state, any other state, or the United States within the past 10 years or conviction of a controlled substance-related felony within the past 10 years.

(2) Within the past 5 years, conviction of a misdemeanor involving a controlled substance, theft, dishonesty, or fraud in any state or 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.

(3) The applicant has knowingly submitted an application for a license that contains false, misleading or fraudulent information, or who has intentionally omitted pertinent information on the application for a license.

(4) Is a member of the Board.

(5) The applicant fails to provide and maintain adequate premises liability and casualty insurance for its proposed marihuana facility.

(6) Holds an elective office of a governmental unit of this state, another state, or the federal government; is a member of or employed by a regulatory body of a governmental unit in this state, another state, or the federal government; or is employed by a governmental unit of this state. This subdivision does not apply to an elected officer of or employee of a federally recognized Indian tribe or to an elected precinct delegate.

(7) The applicant, if an individual, has been a resident of this state for less than a continuous 2-year period immediately preceding the date of filing the application. This requirement does not apply after June 30, 2018.

(8) The applicant fails to meet other criteria established by State-issued rule.

Sec. 30-508. Issuance of provisional approval certificate.

(a) Complete applications for a marihuana facility license determined to be in full compliance with the requirements of this Article shall be issued a provisional medical marihuana facility approval certificate in accordance with the procedures specified in this Section.

(b) The City Clerk, upon approval by the city commission, shall issue a provisional medical marihuana facility approval certificate if the inspection, background checks, and all other information available to the City verify that the applicant as a

grower, processor, provisioning center, safety compliance facility, or secure transporter has submitted a full and complete application, has the ability to make improvements to the business location consistent with the application, complies with applicable zoning and location requirements, and is prepared to operate the business as set forth in the application, all in compliance with this Code and any other applicable law, rule, or regulation.

(c) A provisional medical marihuana facility approval certificate means only that the applicant has submitted a valid application for a marihuana facility license, and is eligible to receive the appropriate marihuana facility license from the Board. The applicant shall not locate or operate a marihuana facility in the City without obtaining a license approved by the Board and issued by the State. A provisional certificate issued by the City on or before December 31, 2018, will expire and be void after 1 year, or will expire and be void after 6 months for a provisional certificate issued on or after January 1, 2019, if such State approval is not diligently pursued to completion by the applicant or on the date that State approval is denied to the applicant, whichever first occurs.

(d) The conditions of an approval of a medical marihuana business license shall include, at a minimum, operation of the business in compliance with all of the plans and information made part of the application.

Sec. 30-509. Issuance of city marihuana facility operating license.

(a) An applicant holding an unexpired provisional certificate issued pursuant to this Article and for which the Board has granted the appropriate marihuana facility state operating license shall provide proof of same to the City Clerk.

(b) Inspection. An inspection of the proposed medical marihuana facility by the City shall be required prior to issuance of the City operating license. Such inspection shall occur after the premises are ready for operation, but prior to the stocking of the business with any medical marihuana, and prior to the opening of the business to any patients or the public. The inspection is to verify that the business facilities are constructed and can be operated in accordance with the application submitted and the applicable requirements of the code and any other applicable law, rule, or regulation.

(c) After verification that the business facilities are constructed and can be operated in accordance with the application submitted and the applicable requirements of the code and any other applicable law, rule, or regulation, the City Clerk shall issue a City operating license whose term shall run concurrent with the State operating license for the facility.

(d) Maintaining a valid marihuana facility license issued by the state is a condition for the issuance and maintenance of the City operating license issued under this Article and the continued operation of any marihuana facility.

Sec. 30-510. License forfeiture.

In the event that a medical marihuana facility does not commence operations within one year of issuance of a City operating license, the license shall be deemed forfeited; the business may not commence operations and the license is not eligible for renewal.

Sec. 30-511. License renewal.

(a) A City marihuana facility operating license shall run concurrently with the State operating marijuana license issued for the facility, unless revoked as provided by law.

(b) A valid marihuana facility license may be renewed on an annual basis by a renewal application upon a form provided by the City and payment of the annual license fee. An application to renew a marihuana facility license shall be filed at least thirty (30) days prior to the date of its expiration.

(c) Prior to the issuance of a renewed marihuana facility license by the City, the premises shall be inspected to assure that it and its systems are in compliance with the requirements of this Article.

Sec. 30-512. Transfer, sale or purchase of license.

