

Chapter 20B

MEDICAL MARIHUANA FACILITIES

STATUTORY REFERENCES

Medical Marihuana Facilities Licensing Act — See MCLA § 333.27101 et seq. **Marijuana Tracking Act — See MCLA § 333.27903 et seq.**

Medical Marihuana Act — See MCLA § 333.26421 et seq. **Public Health Code — See MCLA § 333.1101 et seq.**

ARTICLE I
General Provisions

§ 20B-1. Title.

This chapter is to be known and may be cited as the "City of Kalamazoo Medical Marijuana Facilities Ordinance."

§ 20B-2. Purpose and intent.

- A. Purpose. The purpose of this chapter is to implement the provisions of Public Act 281 of 2016, being the Michigan Medical Marijuana Facilities Licensing Act (MMFLA), 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 marijuana facilities can be operated in the City. Further, the purpose of this chapter is to:
- (1) Authorize the establishment of medical marijuana facilities within the City and provide standards and procedures for the review, issuance, renewal, and revocation of City-issued permits for such facilities;
 - (2) Impose fees to defray and recover the cost to the City of the administrative and enforcement costs associated with medical marijuana facilities;
 - (3) Coordinate with laws and regulations that may be enacted by the state addressing medical marijuana.
- B. Legislative intent. This chapter authorizes the establishment of medical marijuana facilities within the City of Kalamazoo consistent with the provisions of the Michigan Medical Marijuana Facilities Act, and subject to the following:
- (1) Use, distribution, cultivation, production, possession, and transportation of medical marijuana remains illegal under federal law and state law, and marijuana remains classified as a "controlled substance" by federal law and state law. Nothing in this chapter is intended to promote or condone the production, distribution, or possession of marijuana in violation of any applicable law. Nothing in this chapter is intended to grant immunity from any criminal prosecution under state or federal law. This chapter does not protect patients, caregivers, or the owners of properties on which a marijuana commercial operation is occurring from prosecution or having their property seized by federal law enforcement authorities.
 - (2) This chapter is to be construed to protect the public over medical marijuana facility interests. The operation of a licensed medical marijuana facility is a revocable privilege and not a right in the City. Nothing in this chapter is to be construed to grant a property right for an individual or business entity to engage, obtain, or have

renewed a City-issued permit to engage in the use, distribution, cultivation, production, possession, transportation or sale of medical marihuana as a commercial enterprise in the City.

- (3) Any individual or business entity which purports to have engaged in the use, distribution, cultivation, production, possession, transportation or sale of medical marihuana as a commercial enterprise in the City either prior to or after the enactment of this chapter without obtaining the required authorization required by this chapter is deemed to be an illegally established use, and as such is not entitled to legal nonconforming status under this chapter, the City Zoning Code,¹ or state statutory or common law.
- (4) Nothing in this chapter is intended to grant immunity from criminal or civil prosecution, penalty or sanction for the cultivation, manufacture, possession, use, sale, distribution or transport of marihuana in any form that is not in strict compliance with the Michigan Medical Marihuana Act, the Medical Marihuana Facilities Licensing Act, the Marihuana Tracking Act, 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 permit issued under this chapter, and noncompliance with any applicable state law or regulation shall be grounds for revocation or nonrenewal of any permit issued under the terms of this chapter.

C. Indemnification of City.

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

1. Editor's Note: See Appendix A, Zoning Ordinance, of the City of Kalamazoo Code.

D. Reservation of legislative prerogative.

- (1) The City Commission reserves the right to amend or repeal this chapter in any manner, including, but not limited to, the complete elimination of any type or number of medical marihuana facilities authorized to operate in the City.
- (2) 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.

E. Implementation of City Charter Section 199.

- (1) Following the adoption of the citizen-initiated amendment which added Section 199 to the City Charter to provide for the establishment of medical cannabis dispensaries, the Michigan Supreme Court issued its decision in *State of Michigan v. McQueen*, 493 Mich 135 (2013). In that case, the Court observed that "In contrast to several other states' medical marijuana provisions, the MMMA [Michigan Medical Marihuana Act] does not explicitly provide for businesses that dispense marijuana to patients." The Court ruled that a business which facilitates the transfer or sale of marijuana between caregivers and patients, unless they are connected through the MMMA registration process, is susceptible to abatement as a public nuisance.
- (2) The decision of the Michigan Supreme Court in the *McQueen* case left the legality and business practicality of Section 199 open to question. With the enactment of the MMFLA, Public Act 281 of 2016, implementation of Section 199 remains problematic since it is not wholly consistent with the MMFLA.
- (3) It is the intent of the City Commission by adopting this chapter to implement those provisions of Section 199 of the City Charter which do not conflict with the MMFLA or principles of Constitutional jurisprudence. To this end, it is determined that there is no rational basis to treat or make allowances that treat a "medical cannabis dispensary" apart from a "provisioning center."

