

ORDINANCE NO. 21-467

AN ORDINANCE OF THE CITY OF ALPENA, MICHIGAN, AMENDING CHAPTER 18 – BUSINESSES, ARTICLE I. IN GENERAL, Sec. 18-1 MEDICAL MARIHUANA FACILITIES - BY REPEAL OF SAME AND ADOPTION OF NEW LANGUAGE IN LIEU THEREOF.

BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF ALPENA, STATE OF MICHIGAN, AS FOLLOWS:

CHAPTER 18 - BUSINESSES

ARTICLE I. - IN GENERAL

Sec. 18-1. - Medical Marihuana facilities and adult use marihuana establishments.

(A) ***Purpose, intent, relationship to other laws and city liability and indemnification***

- (1) ***Purpose.*** The purpose of this section is to implement and establish a uniformed licensing and regulatory process for Medical and Adult-Use Marihuana Businesses to the extent permissible under the provisions of the Michigan Medical Marihuana Act, (MCL 333.26421 et seq.), the Michigan Marihuana Facilities Licensing Act (MCL 333.27101 et seq.) the Marihuana Tracking Act (MCL 333.27901 et seq.), and the Michigan Regulation and Taxation of Marihuana Act (MCL 333.27951 et seq.) referred to herein as the "Acts", 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 and adult use marihuana establishments can be operated in the city. Further, the purpose of this section is to:
 - a. Provide for a means of cultivation, processing, and distribution of marihuana to patients who qualify to obtain, possess, and use marihuana for medical purposes and for eligible adults with proper qualifying identification to obtain, possess, and use marihuana for legally allowable individual purposes under the Acts;
 - b. Protect public health and safety through reasonable limitations on marihuana operations as they relate to noise, air and water quality, neighborhood and patient/customer safety, security for the facility and its personnel, and other health and safety concerns;
 - c. Protect residential neighborhoods by limiting the location and the concentration of types of medical marihuana facilities and adult use marihuana establishments to specific areas of the city;
 - d. Impose fees to defray and recover the cost to the city of the administrative and enforcement costs associated with medical marihuana facilities and adult use marihuana establishments;
 - e. Coordinate with laws and regulations that may be enacted by the state addressing marihuana; and

- f. To restrict the issuance of medical marihuana facility and adult use marihuana establishment licenses only to individuals and entities that have demonstrated an intent and ability to comply with this section.

(2) ***Legislative intent.*** This section authorizes the establishment of marihuana facilities and marihuana establishments within the city consistent with the Acts;

- a. Marihuana cultivation and processing can have an impact on health, safety, and community resources, and this section is intended to permit marihuana cultivation and processing where it will have a minimal impact;
- b. The regulations for medical marihuana facilities and adult use marihuana establishments are not adequate at the State level to address the impacts on the city of the commercialization of marihuana, making it appropriate for local regulation of the impact of medical marihuana facilities and adult use marihuana establishment on communities as provided for under the acts and expressly retained by municipal charter and any and all powers and immunities, expressed and implied which cities and their officers are, or hereafter may be, permitted to exercise or to provide for under the constitution and laws of the State;
- c. Nothing in this section is intended to promote or condone the distribution, or possession of marihuana in violation of any applicable State law;
- d. This section is to be construed to protect the public over medical marihuana facility and adult use marihuana establishment interests. Operation of a medical marihuana facility and adult use marihuana establishment 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 marihuana as a commercial business in the city.

(3) ***Relationship to federal law.*** As of the effective date of this section, marihuana is classified as a schedule 1 controlled substance under the Federal Controlled Substances Act, 21 U.S.C. Sec. 801 et seq., which makes it unlawful to manufacture, distribute, cultivate, produce, possess dispense or transport marihuana. Nothing in this section is intended to grant immunity from any criminal prosecution under federal law.

(4) ***Relationship to state law.*** As of the effective date of this section, as amended, and except as otherwise provided by the Acts; and this section, a city licensee and its employees and agents who are operating within the scope of a valid state-issued operating license are not subject to criminal or civil prosecution under city ordinances regulating marihuana.