(a) A medical marihuana business license is valid only for the owner named thereon, the type of business disclosed on the application for the license, and the location for which the license is issued. The licensees of a medical marihuana business license are only those persons disclosed in the application or subsequently disclosed to the City in accordance with this article.

(b) Each operating license is exclusive to the licensee and a licensee or any other person must submit an application for licensure with the City Clerk before a license is transferred, sold, or purchased. The attempted transfer, sale, or other conveyance of an interest in a license without prior application with the City Clerk is grounds for suspension or revocation of the license.

Sec. 30-513. License as revocable privilege.

An operating license granted by this Article is a revocable privilege granted by the City and is not a property right. Granting a license does not create or vest any right, title, franchise, or other property interest. Each license is exclusive to the licensee, and a licensee or any other person must apply for and receive the City's approval before a license is transferred, sold, or purchased. A licensee or any other person shall not lease, pledge, or borrow or loan money against a license. The attempted transfer, sale, or other conveyance of an interest in a license without prior Board approval is grounds for suspension or revocation of the license or for other

sanction considered appropriate by the City.

Sec. 30-514. Nonrenewal, suspension or revocation of license.

(a) The City Manager may, after notice and hearing, suspend, revoke or refuse to renew a license for any of the following reasons:

(1) The applicant or licensee, 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 Article or with any applicable state or local law or regulation;

(2) The applicant or licensee, or his or her 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; or

(3) The marihuana commercial entity has been operated in a manner that adversely affects the public health, safety or welfare.

(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 commercial entity 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 commercial entity, or an ongoing nuisance condition emanating from or caused by the marihuana commercial entity. Criminal conduct shall be limited to the violation of a state law or regulation or city ordinance.

(c) The zoning board of appeals shall hear and decide appeals arising from the suspension, revocation or refusal to renew a license. The concurring vote of a majority of the members of the zoning board of appeals is necessary to reverse a decision of the city manager. The standard of review on appeal shall be a finding that the decision of the city manager was arbitrary and capricious or that the decision was unsupported by substantial evidence, two-wit: relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

Division III. Specific marihuana facility requirements

Sec. 30-515. Marihuana facilities.

(a) The following types of Marihuana Facilities, per the Medical Marihuana Facilities Licensing Act (Act 281 of 2016), as permitted uses in the following zoning districts:

Grower: For the Class A, Class B, and Class C designations: permitted use in the M-1, Light Industrial District and M-2, General Industrial District.

Processor: Permitted use in the M-1, Light Industrial District and M-2, General Industrial District.

Secure Transporter: Permitted use in the C-1, Neighborhood Business District, C-2-A, General Business District, C-2-B, Highway Business District, C-3, Central Business District, M-1, Light Industrial District and M-2, General Industrial District.

Safety Compliance Facility: Permitted use in the C-1, Neighborhood Business District, C-2-A, General Business District, C-2-B, Highway Business District, C-3, Central Business District, M-1, Light Industrial District and M-2, General Industrial District.

Provisioning Center: Permitted use in the C-1, Neighborhood Business District, C-2-A, General Business District, C-2-B, Highway Business District, C-3, Central Business District, M-1, Light Industrial District and M-2, General Industrial District.

(b) Separation requirements, property line to property line:

- (1) At least one hundred (100) feet from a church or active religious institution.
- (2) At least five hundred (500) feet from a Pre-K to 12 school.
- (3) At least fifty (50) feet from a court facility or public safety office, including law enforcement centers and fire stations.
- (4) At least one hundred (100) feet from public parks as identified in the City's Parks and Recreation Plan. For the purposes of this Article, the Bay City Railtrail/Riverwalk non-motorized pathway is exempt from this requirement.

Sec. 30-516. Grower license.

Applicable standards for grower facilities:

- (1) More than one Medical Marijuana Grower facility license may be permitted per parcel or lot.
- (2) All Grower facilities and operations must be within an enclosed building.

- (3) A grower may hold more than one class of grower license.
- (4) An applicant and each investor in a grower license cannot have an interest in a secure transporter or safety compliance facility.
- (6) A grower shall comply with all of the following:
 - a. Until December 31, 2021, have as an active employee an individual who has, a minimum of 2 years' experience as a registered primary caregiver.
 - b. While holding a license as a grower, not be a registered primary caregiver and not employ an individual who is simultaneously a registered primary caregiver.
 - c. Enter all transactions, current inventory, and other information into the statewide monitoring system as required in this act, rules, and the marihuana tracking act.
 - d. Sell or transfer marihuana seeds or marihuana plants only to another grower by means of a secure transporter.
 - e. Sell or transfer marihuana, other than seeds, only to a processor or provisioning center by means of a secure transporter.
 - f. No pesticides or insecticides which are prohibited by applicable law for fertilization or production of edible produce shall be used on any marihuana cultivated, produced, or distributed by a medical marihuana business.
 - g. A medical marihuana business shall be ventilated so that the odor of marihuana cannot be detected by a person with a normal sense of smell at the exterior of the medical marihuana business or at any adjoining use or property.