§ 20B-3. Definitions.

Unless the context requires a different meaning, any term used in this chapter that is defined by the Michigan Medical Marihuana Act, the Medical Marihuana Facilities Licensing Act, or the Administrative Rules promulgated by the Michigan Department of Licensing and Regulatory Affairs addressing medical marihuana shall have the definition given in those Acts and Rules.

APPLICANT — A person who applies for a City-issued permit to operate a marihuana facility in accordance with the terms of this chapter and the City Zoning Code.² With respect to disclosures in an application and for purposes of ineligibility for a permit, the term "applicant" includes an officer, director,

and managerial employee of the applicant and any person who holds any direct or indirect ownership interest in the applicant. An applicant shall disclose the identity of any person which controls, directly or indirectly, the applicant, or any person which is controlled, directly or indirectly, by the applicant.

BOARD — The medical marihuana licensing board created pursuant to the MMFLA.

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

GROWER — A licensee that is a commercial entity that cultivates, dries, trims, or cures and packages marihuana for sale to a processor, provisioning center, or another grower.

LICENSEE — A person holding a state operating license.

MARIHUANA — That term as defined in Section 7106 of the Public Health Code, 1978 PA 368, MCL 333.7106.

MARIHUANA COMMERCIAL OPERATION — Any and all of the following marihuana facilities, whether operated for profit or not for profit:

- A. A grower.
- B. A processor.
- C. A secure transporter.
- D. A provisioning center.
- E. A safety compliance facility.

MARIHUANA FACILITY or **FACILITY** — A location at which a licensee is licensed to operate under the MMFLA and this chapter.

MARIHUANA PLANT — Any plant of the species *Cannabis sativa* L.

MARIHUANA-INFUSED PRODUCT — 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.

MEDICAL CANNABIS DISPENSARY — A provisioning center whose license to operate is held solely by one or more registered qualifying patients and/or registered primary caregivers operating at a fixed location.

MICHIGAN MEDICAL MARIHUANA ACT or **MMMA** — 2008 IL 1, MCL 333.26421 et seq., as may be amended.

MICHIGAN MEDICAL MARIHUANA FACILITIES LICENSING ACT or **MMFLA** — Public Act 281 of 2016, MCL 333.27101 et seq., as may be amended.

OPERATING PERMIT or PERMIT — The permit issued pursuant to this chapter authorizing the operation of a medical marihuana facility in the City.

PERMITTEE — A person who holds a permit issued by the City pursuant to this chapter.

PERSON — An individual, corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or other legal entity and includes persons defined as a "true party of interest" as that term is used at Section 404 of the MMFLA, MCL 333.27404 and persons defined as having a "beneficial interest" as that term is used at Section 303(1)(g) of the MMFLA, MCL 333.27303(1)(g).

PROCESSOR — 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 or another processor.

PROVISIONING CENTER — 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 and includes medical cannabis dispensaries. 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 chapter.

REGISTERED PRIMARY CAREGIVER or CAREGIVER — A primary caregiver who has been issued a current registry identification card under the MMMA.

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

RULES — Emergency and general administrative rules promulgated and from time to time amended by the Department in consultation with the Board to implement the MMFLA.

SAFETY COMPLIANCE FACILITY — A licensee that is a commercial entity that takes marihuana from a marihuana facility or receives marihuana from a registered primary caregiver, tests the marihuana for contaminants and for tetrahydrocannabinol and other cannabinoids, returns the test results, and may return the marihuana to the marihuana facility.

SECURE TRANSPORTER — 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 — A license that is issued by the Board under the MMFLA that allows the licensee to operate a marihuana commercial operation, as specified in the license.

ARTICLE II
Licensing of Medical Marihuana Facilities

§ 20B-4. Number of permitted facilities.

