

CITY OF PONTIAC ORDINANCE NO. #2357(B)

An ordinance to allow medical marihuana facilities to operate in the City of Pontiac pursuant to the Medical Marihuana Facilities Licensing Act, Act No. 281 of the Public Acts of 2016; to provide for standards and procedures to permit and regulate medical marihuana facilities; to provide for the imposition of permit application fees; and to impose conditions for the operation of medical marihuana facilities.

The City of Pontiac ordains:

Section 1. Title.

The title of this ordinance shall be the "City of Pontiac Medical Marihuana Facilities Ordinance."

Section 2. Definitions.

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

Applicant means a person who applies for a permit to operate a medical marihuana facility under this ordinance.

Board means the State of Michigan Medical Marihuana Licensing Board.

Class A grower means a grower licensed to grow not more than 500 marihuana plants.

Class B grower means a grower licensed to grow not more than 1,000 marihuana plants.

Class C grower means a grower licensed to grow not more than 1,500 plants.

Department means the State of Michigan Department of Licensing and Regulatory Affairs or its successor agency.

Disqualifying felony means a felony that makes an individual ineligible to receive a license under the MMFLA.

Grower means a commercial entity that cultivates, dries, trims, or cures and packages marihuana for sale to a processor or provisioning center. As used in this ordinance, grower shall include class A growers, class B growers, and class C growers.

License means a license that is issued under the MMFLA that allows the licensee to operate as a grower, processor, secure transporter, provisioning center, or safety compliance facility.

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 products shall not be considered a food for purposes of the food law, Act No. 92 of the Public Acts of 2000, being sections 289.1101 to 289.8111 of the Michigan Compiled Laws.

Medical marihuana facility means a location at which a grower, processor, provisioning center, secure transporter, or safety compliance facility is licensed to operate under the MMFLA.

MMFLA means the Medical Marihuana Facilities Licensing Act, Act No. 281 of the Public Acts of 2016, being sections 333.27101 to 333.27801 of the Michigan Compiled Laws.

MMMA means the Michigan Medical Marihuana Act, Initiated Law 1 of 2008, being sections 333.26421 to 333.26430 of the Michigan Compiled Laws.

Permittee means a person who receives a permit to operate a medical marihuana facility under this ordinance.

Processor means 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 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 MMMA is not a provisioning center for purposes of this ordinance.

Registered primary caregiver means a person who is at least 21 years old and who has agreed to assist with a patient's medical use of marihuana and who has a valid registry identification card.

Registered qualifying patient means a person who has been diagnosed by a physician as having a debilitating medical condition and has a valid registry identification card.

Registry identification card means a document issued by the department that identifies a person as a registered qualifying patient or registered primary caregiver.

Safety compliance facility means a commercial entity that receives marihuana from a medical 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 medical marihuana facility.

Secure transporter means a commercial entity located in this state that stores marihuana and transports marihuana between medical marihuana facilities for a fee.

Stakeholder means with the officers, directors, and managerial employees of an applicant and any persons who hold any direct or indirect ownership interest in the applicant

Section 3. Creation of Medical Marihuana Commission; Composition; Quorum.

(a) There is hereby created a medical marihuana commission. There shall be four (4) members of the medical marihuana commission. The membership shall elect from among its members a chairman, vice-chairman, and secretary.

(b) A quorum of the medical marihuana commission shall consist of three (3) members.

Section 4. Medical Marihuana Commission Membership; Qualifications; Term; Vacancies; Compensation.

(a) Members of the medical marihuana commission shall be residents of the city, and shall be chosen so far as reasonably practicable in such a manner as to represent a cross-section of the community.

(b) Members of the medical marihuana commission shall be appointed by the mayor to serve at the pleasure of the mayor for a term of three (3) years. Reappointment of a member to serve an additional consecutive term is subject to council approval.

(c) If a vacancy occurs on the medical marihuana commission, the mayor shall appoint a new member to fill the vacancy.

(d) Members of the medical marihuana commission shall serve without pay.