Sec. 30-517. Processor license.

Applicable standards for processor facilities:

- (1) Only one Medical Marihuana Processor facility license permitted per parcel or lot.
- (2) All Processing operations must be conducted within an enclosed building.
- (3) A processor license authorizes the purchase of marihuana only from a grower and sale of marihuana-infused products or marihuana only to a provisioning center.

(4) An applicant and each investor in a processor license cannot have an interest in a secure transporter or safety compliance facility.

(5) A processor shall comply with all of the following:

a. Until December 31, 2021, have as an active employee an individual who has, a minimum of 2 years' experience as a registered primary caregiver.

b. While holding a license as a processor, not be a registered primary caregiver and not employ an individual who is simultaneously a registered primary caregiver.

c. Enter all transactions, current inventory, and other information into the statewide monitoring system as required in this act, rules, and the marihuana tracking act.

d. Transfer marihuana and marihuana-infused products only by means of a secure transporter.

Sec. 30-518. Secure transporter license.

Applicable standards for secure transporter:

(1) Secure Transporter facilities are only permitted warehousing activity as an accessory to the principal permitted Secure Transporter use.

(2) A secure transporter license authorizes the storage and transport of marihuana, marihuana-infused products and money associated with the purchase or sale of marihuana and marihuana-infused products between marihuana facilities at the request of a person with legal custody of the marihuana, marihuana-infused products, or money. It does not authorize transport to a registered qualifying patient or registered primary caregiver who is not a licensee.

(3) An applicant and each investor with an interest in a secure transporter license cannot have an interest in a grower, processor, provisioning center, or safety compliance facility and cannot be a registered qualifying patient or a registered primary caregiver.

(4) A secure transporter which operates from a marihuana facility located within the City shall secure a license 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.

(5) A secure transporter shall comply with all of the following:

- a. Each driver transporting marihuana, marihuana-infused products, or money related to the purchase or sale of marihuana or marihuana-infused products must have a chauffeur's license issued by the State of Michigan.
- b. Each employee of a secure transporter who has custody of marihuana, marihuana-infused products or money that is related to the purchase or sale of marihuana or marihuana-infused products shall not have been convicted of or released from incarceration for a felony under the laws of this state, any other state, or the United States within the past 5 years or have been convicted of a misdemeanor involving a controlled substance within the past 5 years.
- c. Each vehicle shall be operated with a 2-person crew with at least 1 individual remaining with the vehicle at all times during the transportation of marihuana or marihuana-infused products.
- d. A route plan and manifest shall be entered into the statewide monitoring system, and a copy shall be carried in the transporting vehicle and presented to a law enforcement officer upon request.
- e. The marihuana and marihuana-infused products shall be transported in 1 or more sealed containers and shall not be accessible while in transit.
- f. A secure transporting vehicle shall not bear markings or other indication that it is carrying marihuana or a marihuana-infused product.
- g. A secure transporter is subject to administrative inspection by a law enforcement officer at any point during the transportation of marihuana or marihuana-infused products to determine compliance with this act.
- h. A secure transporter shall enter all transactions, current inventory, and other information into the statewide monitoring system as required in this act, rules, and the marihuana tracking act.
- i. When determining and reporting the route to take, a secure transporter shall select the most direct route that provides efficiency and safety.

Sec. 30-519. Provisioning center license.

Applicable standards for provisioning centers:

- (1) Only one Provisioning Center license per parcel or lot.
- (2) All Provision Center activities must be conducted within an enclosed

building.

(3) A licensed provisioning center is authorized:

- a. To purchase or receive marihuana from a grower;
- b. To purchase or receive marihuana and marihuana-infused products from a processor; and
- c. Sell or dispense marihuana and marihuana-infused products only to registered qualifying patients and registered primary caregivers.

(4) All transfers of marihuana and marihuana-infused products to a provisioning center from a separate marihuana facility shall be by means of a secure transporter.