Nothing in this section 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 Acts, all applicable rules promulgated by the state regarding marihuana and all local laws, ordinances, rules and policies. 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 section, and noncompliance with any applicable state law or local law or regulation shall be grounds for revocation or nonrenewal of any license issued under the terms of this section.

(5) ***Reservation of legislative prerogative.***

- a. The City of Alpena reserves the right to amend or repeal this Chapter in any manner, including, but not limited to, the complete elimination of any type or number of medical marihuana facilities or adult-use marihuana establishments authorized to operate in the City.
- b. Nothing in this Chapter may be held or construed to grant or "grandfather" any medical marihuana facility a vested right, license, permit or privilege to continued operations within the City, except as granted by approval through the application and/or application renewal process and as consistent with all other applicable laws, rules, regulations, and guidelines of the state of Michigan.

(6) ***City liability and indemnification.***

- a. By accepting a license issued pursuant to this section, 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 and adult use marihuana establishment owners, operators, employees, clients or customers for a violation of local, state or federal laws, rules or regulations.
- b. By accepting a license issued pursuant to this section, 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 or establishment, arising out of, claimed to have arisen out of, or in any manner connected with the operation of a medical marihuana facility and adult use marihuana establishment 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).
- c. By accepting a license issued pursuant to this section, 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 33.7101 et seq.

(B) ***Definitions.*** Through this section, the city adopts all definitions contained in any of the state rules, regulations, statutes, administrative code, enacted for the purpose of regulating marihuana facilities and establishments.

(C) ***Licensing of medical marihuana facilities and adult use marihuana establishments.***

(1) ***Local licensing authority.***

- a. The Alpena City Council is designated as the local licensing authority. The city council may by resolution delegate its authority or a portion of such authority to a new committee or other designee to act as the local licensing authority. The local licensing authority shall have the duty and authority pursuant to the Medical Marihuana Facilities Licensing Act (“MMFLA”) and Michigan Regulation and Taxation of Marihuana Act (“MRTMA”) in this Ordinance to grant or deny an application described in this Ordinance and to levy penalties against the licensee in the manner provided by law.
- b. The local license authority shall consider applications for new business premises, transfer of ownership, change of location, license premises modification, changes in trade name, and any other appropriate application.
- c. The local license authority shall have the power to promulgate rules and regulations concerning the procedure for hearings before the local licensing authority.
- d. The local license authority shall have the power to require any application or licensee to furnish such information to the authority as may be reasonably necessary in order for the authority to perform its duties and functions authorized by this Ordinance.
- e. The local license authority shall have the power to administer oaths and issue subpoenas to require the presence of persons and the productions of papers, books and records at any hearing in which the authority is authorized to conduct. Any subpoena shall be served in the same manner as a subpoena issued by a District Court of the State. The District Court Judge shall have the power and authority to enforce such subpoena.

- (2) ***Number of permitted facilities.*** The maximum number of each type of medical marihuana facility and adult use marihuana establishment permitted in the city is as follows:

Type	Number Permitted in City
Grower Licenses of Class A (maximum of 100 marihuana plants) as defined in the MRTMA or Class A (maximum of 500 marihuana plants) as defined in the MMFLA	Unlimited
Grower Licenses of Class B (maximum of 250 marihuana plants) as defined in the MRTMA or Class B (maximum of 1,000 marihuana plants) as defined in the MMFLA	Unlimited
Grower Licenses of Class C (maximum of 2,000 marihuana plants) as defined in the MRTMA or Class C (maximum of 1,500 marihuana plants) as defined in the MMFLA	Unlimited
Marihuana Microbusiness	Unlimited
Medical Marihuana Provisioning Centers/Marihuana Retailers	Unlimited
Marihuana Processor or Medical Marihuana Processor Facility	Unlimited
Marihuana Safety Compliance Establishment or Medical Marihuana Safety Compliance Facility	Unlimited
Secure Transporter or Medical Marihuana Secure Transporter	Unlimited
Excess Grower	Unlimited
Designated Consumption Center	Prohibited
Marihuana Event Organizer	Prohibited
Temporary Event License	Prohibited

- (3) ***Location.*** No medical marihuana facility or adult use marihuana establishment shall be eligible to be issued a license unless at the time of application for such license, the location of the proposed facility complies with the zoning and separation distances from other uses as set forth in the city zoning ordinance as required for the specific type of medical marihuana facility or adult use marihuana establishment for which licensure is being sought;
- (4) ***Operation at location provided on application only.*** A licensee shall not operate a medical marihuana facility or adult use marihuana establishment at any place in the city other than the address provided in the application on file with the city clerk.