Section 5. Medical Marihuana Commission Powers and Duties.

The medical marihuana commission shall review and decide all appeals that are forwarded to it by the clerk under this ordinance. The medical marihuana commission shall review all appeals de novo. The medical marihuana commission shall only overturn a decision or finding of the clerk if it finds such decision or finding to be arbitrary or capricious and not supported by material, substantial, and competent facts on the whole record considered by the clerk in arriving at such decision or finding.

Section 6. Medical Marihuana Commission Rules and Regulations; Meetings.

(a) The medical marihuana commission shall adopt such rules and regulations as it deems necessary to govern its proceedings and deliberations.

(b) The rules and regulations adopted by the medical marihuana commission shall be subject to approval by the council.

(c) The commission shall maintain a written record of its proceedings and actions which shall be available for public inspection, showing the action of the commission and the vote of each member upon each question considered. All meetings of the commission shall be held in conformance with the open meetings act, Act. No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

Section 7. Medical Marihuana Facility Rules and Regulations.

(a) In addition to the rules promulgated by the department and the statutes of the State of Michigan, the operation of medical marihuana facilities shall be made in accordance with the provisions of this ordinance.

(b) Medical marihuana provisioning centers shall be closed for business, and no sale or other distribution of marihuana in any form shall occur upon the premises between the hours of 10:00 p.m. and 7:00 a.m.

Section 8. Medical Marihuana Facility Applications.

(a) No person shall operate a medical marihuana facility in the city without first obtaining a permit for the medical marihuana facility from the city and obtaining a license from the department

(b) In addition to such applications as may be required by the department for licensing by the State of Michigan, application shall be made to the clerk to operate a medical marihuana facility in the city.

(c) Applications shall be made on forms provided by the clerk, shall be signed by the applicant, if an individual, or by a duly authorized agent thereof, if an entity, verified by oath or affidavit, and seal if available, and shall contain all of the following:

(1) The full name, date of birth, physical address, email address, and telephone number of the applicant in the case of an individual; or, in the case of an entity, all stakeholders thereof.

(2) If the applicant is an entity, the entity's articles of incorporation or organizational documents.

(3) If the applicant is an entity, the entity's employee identification number.

(4) If the applicant is an entity, the entity's operating agreement or bylaws.

(5) A written description of the training and education that the applicant will provide to all employees.

- (6) A copy of the proposed business plan for the applicant.
- (7) The proposed ownership structure of the entity that identifies the ownership percentage held by each stakeholder.
- (8) A current organization chart that includes position descriptions and the names of each person holding such position.
- (9) A proposed marketing, advertising, and business promotion plan for the proposed medical marihuana facility.
- (10) A description of planned tangible capital investment in the city, including detail related to the number and nature of proposed medical marihuana facilities, and whether the locations of such facilities will be owned or leased.
- (11) An explanation of the economic benefits to the city and job creation to be achieved, including the number and type of jobs the medical marihuana facility is expected to create, the amount and type of compensation expected to be paid for such jobs, and the projected annual budget and revenue of the medical marihuana facility.
- (12) A description of the financial structure and financing for the proposed medical marihuana facility.
- (13) Short-term and long-term business goals and objectives for the proposed medical marihuana facility.
- (14) A criminal background report of the applicant's criminal history. Such reports shall be obtained by the applicant through the Internet Criminal History Access Tool (ICHAT) for applicants residing in Michigan and/or through another state sponsored or authorized criminal history access source for applicants who reside in other states or have resided in other states within 5 years prior to the date of the application. The applicant is responsible for all charges incurred in requesting and receiving the criminal history report and the report must be dated within thirty (30) days of the date of the application.
- (15) A description of proposed community outreach and education strategies.
- (16) A description of proposed charitable plans, whether through financial donations or volunteer work.
- (17) A description of the security plan for the proposed medical marihuana facility that is consistent with the requirements of the department.
- (18) A floor plan of the proposed medical marihuana facility.