(5) A provisioning center license authorizes the provisioning center to transfer marihuana to or from a safety compliance facility for testing by means of a secure transporter.

(6) An applicant and each investor in a provisioning center cannot have an interest in a secure transporter or safety compliance facility.

(7) A provisioning center shall comply with all of the following:

- a. Sell or transfer marihuana to a registered qualifying patient or registered primary caregiver only after it has been tested and bears the label required for retail sale.
- b. Enter all transactions, current inventory, and other information into the statewide monitoring system as required in this act, rules, and the marihuana tracking act.
- c. Before selling or dispensing marihuana or marihuana-infused products to a registered qualifying patient or to a registered primary caregiver on behalf of a registered qualifying patient, inquire of the statewide monitoring system to determine whether the patient and, if applicable, the caregiver holds a valid, current, unexpired, and unrevoked registry identification card and that the sale or transfer will not exceed the daily purchasing limit established by the Board.
- d. Not allow the sale, consumption, or use of alcohol or tobacco products on the premises.
- e. Not allow a physician to conduct a medical examination or issue a medical certification document on the premises for the purpose of obtaining a registry identification card.

(8) No marihuana plants shall be located in a provisioning center.

Sec. 30-520. Safety compliance facility license.

Applicable standards for safety compliance:

- (1) All testing must be conducted within an enclosed building.
- (2) A licensed safety compliance facility is authorized to:
 - a. Receive marihuana from, test marihuana for, and return marihuana to a marihuana facility; and
 - b. Receive from, test for, and return 2.5 ounces or less of marihuana to a registered primary caregiver.
- (3) A safety compliance facility must be accredited by an entity approved by the Board by 1 year after the date the license is issued or have previously provided drug testing services to this state or this state's court system and be a vendor in good standing in regard to those services. The Board may grant a variance from this requirement upon a finding that the variance is necessary to protect and preserve the public health, safety, or welfare.
- (4) An applicant and each investor with any interest in a safety compliance facility cannot have an interest in a grower, secure transporter, processor, or provisioning center.
- (5) A safety compliance facility shall comply with all of the following:
 - a. Perform tests to certify that marihuana is reasonably free of chemical residues such as fungicides and insecticides.
 - b. Use validated test methods to determine tetrahydrocannabinol, tetrahydrocannabinol acid, cannabidiol, and cannabidiol acid levels.
 - c. Perform tests that determine whether marihuana complies with the standards the Board establishes for microbial and mycotoxin contents.
 - d. Perform other tests necessary to determine compliance with any other good manufacturing practices as prescribed in rules.
 - e. Enter all transactions, current inventory, and other information into the statewide monitoring system as required in this act, rules, and the marihuana tracking act.

f. Have a secured laboratory space that cannot be accessed by the general public.

g. Retain and employ at least 1 staff member with a relevant advanced degree in a medical or laboratory science.

Division IV. General Requirements

Sec. 30-521. Compliance with rules; inspections.

(a) A licensee shall strictly comply with the rules and emergency rules that may from time to time be promulgated by the Department.

(b) A licensee shall adopt and use the statewide monitoring system of inventory control and tracking authorized by the Marihuana Tracking Act so as to provide the capability for the licensee to comply with the State requirements applicable to the type of license held by the licensee.

(c) A marihuana facility and all articles of property in the facility are subject to inspection, search and examination at any time by a member of the Bay City Public Safety Department or the Department of State Police.

(d) Any failure by a licensee to comply with Department rules or the provisions of this Article is a violation of this Article and any infraction or violation, however slight, is sufficient grounds for suspension and revocation of licensure under this Article.

Sec. 30-522. Signage and advertising.

All signage and advertising for a medical marihuana facility shall comply with all applicable provisions of this Code including Chapter 85. In addition, it shall be unlawful for any licensee to:

(1) Use signage or advertising with the word "marihuana", "marijuana" or "cannabis" or any other word, phrase or symbol commonly understood to refer to marihuana unless such word, phrase or symbol is immediately preceded by the word "medical" in type and font that is at least as readily discernible as all other words, phrases or symbols;

(2) Use advertising material that is misleading, deceptive or false or that, as evidenced by the content of the advertising material or by the medium or the manner in which the advertising material is disseminated, is designed to appeal to minors;

(3) Advertise in a manner that is inconsistent with the medicinal use of medical marihuana or use advertisements that promote medical marihuana

for recreational or any use other than for medicinal purposes.