- (5) ***Combined facilities.*** Multiple types of medical marihuana facilities and adult use marihuana establishments may operate from a single location pursuant to the Acts, State of Michigan rules, and the city Zoning Ordinance. A combined facility shall pay one licensing fee upon application if the combined facility is applied for concurrently. If a medical marihuana facility or adult use establishment is added to an existing facility or establishment, a new application and licensing fee shall be required. Annual renewal of the combined facility shall require one fee.
- (6) ***Stacking of licenses.*** Any grower issued a license by the city may stack up to three class C licenses at a single location without requiring any additional city licensing or approval, provided that the exterior of the existing structure where the facility is located will not require expansion. If expansion is required, the licensee must obtain all necessary permits and approval required for such expansion.
- (7) ***Expansion of license classification.*** Provided further that any licensed grower in the city that holds anything less than a state issued class C license may, at any time, expand the license classification without requiring city approval. By way of example: licensee holding a state issued class A license may expand at any time to a state issued class B or C and may further stack up to three class C licenses as provided above without city approval.
- (8) ***License and annual fees required.***
- a. No person shall establish or operate a medical marihuana facility or adult use marihuana establishment in the city without first having obtained from the city and the State of Michigan a license for each such facility or establishment to be operated. License certificates shall be kept current and publicly displayed within the facility or establishment. Failure to maintain or display a current license certificate shall be a violation of this section;
 - b. An annual, nonrefundable licensing fee to defray the administrative and enforcement costs associated with medical marihuana facilities and adult use marihuana establishments located in the city of not more than \$5,000.00 per license or in an amount established by resolution adopted by the city council or in an amount established by state law;
 - c. The annual, nonrefundable application/reapplication fee, as determined by city council resolution from time to time, per license 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 section. This application/reapplication fee shall be considered part of the licensing fee in subsection 6.b;
 - d. The annual, nonrefundable inspection fee, as determined by city council resolution from time to time, per licensed facility required under this section shall be due and payable with the application for annual inspection and upon the application for renewal of any such license under this section; This inspection fee shall be considered part of the licensing fee in subsection 6.b;

- e. The fees set forth herein 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;
- f. The issuance of any license pursuant to this section 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;
- g. A separate license shall be required for each facility or establishment type or premise from which a medical marihuana facility or adult use marihuana establishment is operated.
- h. The term of each license shall be one year beginning when the licensee is granted a certificate of occupancy and permit from the building and safety inspections division.
- i. The annual license established pursuant to the above paragraph begins and commences at the time of the receipt of the applicant's certificate of occupancy by the city.

(9) ***Application requirements.***

- a. A person seeking a license pursuant to the Acts and the provisions of this section shall submit an application to the city on forms provided by the city. All documents submitted to the city shall be submitted in both hardcopy and digital formats. 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 a complete copy of their application for State approval, including, but not limited to:
 - 1. Proof of ownership or authorization to use the property for a medical marihuana facility or adult use marihuana establishment.
 - 2. A notarized statement from the owner of such property authorizing the use of the property for a medical marihuana facility or adult use marihuana establishment, if the applicant is not the owner of the proposed licensed premises;
 - 3. 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.