The maximum number of each type of medical marihuana commercial entity permitted in the City is as follows:

Type of Facility	Number
Grower	No limit
Processor	No limit
Secure Transporter	No limit
Provisioning Center	No limit
Safety Compliance Facility	No limit

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

- A. No person shall establish or operate a medical marihuana commercial facility in the City without first having obtained from the City and the state a license for each such facility to be operated. Permit and license certificates shall be kept current and publically displayed within the facility. Failure to maintain or display current state and City certificates shall be a violation of this chapter.
- B. There shall be an annual nonrefundable fee to defray the administrative and enforcement costs associated with medical marihuana facilities located in the City of not more than \$5,000 per licensed facility as set by resolution adopted by the City Commission; provided, however, that the annual nonrefundable fee shall not exceed \$3,000 for provisioning centers.
- C. The annual nonrefundable fee required under this section shall be due and payable with the application for a permit and upon the application for renewal of any such permit under this chapter. The permit and fee requirements of this chapter apply to all facilities, whether operated for profit or not for profit.
- D. The permit fee requirement set forth in this chapter shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any state regulatory agency, or by City ordinance, including, by way of example, any applicable fees for site plan review, zoning review, inspections, or building permits.
- E. The issuance of any permit pursuant to this chapter does not create an exception, defense, or immunity to any person in regard to any potential criminal liability the person may have for the production, distribution, or possession of marihuana under federal law.
- F. A separate permit shall be required for each premises from which a medical marihuana facility is operated. Operation of a grower and

processor facility at the same location is authorized, provided that each facility is separately licensed and permitted. Operation of a provisioning center at the same location as a grower or processing facility is not authorized.

- G. This chapter is not applicable to a home occupation operating in accordance with § 4.3G.16 of the City Zoning Code.³

§ 20B-6. Location criteria.

- A. No medical marihuana facility shall be eligible to be issued a permit unless at the time of granting the permit, the location of the proposed facility complies with the zoning and separation distances from other uses as set forth in the City Zoning Ordinance⁴ as required for the specific type of medical marihuana facility for which a permit is being sought.
- B. Mobile marihuana facilities and drive-through operations are prohibited.
- C. 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. A permit issued under this chapter may be transferred to a different location upon receiving written approval from the City Clerk. In order to request approval to transfer the location of a permit, the licensee must make a written request to the City Clerk, indicating the current licensed location and the proposed licensed location. Upon receiving the written request, the City Clerk shall forward a copy of the request to affected service areas and departments of the City to determine whether the proposed location complies with all applicable laws, rules and regulations. No permit transfer will be approved unless the proposed location meets the standards identified in this chapter and the City zoning code.

§ 20B-7. General permit application requirements.

- A. A person seeking a permit pursuant to the Medical Marihuana Facilities Licensing Act and the provisions of this chapter shall submit an application in writing to the City Clerk 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 costs associated with the processing of the application. In addition, the applicant shall present a suitable copy of government-issued photographic identification to accompany the application.
- B. The applicant shall also provide the following information, under the penalty of perjury, on the City-issued form approved by or acceptable to, the City Clerk and Public Safety Chief. Such information is required

3. Editor's Note: See Appendix A, Zoning Ordinance, of the City of Kalamazoo Code.

4. Editor's Note: See Appendix A, Zoning Ordinance, of the City of Kalamazoo Code.

for the applicant, the proposed manager of the marihuana facility, and all persons who are true parties of interest in the marihuana facility that is the subject of the application:

- (1) If the applicant is an individual or sole proprietorship, the proprietor and his or her spouse, if any, shall provide their name, address, date of birth, business address, business telephone number, e-mail address, social security number, and, if applicable, federal tax identification number;
- (2) If the applicant is not an individual or sole proprietorship, information regarding the business entity, including, without limitation, the name and address of the entity, website address (if any), type of business organization, proof of registration with, or a certificate of good standing from, the State of Michigan, as applicable, and the names, dates of birth, addresses, e-mail addresses, and phone numbers of each true party of interest, and the federal tax identification number of the business entity;
- (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 description of the type of the proposed marihuana commercial operation and its physical address;
- (7) A "to scale" diagram of the proposed licensed premises, no larger than 11 inches by 17 inches, showing, without limitation, building floor plan and layout, all entryways, doorways, or passageways, and means of public entry and exits to the proposed licensed premises, loading zones, available on-site parking spaces, fencing at the premises, and all areas in which medical marihuana will be stored, grown, manufactured or dispensed;
- (8) A lighting plan showing the lighting outside of the medical marihuana facility for security purposes and compliance with applicable City outdoor lighting requirements;
- (9) Proof of insurance.
 - (a) A licensee shall at all times maintain in full force and effect for duration of the license workers' 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 having an A.M. Best rating of at least B++. A licensee shall provide proof of insurance to the City Clerk in the form of a certificate of insurance evidencing the existence of a valid and effective policy which discloses the limits of each policy, the name of the insurer, the effective date and expiration date of each policy, the policy number, and the names of the additional insureds. The policy shall name the City of Kalamazoo and its officials and employees as additional insureds to the limits required by this section. A 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 five business days in the event of expiration or cancellation of coverage.