- (19) A scale diagram illustrating the property upon which the proposed medical marihuana facility is to be operated, including all available parking spaces, and specifying which parking spaces are handicapped-accessible.
- (20) A depiction of any proposed text or graphic materials to be shown on the exterior of the proposed medical marihuana facility.
- (21) A facility sanitation plan that describes how waste will be stored and disposed and how marihuana will be rendered unusable upon disposal at the proposed medical marihuana facility.
- (22) A proposed inventory and recordkeeping plan consistent with the requirements of the department.
- (23) An affidavit that neither the applicant nor any stakeholder of the applicant is in default to the city.
- (24) Verification that the applicant has a minimum capitalization consistent with the requirements of the department.
- (25) Proof of premises liability and casualty insurance consistent with the requirements of the department.
- (26) A signed acknowledgement that the applicant understands that all matters related to marihuana cultivation, possession, dispensing, testing, transporting, distribution and use are currently subject to federal laws, and that the approval of a permit hereunder does not exonerate or exculpate the applicant from exposure to any penalties associated therewith. Further, the applicant completely releases and forever discharges the city and its respective employees, agents, facilities, insurers, indemnors, successors, heirs and/or assigns from any and all past, present or future claims, demands, obligations, actions, causes of action, wrongful death claims, rights, damages, costs, losses of services, expenses and compensation of any nature whatsoever, whether based on a tort, contract or other theory or recovery, which the applicant or its stakeholders may now have, or which may hereafter accrue or otherwise be acquired, on account of, or may in any way arise out of the applicant or stakeholders' application for a permit and, if issued a permit, the applicant or stakeholders' operation of a medical marihuana facility.
- (27) A location area map that identifies the relative locations of, and distances from, the nearest school, childcare center, public park containing playground equipment, or religious institution, as measured along the centerline of the street or streets of address between two fixed points on the centerline determined by projecting straight lines, at right angles to the centerline, from the primary point of ingress to the school, childcare center, or religious institution, or, for a public park, from the playground equipment nearest to contemplated location, and from the primary point of ingress to the contemplated location.

(28) If the applicant is applying for a permit to operate a provisioning center, a patient education plan consistent with the requirements of the department.

(29) If the applicant is applying for a permit to operate a provisioning center, a description of any drug and alcohol awareness programs that shall be provided or arranged for by the applicant and made available to the public.

(30) If the applicant is applying for a permit to operate a grower, a cultivation plan that includes a description of the cultivation methods to be used, including whether the grower plans to grow outdoors consistent with the rules promulgated by the department.

(31) If the applicant is applying for a permit to operate a grower, a chemical and pesticide storage plan that is consistent with the requirements of the department

(d) All applications must be accompanied by the appropriate fee to help defray administrative costs associated with the application for the medical marihuana facility, which shall be set by a resolution adopted by council, but shall not exceed five thousand dollars (\$5,000.00) per application.

(e) An applicant may apply for multiple medical marihuana facility permits of the same or different nature.

Section 9. Medical Marihuana Facility Application Process.

(a) Upon receipt of a completed application meeting the requirements of this ordinance and the appropriate permit application fee, the clerk shall refer a copy of the application to the fire department and the department of building safety & planning.

(b) No application shall be approved for a permit unless:

(1) The fire department and the department of building safety & planning or another relevant department have inspected the proposed location for compliance with all state and local building, electrical, fire, mechanical and plumbing requirements.

(2) The department of building safety & planning or another relevant department has confirmed that the proposed location complies with the zoning ordinance.

(3) The proposed medical marihuana facility has been issued a certificate of occupancy and, if necessary, a building permit

(c) After this ordinance becomes effective, the clerk shall begin accepting medical marihuana facility applications within 60 days. Within 7 days of the date the clerk begins accepting medical marihuana facility permit applications, the clerk must set a 21- day application period during which applicants may apply for a permit to operate a provisioning center.

(d) The clerk shall award a permit to any applicant for a permit to operate a grower, processor, secure transporter, or safety compliance facility who submits a complete application, receives the approvals required in this section, and meets the requirements of this ordinance.