4. The non-refundable application fee for a medical marihuana facility or adult use marihuana establishment license is \$1,500.00 per license or as established by resolution adopted by city council or in an amount established by state law. This application fee shall be considered part of the licensing fee in subsection 6.b;
- c. For medical marihuana provisioning centers, marihuana retailers, and marihuana microbusinesses, the following shall apply:
1. At least one applicant shall demonstrate experience with owning (51% or more), operating, and/or managing a business with inventory tracking and control (min. of 1 year) pursuant to MCL 125.3501, MCL 125.3502, MCL 125.3504, Article VII, § 34 Construction of constitution and law concerning counties, townships, cities, villages and Article VII, § 22 Charters, resolutions, ordinances; enumeration of powers of the Michigan Constitution.
 2. At least one applicant shall demonstrate experience with owning (51% or more), operating, and/or managing a business in a highly regulated industry (min. of 1 year). Highly regulated means subject to regulation by LARA or a similarly regulated agency (state or federal) pursuant to MCL 125.3501, MCL 125.3502, MCL 125.3504, Article VII, § 34 Construction of constitution and law concerning counties, townships, cities, villages and Article VII, § 22 Charters, resolutions, ordinances; enumeration of powers of the Michigan Constitution.
 3. Applicant shall present a detailed description of estimated capital investment. Capital investment is defined as a fixed asset, which is an asset purchased for a long-term use and not likely to be converted quickly into cash such as land, buildings, and equipment pursuant to MCL 125.3501, MCL 125.3502, MCL 125.3504, Article VII, § 34 Construction of constitution and law concerning counties, townships, cities, villages and Article VII, § 22 Charters, resolutions, ordinances; enumeration of powers of the Michigan Constitution.
 4. Applicant shall include a business plan which includes a daily operations schedule.
 5. Applicant shall present a proposed staffing plan, complete with descriptions of job duties, proposed wages, and employee qualifications/hiring criteria pursuant to MCL 125.3501, MCL 125.3502, MCL 125.3504, Article VII, § 34 Construction of constitution and law concerning counties, townships, cities, villages and Article VII, § 22 Charters, resolutions, ordinances; enumeration of powers of the Michigan Constitution.
 6. Applicant shall present a documented employee policy book and code of ethics to ensure honesty and integrity of employees.
 7. Applicant shall present a sworn attestation that the Applicant and/or parties with 25% or more interest in the company have not been subject to any civil

monetary judgements entered against it in the last 7 years, excluding family law matters or estate disputes.

8. Applicant shall present a sworn attestation that the Applicant and/or parties with 25% or more interest in the company have not filed bankruptcy within the last 7 years.
9. Applicant shall present a plan to deter and prevent unauthorized entrance into the facility.
10. Applicant shall present a plan to prevent theft and diversion.
11. Applicant shall present a plan for 24/7 video surveillance inside and outside of facility.
12. Applicant shall present a plan for secure storage of medical marihuana and proceeds.
13. Applicant shall present a detailed plan for record keeping and inventory management.
14. Applicant shall provide copies of material safety data sheets for hazardous materials and their plan for storage and disposal (or a sworn attestation that no hazardous materials will be on the premises at any time).
15. Applicant shall present a plan that included a security system in place to alert owner of possible tampering with the facility or its contents.
16. Applicant shall propose a living wage (at least 200% of the Federal Poverty Level for a family of two, at its hourly basis) to all employees pursuant to MCL 125.3501, MCL 125.3502, MCL 125.3504, Article VII, § 34 Construction of constitution and law concerning counties, townships, cities, villages and Article VII, § 22 Charters, resolutions, ordinances; enumeration of powers of the Michigan Constitution.
17. Applicant shall offer a benefits package in addition to wages or salary pursuant to MCL 125.3501, MCL 125.3502, MCL 125.3504, Article VII, § 34 Construction of constitution and law concerning counties, townships, cities, villages and Article VII, § 22 Charters, resolutions, ordinances; enumeration of powers of the Michigan Constitution.

(10) ***Review process.***

- a. Within fourteen (14) days of application submittal, city staff will determine if the application is complete and will notify the applicant if there are deficiencies.

- b. After receiving notification from city staff pursuant to subsection 8.a above, the applicant shall have fourteen (14) days from the date of said notification to submit additional information.
- c. Within thirty (30) days of the application being determined to be complete, city staff will review the application to determine compliance with this section and shall notify the applicant that the applicant is approved to proceed with the inspection phase pursuant to subsection 10.