- (b) A secure transporter shall provide proof of no-fault automobile insurance with a company licensed to do business in Michigan with limits of liability not less than \$1,000,000 per occurrence combined single limit for bodily injury and property damage, vehicle registration, and registration as a commercial motor vehicle for all vehicles used to transport marijuana or marijuana-infused products.
 - (c) Any failure to maintain or lapse in the insurance coverage required by this chapter will be grounds for revocation of the City-issued operating license.
- (10) A staffing plan which describes the anticipated or actual number of employees, including an estimate of the number and type of jobs that the facility is expected to create and the amount and type of compensation (including benefits) expected to be paid for such jobs;
 - (11) An explanation, with supporting factual data, of the economic benefits to the City and the job creation for local residents to be achieved by the facility, including plans for community outreach and worker training programs, through the grant of a medical marijuana facility license;
 - (12) A statement that neither the applicant nor any true party of interest is in default to the City for any property tax, special assessment, utility charges, fines, fees or other financial obligation owed to the City;
 - (13) A statement that the applicant has reviewed and agrees to conform its hiring and public accommodation practices to the City's antidiscrimination ordinance provisions;

- (14) A statement that neither the applicant nor any true party of interest is ineligible from holding a license for any of the reasons set forth at Section 402 of the MMFLA, MCL 333.27402;
 - (15) Attestation that the applicant consents to inspections, examinations, searches and seizures required or undertaken pursuant to enforcement of this chapter; and
 - (16) Any additional information that the City Clerk or Public Safety Chief reasonably determines to be necessary in connection with the investigation and review of the application.
- C. Upon receipt of a completed application, the City Clerk may circulate the application to all affected service areas and departments of the City to determine whether the application is in full compliance with all applicable laws, rules and regulations.
 - D. If the City Clerk identifies or is informed of a deficiency in an application, the applicant shall have five business days to correct the deficiency after notification by the City Clerk.

§ 20B-8. Denial of application.

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

§ 20B-9. Issuance of provisional approval certificate.

- A. Within 35 days following the adoption of this chapter, the City Clerk shall establish an initial application period of at least 21 days to accept permit applications for licensed medical marihuana facilities. Initial applications following the adoption of this chapter for grower, processor, secure transporter, safety compliance and provisioning center facilities whose inspection, background checks, and all other information available to the City verify that the applicant has submitted a full and complete application, has made or has secured permits for making improvements to the business location consistent with the type of facility applied for, complies with applicable zoning and location requirements, and is prepared to operate the business as set forth in the application will be reviewed by the office of the City Clerk for completeness and compliance with the requirements of this chapter. The City Clerk shall issue a provisional medical marihuana facility approval certificate to each applicant whose application is complete

and in compliance with the provisions of this chapter and applicable state-issued regulations.

- B. Complete applications for a marihuana facility operating permit determined to be in full compliance with the requirements of this chapter shall be issued a provisional medical marihuana facility approval certificate in accordance with the procedures specified in this section.
- C. The City Clerk 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, safety compliance facility, or secure transporter has submitted a full and complete permit 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 the City Code of Ordinances and any other applicable law, rule, or regulation.
- D. A provisional medical marihuana facility approval certificate only means that the applicant has submitted a valid application for a marihuana facility operating permit, 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 one year, or will expire and be void after six 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.
- E. Within 30 days from the issuance of a provisional medical marihuana facility approval certificate by the City Clerk, the applicant must submit proof to the City Clerk that the applicant has applied for prequalification for the state for a state operating license or has submitted full application for such license. If the applicant fails to submit such proof, then the provisional approval will be cancelled by the City Clerk.
- F. If a provisionally approved applicant is denied prequalification for a state operating license or is denied on full application for a state operating license, then the provisional approval will be cancelled by the City Clerk and the provisional facility approval certificate will be made available to the next available qualified applicant under the applicable provision of this section.

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

- A. An applicant holding an unexpired provisional certificate issued pursuant to this chapter and for which the Board has granted the

appropriate marihuana facility state operating license shall provide proof of same to the City Clerk.