(e) The clerk shall assess, evaluate, score and rank all applications for permits to operate a provisioning center submitted during the twenty-one (21) day application period set forth in this section.

(f) In its application assessment, evaluation, scoring, ranking, and deliberations related to permits to operate a provisioning center, the clerk shall assess, evaluate, score, and rank each application based upon a scoring and ranking procedure developed by the clerk consistent with the requirements, conditions, and provisions of this ordinance in each of the following categories:

(1) The content and sufficiency of the information required to be in the application under this ordinance. The maximum number of scoring points in this category shall be fifty (50) points.

(2) Whether the proposed medical marihuana facility will be consistent with land use for the surrounding neighborhood and not have a detrimental effect on traffic patterns and resident safety. The maximum number of scoring points in this category shall be twenty (20) points.

(3) Planned outreach on behalf of the proposed medical marihuana facility, and whether the applicant or its stakeholders have made, or plan to make, significant physical improvements to the building housing the proposed medical marihuana facility, including plans to eliminate or minimize traffic, noise, and odor effects on the surrounding neighborhood. The maximum number of scoring points in this category shall be ten (10) points.

(4) Whether the applicant or any of its stakeholders have a record of acts detrimental to the public health, security, safety, morals, good order, or general welfare prior to the date of the application. The maximum number of scoring points in this category shall be ten (10) points. If an applicant and all of its stakeholders have received prequalification approval from the department or board, the applicant shall receive the maximum number of scoring points under this category.

(5) Whether the applicant has reasonably and tangibly demonstrated it possesses sufficient financial resources to fund, and the requisite business experience to execute, the submitted business plan and other plans required this ordinance. The maximum number of scoring points in this category shall be ten (10) points. If an applicant and all of its stakeholders have received prequalification approval from the department or board, the applicant shall receive the maximum number of scoring points under this category.

(6) The number of full-time and part-time positions the applicant intends to create; the hourly wages or salaries the applicant intends to pay employees; whether the applicant has articulated plans and strategies to attract and hire employees from the City of Pontiac; and

whether the applicant has articulated plans to provide employee health and welfare benefit plans, including, but not limited to, sick leave, maternity leave, and paternity leave. The maximum number of scoring points in this category shall be ten (10) points.

(7) Planned philanthropic endeavors and community improvement programs aimed at the City of Pontiac. The maximum number of scoring points in this category shall be ten (10) points.

(8) The proximity of the proposed medical marihuana facility to other structures, including whether the proposed medical marihuana facility is more than 1,000 feet from an operational public or private school and more than 500 feet from an operational commercial childcare organization (non-home occupation) that is licensed or registered with the State of Michigan Department of Health and Human Services or its successor agency, a public park with playground equipment, or a religious institution that is defined as tax exempt by the city assessor. Such distance between the school, childcare center, public park, or religious institution and the contemplated location shall be measured along the centerline of the street or streets of address between two fixed points on the centerline determined by projecting straight lines, at right angles to the centerline, from the primary point of ingress to the school, childcare center, or religious institution, or from the playground equipment in a public park, and from the primary point of ingress to the contemplated location. The maximum number of scoring points in this category shall be ten (10) points.

(g) Overall scoring and ranking shall be conducted and applied by the clerk on the basis of assigned points from zero (0) points to one hundred and thirty (130) points with the lowest overall total score as zero (0) points and the highest possible total score being one hundred and thirty (130) points.

(h) At the conclusion of the twenty-one (21) day application period, the clerk shall begin processing applications for permits to operate provisioning centers, awarding permits to the twenty (20) highest scoring applicants. In the event of an evaluation scoring tie, which causes there to be more than twenty (20) applicants who achieve scores sufficient to qualify for a permit, the scoring-tied applicants will be entered into a random draw. Those applications randomly selected shall be eligible to receive a permit to operate a provisioning center. In the event that the number of provisioning center permits subsequently falls below the maximum number authorized under this ordinance, the clerk shall not be required to score applicants. Instead, the clerk shall evaluate applications in the order that they are submitted and shall award permits for provisioning centers to an applicant who submits a complete application, receives the approvals required in this section, and meets the requirements of this ordinance. However, in no event shall the number of provisioning center permits exceed the maximum number authorized under this ordinance.