(11) ***Denial of application and due process.***

- a. The city shall reject any application that does not meet the requirements of the Acts or this section, or any pertinent provision of any State of Michigan or City of Alpena laws, rules or regulations.
- b. In accordance with the Acts, an applicant may be ineligible to receive a license under this section if any of the following circumstances:

- 1. The applicant has knowingly submitted an application for license that contains false, misleading or fraudulent information, or who has intentionally omitted pertinent information for the application for license.
- 2. The applicant fails to meet other criteria established by the Acts or other pertinent law and/or obtain a state license.
- 3. The applicant does not submit proof of "approved for prequalification" with the state.

c. ***Denial of application; due process.***

- 1. Those applicants denied a license based on qualifications may appeal the decision within thirty (30) days of notification of denial. The city council shall hear and decide questions or requests for due process that arise after city staff have reviewed and provided a decision that the applicant wishes to further appeal.
- 2. The applicant must submit a narrative request for due process that includes detailed information and all supporting documentation for any/all points they wish to have city council consider.
 - i. Within thirty (30) days of notification of appeal by the applicant, a due process review shall be conducted at a public meeting of the council and a concurring vote of a majority of the members of the full city council is necessary to reverse an order, requirement, decision or determination of an administrative official in the interpretation of this section;

- ii. The applicant must be present at the designated council meeting or forfeits their right to due process;
- iii. The decision of the city council is final.

(12) *Issuance of city medical marihuana facility or adult use marihuana establishment operating license.*

- a. *Special use permit.* The proposed medical marihuana facility or adult use marihuana establishment shall obtain a Special Use permit from the Planning Commission.
- b. *Inspection.* An occupancy inspection of the proposed medical marihuana facility or adult use marihuana establishment by the city shall be required prior to the issuance of the city operating license in accordance with the currently adopted Michigan Building Code. Such inspection shall occur after the premises are ready for operation, but prior to the stocking of the business with any 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. In the event that the medical marihuana facility or adult use marihuana establishment is granted a license but fails to substantially comply with its original site plan or operates inconsistent with the manner in which it was represented on the licensing application, the city may revoke the license or may allow the licensee to present its case for modification of its original facility and license to the Planning Commission. If the Planning Commission approves the changes, then the city will take no further action regarding the licensee's license. If the licensee fails to address its substantial non-compliance with the Planning Commission, then the city may revoke the license and may prohibit the licensee from applying for a medical marihuana facility or adult use marihuana establishment license in the future.
- d. 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 medical marihuana facility or adult use marihuana establishment license whose term shall run concurrent with the State of Michigan license for the facility or establishment.
- e. Maintaining a valid medical marihuana facility or adult use marihuana establishment license issued by the State of Michigan is a condition for the issuance and maintenance of the city medical marihuana facility or adult use marihuana establishment operating license issued under this section and the continued operation of a medical marihuana facility or adult use marihuana establishment.

- f. The city will authorize approved medical marihuana facility or adult use marihuana establishment license(s) to entities on the condition that the following have been submitted, completed and approved:
1. Application on a form provided by the city; and
 2. Paid all licensing fees due to the city; and
 3. The entity(ies) holds an approved and fully authorized State of Michigan approved medical marihuana facility or adult use marihuana establishment license to the city clerk; and
 4. An approved Special Land Use permit from the Planning Commission; and
 5. An approved certificate of occupancy from the applicable building official; and
 6. All medical marihuana facilities or adult use marihuana establishments shall obtain a State of Michigan license and all other required permits or licenses related to the operation of the medical marihuana facility or adult use marihuana establishment, including, without limitation, any development approvals or building permits required by any applicable code or ordinance prior to opening to the public; including but not limited to any approved building permits (as required for any construction/deconstruction) by the city official as appropriate. Any such license and required permits shall be acquired within one (1) year from the date of approval by city council unless that period is extended by mutual agreement of the city council and licensee.
 7. *Proof of insurance.* A licensee shall at all times maintain full force and effect for duration of the license, workers compensation as required by state law, and general liability insurance with minimum limits of \$1,000,000.00 per occurrence and a \$2,000,000.00 aggregate limit issued from a company licensed to do business in the state having an AM Best rating of at least A-.
 8. The policy shall name the 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 (7) 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 five business days in the event of expiration or cancellation of coverage.