Sec. 30-523 Warning signs.

There shall be posted in a conspicuous location in each facility a legible sign containing the content of this section warning that:

- (1) The possession, use or distribution of marihuana is a violation of federal law;
- (2) It is illegal under state law to drive a motor vehicle or to operate machinery when under the influence of, or impaired by, marihuana; and
- (3) No one under the age of eighteen (18) years is permitted on the premises.

Sec. 30-524. Security requirements.

(a) Security measures at all licensed premises shall comply with the requirements of all applicable rules and regulations promulgated by the Department.

(b) A description of the security plan shall be submitted with the application for a City operating license. The security system, shall be maintained in good working order and provide twenty-four hours per day coverage. A separate security system is required for each facility.

(c) The security plan must include, at a minimum, the following security measures:

(1) Cameras. The medical marihuana business shall install and use security cameras to monitor and record all areas of the premises (except in restrooms) where persons may gain or attempt to gain access to marihuana or cash maintained by the medical marihuana business entity. Cameras shall record operations of the business to the off-site location, as well as all potential areas of ingress or egress to the business with sufficient detail to identify facial features and clothing. Recordings from security cameras shall be maintained for a minimum of thirty (30) days in a secure offsite location in the City or through a service over a network that provides on- demand access, commonly referred to as a "cloud." The offsite location shall be included in the security plan submitted to the City and provided to the Department of Public Safety upon request, and updated within seventy-two hours of any change of such location.

(2) Use of safe for storage. The medical marihuana business shall install and use a safe for storage of any processed marihuana and cash on the premises when the business is closed to the public. The safe shall be incorporated into the building structure or securely attached thereto. For medical marihuana-infused products that must be kept refrigerated or frozen, the business may lock the refrigerated container or freezer in a manner authorized by the city in place of use of a safe so long as the container is affixed to the building structure.

(3) Alarm system. The medical marihuana business shall install and use an alarm system that is monitored by a company that is staffed twenty-four hours a day, seven days a week. The security plan submitted to the city shall identify the company monitoring the alarm, including contact information, and updated within seventy-two hours of any change of monitoring company.

Sec. 30-525. Visibility of activities; control of emissions.

(a) All activities of marihuana commercial entities, including, without limitation, the cultivating, growing, processing, displaying, manufacturing, selling, and storage of marihuana and marihuana-infused products shall be conducted indoors and out of public view.

(b) No medical marihuana or paraphernalia shall be displayed or kept in a business so as to be visible from outside the licensed premises.

(c) Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting a marihuana commercial entity must be provided at all times. In the event that any odors, debris, dust, fluids or other substances exit a marihuana commercial entity, the owner of the subject premises and the licensee shall be jointly and severally liable for such conditions and shall be responsible for immediate, full clean-up and correction of such condition. The licensee shall properly dispose of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations.

Sec. 30-526. Marihuana cultivation.

(a) Cultivation, generally.

(1) Marihuana cultivation shall be conducted in a completely closed building.

(2) Marihuana cultivation shall comply with all applicable requirements of the laws and regulations of the City and the State.

(3) Marihuana cultivation shall not occur in detached outbuildings.

(4) All marihuana cultivation shall take place in a locked and enclosed space.

(b) All marihuana products kept on premises where marihuana plants are grown shall be stored in a locked and enclosed space.

(c) All exterior and interior lighting shall meet the requirements of the Michigan Building Code and the National Electrical Code.

(d) No marihuana cultivation activity shall result in the emission of any gas, vapors, odors, smoke, dust, heat or glare that is noticeable at or beyond the property line of the dwelling at which the cultivation occurs. Sufficient measures and means of preventing the escape of such substances from a dwelling must be provided at all

times. In the event that any gas, vapors, odors, smoke, dust, heat or glare or other substances exit a dwelling, the owner of the subject premises shall be liable for such conditions and shall be responsible for immediate, full clean-up and correction of such condition. The owner shall properly dispose of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations. In the event there is a lessee of the subject premises, the owner and the lessee shall be jointly and severally liable for such conditions.

Sec. 30- 527. Odor control.

(a) No person, tenant, occupant, or property owner shall permit the emission of marihuana odor from any source to result in detectable odors that leave the premises upon which they originated and interfere with the reasonable and comfortable use and enjoyment of another's property.

(b) Whether or not 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.

(c) A grower or a processor shall install and maintain in operable condition a system which precludes the emission of marihuana odor from the premises.