(i) Nothing in this section is intended to confer a property or other right, duty, privilege or interest in a permit of any kind or nature whatsoever including, but not limited to, any claim of entitlement.

(j) The clerk may engage professional expert assistance in performing the clerk's duties and responsibilities under this ordinance.

Section 10. Medical Marihuana Facility Permit limitations.

There shall be no limit on the number of permits issued by the city for growers, processors, secure transporters, or safety compliance facilities. The city shall issue twenty (20) provisioning center permits or a number of provisioning center permits equal to the number of complete provisioning center permit applications that meet the requirements of this ordinance and are submitted during the twenty-one (21) day period, whichever number is less.

Section 11. Medical Marihuana Facility Co-Location and Stacking.

(a) Consistent with the MMFLA and rules promulgated by the department, any combination of growers, processors, and provisioning centers may operate as separate medical marihuana facilities at the same physical location.

(b) Consistent with the MMFLA and rules promulgated by the department, applicants for class C grower permits shall be allowed to receive multiple such permits and operate under each permit in a single facility.

Section 12. Transfer of Existing Medical Marihuana Facility Permits.

(a) Permittees may transfer a permit issued under this ordinance to a different location upon receiving written approval from the clerk and the department or the board pursuant to the MMFLA and rules promulgated by the department. In order to request municipal approval to transfer a permit location, the permittee must make a written request to the clerk, indicating the current location of the medical marihuana facility and the proposed new location. Upon receiving the written request, the clerk shall refer a copy of the written request to the fire department and the department of building safety & planning or another appropriate department. No permit transfer shall be approved unless each such department or entity gives written approval that the proposed permit location meet the standards identified in this ordinance and the department or board approves the transfer.

(b) Permittees may transfer a permit issued under this ordinance to a different individual or entity upon receiving written approval from the clerk and the department or the board pursuant to the MMFLA and rules promulgated by the department. In order to request municipal approval to transfer a permit to a different individual or entity, the permittee must make a written request to the clerk, indicating the current permittee and the proposed permittee. The clerk shall grant the request so long as the department or board authorizes the transfer pursuant to the MMFLA and rules promulgated by the department.

Section 13. Term of Medical Marihuana Facility Permit

(a) Each permit shall be displayed in a conspicuous spot in the building for that current year.

(b) A permittee shall remove any expired permit on display and replace it with the current permit. A permittee shall not attempt nor act in any fraudulent manner in regard to the display of any permit.

(c) Approval of a permit shall be for a period of one calendar year subject to review by the clerk upon continued compliance with the regulations of this article.

Section 14. Annual Medical Marihuana Facility Permit Renewal.

(a) Application for a permit renewal shall be made in writing to the clerk at least 30 days prior to the expiration of an existing permit.

(b) An application for a permit renewal required by this ordinance shall be made under oath on forms provided by the clerk, and shall contain all of the information required in an initial application.

(c) An application for a permit renewal shall be accompanied by a renewal fee to help defray administrative and enforcement costs associated with the operation of the medical marihuana facility, which shall be set by resolution of the council, but shall not exceed five thousand dollars (\$5,000.00).

(d) Upon receipt of a completed application for a permit renewal meeting the requirements of this ordinance and the permit renewal fee, the clerk shall refer a copy of the renewal application to the fire department and the department of building safety & planning.

(e) No application for a permit renewal shall be approved unless:

(1) The fire department and the department of building safety & planning or another relevant department have, within the past calendar year, inspected the proposed location for compliance with all state and local building, electrical, fire, mechanical and plumbing requirements.

(2) The department of building safety & planning or another relevant department has confirmed that the location complied with the zoning ordinance at the time the permit was granted.