9. Applicant will provide any additional information that the city clerk, law enforcement, fire chief, public works supervisor, zoning administrator, building official, city manager and/or city attorney or their designees reasonably determines to be necessary in connection with the investigation and review of the application.

(13) ***License forfeiture.*** In the event that a medical marihuana facility or adult use marihuana establishment does not commence operations within one (1) year of issuance of a city operating license, the license shall be deemed forfeited; the business may not commence operations, unless extended by a majority vote of the full city council.

(14) ***License renewal.*** A valid medical marihuana facility or adult use marihuana establishment license may be renewed on an annual basis by a renewal application upon a form provided by the city and payment of annual fees.

- a. ***Timeline of renewal application.*** An application to renew a medical marihuana facility or adult use marihuana establishment license shall be filed at least ninety (90) days prior to the date of its expiration.
- b. ***Late fee.*** In the event that the renewed application is not submitted in accordance with this section, the city will assess a late fee as fixed by city council for each day that the renewal application is submitted late.
- c. ***Late fee after expiration.*** In the event that an application is not received by the date of expiration, an additional late fee shall be assigned by the city council not to exceed \$2,000.00, in addition to the daily late fees outlined herein and annual renewal fee.
- d. ***Expiration.*** In the event that an application is not received by the date of expiration, the license will be considered null and void and all operations must immediately cease by order of law enforcement.
- e. ***Notice of revocation.*** A notice of local revocation will be issued to the State of Michigan and the licensee will have to resubmit all documentation, fees, and receive all approvals as a new entity should they wish to reopen their business.
- f. ***Annual inspection.*** Prior to the issuance of a renewed medical marihuana facility or adult use marihuana establishment license by the city, the premises shall be inspected to assure that it and its systems are in compliance with the requirements of this section. The annual, nonrefundable inspection fee, as assigned by the city council, per licensed facility or establishment required under this section, shall be due and payable with the application for annual inspection and upon the application for renewal of any such license under this section.

(15) *Transfer, sale, or purchase of license.*

- a. A medical marihuana facility or adult use marihuana establishment 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 facility or adult use marihuana establishment license are only those persons disclosed in the application or subsequently disclosed to the city in accordance with this section.
- b. Each operating license is exclusive to the licensee and location. A licensee or any other person must submit an application for licensure with the city clerk before a license is transferred, sold, or purchased.
- c. In compliance with any/all rules issued by the board regarding the sale, transfer or purchase of existing licenses; any entity that holds a city-issued license may transfer or sell their license to a qualifying applicant.
 1. Any entity purchasing or receiving a transferred license must submit an application and all associated documentation and all fees;
 2. The applicant who is receiving the transfer or purchasing the license must have submitted all new application, license and inspection fees and received all local and State of Michigan approvals, including "approved for prequalification" with the State of Michigan on all applications and associated documentation as well as all inspections as outlined in this section and the Acts prior to beginning or taking over operations.
- d. The attempted transfer, sale, or other conveyance of an interest in a license without city approval is grounds for suspension or revocation of the license or for other sanction considered appropriate by the city.
- e. The following actions constitute transfer of ownership and require a new application, application fee and city council approval:
 1. ***Persons.*** Any Transfer of more than 1% of an ownership interest in an Applicant or Permit Holder between Persons constitutes a transfer of ownership.
 2. ***Corporations.*** Any transfer of more than 1% of stock or any change in principal officers or directors of any corporation holding a Permit constitutes a transfer of ownership.
 3. ***Limited Liability Companies.*** Any transfer of more than 1% of membership interest or any change in members or change in the interest held by member(s) of any Limited Liability Company holding a Permit constitutes a transfer of ownership.

4. ***Partnerships.*** Any change of more than 1% of a partnership interest or any change in general or managing partners of any partnership holding a Permit constitutes a transfer of ownership.
5. ***Assets.*** Any transfer of more than 1% of the assets held by an Applicant or Permit Holder constitutes a transfer of ownership

f. ***Effect of transfer.***

1. Immediately following the approval of a transfer of ownership by the city, the transferee(s) will obtain all the interests, rights, obligations and responsibilities of the previous license holder. Once a license holder has transferred his or her ownership interest, any privileges enjoyed by that license holder under this ordinance are terminated.
2. For transfers, the renewal and termination dates of the license shall not change.