Sec. 30-528. Separation of licensed premises.

A grower facility and processor facility are separate medical marihuana commercial entities requiring separate licenses and separate premises. In addition to all other application requirements for separate premises, each facility shall:

(1) Have separate operations, ventilation, security, and fire suppression systems, and separate access from a public area.

(2) Be divided within a building from floor to roof. Unless higher performance is required by applicable law, there must be a minimum of a one-hour fire separation between a medical marihuana business and any adjacent business.

Sec. 30-529. Prohibited acts.

(a) It shall be unlawful for any licensee to permit the consumption of alcohol beverages on the licensed premises.

(b) It shall be unlawful for any licensee holding a provisioning center license, or for any agent, manager or employee thereof, to:

(1) sell, give, dispense or otherwise distribute medical marihuana or medical marihuana paraphernalia from any outdoor location;

(2) sell, give, dispense or otherwise distribute to any patient or primary caregiver who is not a licensee more usable form of medical marihuana

(including the useable marihuana equivalent of medical marihuana-infused products) within any seven-day period of time than they are allowed by the MMMA to possess.

(c) It shall be unlawful for retail marihuana establishments to distribute marihuana or marihuana-infused products to a consumer free of charge.

(d) It shall be unlawful for any licensee to permit the consumption of retail marihuana or retail marihuana products on the licensed premises.

(e) It shall be unlawful for any licensee to sell marihuana or marihuana products at a licensed provisioning center at any time other than between the hours of 7:00 a.m. and 9:00 p.m. daily.

Sec. 30-530. Reports of crime.

Reports of all criminal activities or attempts of violation of any law at the medical marihuana facility or related thereto shall be reported to Bay City Department of Public Safety within twelve hours of occurrence, or its discovery, whichever is sooner.

Sec. 30-531. 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 Department of Public Safety and all other City departments for the purpose of investigating and determining compliance with the provisions of this Article and any other applicable state and local laws or regulations.

(b) Consent to Inspection. Application for a medical marihuana business license or operation of a medical marihuana business, or leasing property to a medical 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 to conduct routine examinations and inspections of the medical marihuana business to ensure compliance with this Article or any other applicable law, rule, or regulation. For purposes of this Article, examinations and inspections of medical marihuana businesses and recordings from security cameras in such businesses are part of the routine policy of enforcement of this article for the purpose of protecting the public safety, individuals operating and using the services of the medical marihuana business, and the adjoining properties and neighborhood.

(c) Application for a medical marihuana business license constitutes consent to the examination and inspection of the business as a public premise without a search warrant, and consent to seizure of any surveillance records, camera

recordings, reports, or other materials required as a condition of a medical marijuana license 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 Article, the MMFLA, or applicable state administrative rules.

Sec. 30-532. Financial statements.

Within 30 days after the end of the State fiscal year, each licensee shall transmit to the City financial statements of the licensee's total operations. The financial statements shall be reviewed by a certified public accountant licensed in this State. The financial statements shall be in a manner and form prescribed by the Board.

Sec. 30-533. Additional requirements.

(a) No medical marijuana business may use metals, butane, propane, or other flammable product, or produce flammable vapors, to process marijuana unless the process used and the premises are verified as safe and in compliance with all applicable codes by a qualified industrial hygienist.

(b) The City shall require the business to obtain verification from a qualified industrial hygienist that the manner in which the business is producing medical marijuana complies with all applicable laws and does not produce noxious or dangerous gases or odors or otherwise create a danger to any person or entity in or near the businesses.

Sec. 30-534. 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 medical marijuana, the additional or stricter regulation shall control the establishment or operation of any marijuana commercial entity in the City. Compliance with any applicable state law or regulation shall be deemed an additional requirement for issuance or denial of any license under this Article, and noncompliance with any applicable state law or regulation shall be grounds for revocation or suspension of any license issued hereunder.

Sec. 30-535. Grant of administrative authority.

The City Manager is granted the power and duty to fully and effectively implement and administer the license application process and issuance of Provisional Approval Certificates and Operating Licenses issued by the City under this Article.

Sec. 30-536. Violations and penalties.

In addition to the possible denial, suspension, revocation or nonrenewal of a license under the provisions of this Article, any person, including, but not limited to, any licensee, manager or employee of a marihuana commercial entity, or any customer of such business, who violates any of the provisions of this Article, shall be guilty of a misdemeanor punishable in accordance with section 1-15 of this Code.