(3) The permittee possesses the necessary state licenses or approvals, including those issued pursuant to the MMFLA.

(4) The applicant has operated the medical marihuana facility in accordance with the conditions and requirements of this ordinance.

(5) The permittee is operating the medical marihuana facility in accordance with State of Michigan laws and rules and this ordinance, and has not been declared a public nuisance.

(f) If written approval is given by each department or entity identified in this section, the clerk shall issue a permit renewal to the applicant. The renewal shall be deemed approved if the city has not issued formal notice of denial within 60 days of the filing date of the application.

Section 15. Revocation or Suspension of Medical Marihuana Facility Permit

Each medical marihuana facility within the city for which a permit is granted shall be operated and maintained in accordance with all applicable laws, rules, and regulations. Upon any violation of this section or any section of this ordinance, the clerk may, after a notice and hearing, revoke or suspend such permit as hereinafter provided.

Section 16. Procedure for Denial, Recommendation of Nonrenewal, Suspension, or Revocation of Medical Marihuana Facility Permit

The clerk shall notify an applicant of the reasons for denial of an application for a permit or permit renewal or for revocation of a permit or any adverse decision under this ordinance and provide the applicant or permittee with the opportunity to be heard. Any applicant or permittee aggrieved by the denial or revocation of a permit or adverse decision under this ordinance may appeal to the clerk, who shall appoint a hearing officer to hear and evaluate the appeal and make a recommendation to the clerk. Such appeal shall be taken by filing with the clerk, within fourteen (14) days after notice of the action complained of has been mailed to the applicant or permittee's last known address on the records of the clerk, a written statement setting forth fully the grounds for the appeal. The clerk shall review the report and recommendation of the hearing officer and make a decision on the matter. The clerk's decision may be further appealed to the medical marihuana commission if applied for in writing to the medical marihuana commission no later than thirty (30) days after the clerk's decision. The review on appeal of a denial or revocation or adverse action shall be by the medical marihuana commission pursuant to this ordinance. Any decision by the medical marihuana commission on an appeal shall be final for purposes of judicial review. The clerk may engage professional experts to assist with the proceedings under this section.

Section 17. Criteria for Denial, Nonrenewal, Suspension, or Revocation of Medical Marihuana Facility Permit.

In addition to any other reasons set forth in this ordinance, the city may refuse to issue a permit or grant renewal of the permit or suspend or revoke the permit pursuant to Pontiac City Ordinance section 1-24 or for any of the following reasons:

- (1) A material violation of any provision of this ordinance.
- (2) Any conviction of a disqualifying felony by the permittee or any stakeholder of the permittee.
- (3) Failure of the permittee or the medical marihuana facility to obtain or maintain a license from the state pursuant to the MMFLA.

Section 18. Penalties.

Any person in violation of any provision of this ordinance, including the operation of a medical marihuana facility without a permit issued pursuant to this ordinance, shall be subject to a five hundred dollar (\$500.00) civil fine and costs. Each day of a violation may be considered a separate violation.

Section 19. Severability; Conflicts.

(a) If any section, clause, or provision of this ordinance shall be declared to be unconstitutional, void, illegal, or ineffective by any court of competent jurisdiction, such section, clause, or provision declared to be unconstitutional, void, or illegal shall thereby cease to be a part of this ordinance, but the remainder of this ordinance shall stand and be in full force and effect.

(b) If any section, clause, or provision of this ordinance is determined by a court of competent jurisdiction to conflict with the MMFLA, state law, or rules promulgated by the department, the MMFLA, state law, or rules shall control.

Section 20. Repealer.

All ordinances or parts of ordinances in conflict herewith are hereby repealed only to the extent necessary to give this ordinance full force and effect.

Following a recount on September 12, 2018 from the August 7, 2018 Election, the following ordinance was adopted.

I hereby certify that the foregoing is a true copy of the Ordinance passed by the Citizens of Pontiac during an Election on August 7, 2018 and recount on September 12, 2018.

Sheila R. Grandison, Acting City Clerk