(16) ***License as revocable privilege.***

- a. An operating license granted by this section 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.
- b. 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.
- c. A licensee or any other person shall not lease, pledge, or borrow or loan money against a license.
- d. Any effort to circumvent the protocol listed in this section and/or the city zoning ordinance will result in the immediate denial of application or complete revocation of the city-issued medical marihuana facility or adult use marihuana establishment license.

(17) ***Nonrenewal, suspension, or revocation of license.***

- a. The city may, after notice, 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 section 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 of Michigan 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 medical marihuana facility or adult use marihuana establishment has been operated in a manner that adversely affects the public health, safety or welfare;
 4. The licensee has not submitted all necessary documentation and/or fees to renew their license.
- b. Evidence to support a finding under this section may include, without limitation, a continuing pattern of conduct, a continuing pattern of drug-related criminal conduct within the premises or property occupied by the medical marihuana facility or adult use marihuana establishment, a continuing pattern of criminal conduct directly related to or arising from the operation of the medical marihuana facility or adult use marihuana establishment, or an ongoing nuisance condition emanating from or caused by the medical marihuana facility or adult use marihuana establishment or any other concerns raised by city staff and/or other local, state or federal officials. Criminal conduct shall be limited to the violation of a state law or regulation or city ordinance.
 - c. Any decision of nonrenewal, suspension or revocation has the right to due process and may be eligible for appeal to the city council.

(D) General requirements and restrictions. All medical marihuana facilities or adult use marihuana establishments operating within the city shall be subject to the following general requirements and restrictions. To the extent there is a conflict between these requirements and restrictions and the Act, the Act shall prevail.

(1) General requirements.

- a. **Exterior signage.** Facilities and establishments may only use exterior signage that is in compliance with the city's zoning ordinance regarding signs and Michigan law. Facilities may not use exterior signage or displays with neon, flashing lights, or similarly noxious or obtrusive lighting or effects.
- b. **Hours of operation.** Provisioning centers, retailers, and microbusinesses may only operate between the hours of 8:00 a.m. and 9:00 p.m.
- c. **Indoor operations/no drive-thru service.** All business operations of a facility or establishment must occur indoors. Facilities and establishments may not provide drive-thru service.

- d. **Odors.** Facilities and establishments may not emit noxious odors or fumes, in accordance with the city's zoning ordinance regarding visibility of activities; control of emissions.
- e. **Artificial lighting.** Any artificial grow lighting must not be visible from neighboring properties, streets, or rights-of-way.
- f. **Security.** Facilities and establishments shall have:
 - 1. A monitored alarm system (24 hours per day and seven days a week);
 - 2. A safe for all cash, cash equivalents, and marihuana stored in the facility or establishment overnight shall be in a room secured by commercial grade security doors;
 - 3. Monitored security cameras covering, at a minimum, all parking areas, entrances and exits, points of sale, and all areas where marihuana is stored or handled. All security recordings must be maintained for a minimum of forty-five (45) days and provided to law enforcement upon request;
- g. **Display of permit.** The permit issued by the city and the license issued by the state shall be prominently displayed within the facility in a location where it can be easily viewed by the public.
- h. **Systems.** All facilities and establishments shall have electrical, fire safety, plumbing, filtration and waste disposal systems, which are appropriate and consistent with best industry practices for the business being conducted.

(2) **Prohibited acts.**

- a. No person under the age of eighteen (18) shall be permitted to enter a facility unless the person has a medical marihuana card and is accompanied by a legal guardian over the age of eighteen (18).
- b. No marihuana may be smoked, used, or consumed at any facility.
- c. It shall be unlawful for any licensee to permit the consumption of alcohol beverages on the licensed premises.
- d. No facility or establishment may operate under a temporary certificate of occupancy. Facilities and establishments shall be in full compliance with all applicable legal requirements in order to operate.
- e. It shall be unlawful for any licensee holding a provisioning center, retailer, or microbusiness license, or for any agent, manager, or employee thereof to:

1. Sell, give, dispense or otherwise distribute medical marihuana or adult use 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 medical marihuana equivalent of medical marihuana-infused products) within any seven-day period of time than they are allowed by the MMMA to possess;
3. It shall be unlawful for a provisioning center, retailer, or microbusiness to distribute marihuana or marihuana-infused products to a consumer free of charge.

(3) ***Inspection of licensed premises.***

- a. Application for medical marihuana facility or adult use marihuana establishment license or operation of a medical marihuana facility or adult use marihuana establishment, or leasing property to a medical marihuana facility or adult use marihuana establishment, constitutes consent by the applicant, and all owners, managers, and employees of the business, and the owner of the property to permit law enforcement, or their designee, to conduct routine examinations and inspections of the medical marihuana facility or adult use marihuana establishment to ensure compliance with this section or any other applicable law, rule or regulation.
- b. 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 law enforcement and any other city departments for the purpose of investigating and determining compliance with the provisions of this section and any other applicable state and local laws or regulations.
- c. For the purposes of this section, examinations and inspections of medical marihuana facilities and adult use marihuana establishments and recordings from security cameras in such businesses are part of the routine policy of enforcement of this section for the purpose of protecting the public safety, individuals operating and using the services of the medical marihuana facilities and adult use marihuana establishments, and the adjoining properties and neighborhoods.
- 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 section, the Acts, or applicable state administrative rules.

(E) *Other laws remain applicable.* To the extent the State of Michigan adopts in the future any additional or stricter law or regulation governing the sale or distribution of medical marihuana, the additional or stricter regulation shall control the establishment or operation of any medical marihuana facility or adult use marihuana establishment in the city. Compliance with any applicable state law or regulation shall be deemed an additional requirement for issuance or denial of any license, and noncompliance with any applicable state law or regulation shall be grounds for the revocation or suspension of any license.

(F) *Grant of administrative authority.* The city clerk is granted the power and duty, through its official designation, to fully and effectively implement and administer the license application process and issuance of operating licenses issued by the city under this section. The city clerk, after consultation with other city departments, may promulgate such rules as necessary to implement and administer this section.

(G) *Violations and penalties.*

(1) In addition to the possible denial, suspension, revocation or nonrenewal of a license under the provisions of this section, any person, including, but not limited to, any licensee, manager or employee of a medical marihuana facility or adult use marihuana establishment, or any customer of such business, who violates any of the provisions of this section, shall be guilty of a misdemeanor punishable in accordance with this section unless a different penalty is provided herein.

(2) If a facility is operated in violation of the Act or any applicable ordinance, or if the Licensee is found to have submitted false or misleading information in its permit application, the city may revoke the permit for such facility to operate within the city. The city retains the right to alter the number and type of facilities and establishments authorized hereunder at any time. Any permit granted hereunder is a revocable privilege granted by the city and is not a property or other legal right.

(3) With respect to any facility that is in violation of any requirement or restriction set forth in this section, the Licensee of a facility, all persons identified pursuant to the Acts, and any on-site manager shall be subject to the following penalties:

- a. Any violation shall be a misdemeanor and may be punished by a fine of not more than \$1,500.00 and/or imprisonment not exceeding ninety (90) days and the violator(s) shall pay all court costs and expenses.
- b. The penalties set forth herein are non-exclusive and cumulative, and nothing herein shall be deemed to prevent city from enforcing any other applicable ordinance.
- c. In addition to the remedies provided herein, the city may file for injunctive relief to abate any violation hereof.

EFFECTIVE DATE

THE PROVISIONS OF THIS ORDINANCE SHALL TAKE EFFECT TEN (10) DAYS AFTER BEING ADOPTED BY THE MUNICIPAL COUNCIL AND DULY PUBLISHED.

I HEREBY CERTIFY THAT THE ABOVE ORDINANCE WAS ADOPTED BY THE MUNICIPAL COUNCIL OF THE CITY OF ALPENA, MICHIGAN, AT A REGULAR MEETING HELD ON THE _____ DAY OF _____ 2021.

Matthew J. Waligora
Mayor

Anna Soik
City Clerk/Treasurer/Finance Director

First Presented: December 6, 2021
Adopted: _____, 2021
Published: _____, 2021

William A. Pfeifer, City Attorney