- B. An inspection of the proposed medical marihuana facility by the City shall be required prior to issuance of the City operating permit. Such inspection shall occur after the premises are ready for operation, but prior to the stocking of the business with any medical marihuana, and prior to the opening of the business or commencement of operations. 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 this chapter 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 this chapter and any other applicable law, rule, or regulation, and the issuance of a permanent certificate of occupancy for the facility, the City Clerk shall issue a City medical marihuana operating permit for a term of one year. The City-issued permit shall be prominently displayed within the facility.
- D. Maintaining a valid marihuana facility license issued by the state is a condition for the issuance and maintenance of the City marihuana facility operating license issued under this chapter and the continued operation of any marihuana facility.
- E. A condition of the issuance of a medical marihuana operating license includes, at a minimum, operation of the business in compliance with all of the plans and the information provided to the City as part of the application. A licensee must update any change in the information provided to the City as part of the application within five business days of such change during the term of the license. The failure to timely update a change in information will be grounds for suspension or revocation of the operating permit.

§ 20B-11. Permit forfeiture.

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

§ 20B-12. Permit renewal.

- A. A valid marihuana facility operating permit 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 set by City Commission resolution. An application to renew a marihuana facility operating permit shall be filed no sooner than 90 days and at least 60 days prior to the date of its expiration. The failure to timely file for renewal is

sufficient grounds to deny renewal of a permit to operate a medical marihuana facility in the City and is not subject to appeal.

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

§ 20B-13. Transfer of permit.

- A. A medical marihuana business permit is valid only for the owner named thereon, the type of business disclosed on the application for the permit, and the location for which the permit is issued.
- B. Each operating permit is exclusive to the licensee, and a licensee or any other person must submit an application for a permit 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 for a City operating permit with the City Clerk is grounds for suspension or revocation of the license and existing permit.

§ 20B-14. Permit as revocable privilege.

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

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

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

ARTICLE III
Specific Marihuana Facility Requirements

§ 20B-16. Limitation on grower classes.

A grower may not hold more than one class of grower license.

§ 20B-17. Separation of licensed premises.

A grower facility and processor facility in the same location are separate medical marihuana commercial operations requiring separate licenses and separate permits. In addition to all other application requirements for separate facilities, each business, if sharing a building or structure, shall be distinctly partitioned from each other from floor to roof and have separate operations, ventilation, security and fire suppression systems, and separate entrances and exits.

§ 20B-18. Secure transporter.

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.

§ 20B-19. Provisioning centers.

- A. The licensee, manager, operator and employees of a provisioning center shall strictly comply with all rules addressing security (including but not limited to an operating video surveillance system), storage of marihuana and marihuana-infused products to prevent direct customer access and use of a separate room as a point-of-sale area.
- B. It is unlawful for the licensee, manager, operator or employees of a provisioning center to:
- (1) Permit the sale, consumption, or use of alcohol beverages on the licensed premises.
 - (2) Sell, give, dispense or otherwise distribute medical marihuana or medical marihuana paraphernalia from any outdoor location.
 - (3) Offer or distribute samples of marihuana or marihuana-infused products to a consumer free of charge.
 - (4) Permit the consumption of marihuana or marihuana-infused products on the licensed premises.
 - (5) Operate a licensed provisioning center at any time other than between the hours of 7:00 a.m. and 9:00 p.m. daily.
 - (6) Keep or grow marihuana plants within a provisioning center.

- C. Provisioning centers shall be wheelchair accessible, and disability accommodations shall be provided to patients upon request.

ARTICLE IV
General Requirements

§ 20B-20. 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. All marihuana commercial operations shall obtain all other required permits or licenses related to the operation of the marihuana facility, including, without limitation, any development approvals or building permits required by any applicable code or ordinance.
- C. Any failure by a licensee to comply with Department rules or the provisions of this chapter is a violation of this chapter, and any infraction or violation, however slight, is sufficient grounds for suspension and revocation of licensure under this chapter.

§ 20B-21. Signage and advertising.

- A. All signage and advertising for a medical marihuana facility shall comply with all applicable provisions of this Code and the City Zoning Code.⁵ In addition, it shall be unlawful for any licensee to:
 - (1) 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 aged 17 or younger;
 - (2) Advertise in a manner that is inconsistent with the medicinal use of marihuana and marihuana-infused products or use advertisements that promote medical marihuana or marihuana-infused products for recreational or any use other than for medicinal purposes by patients and caregivers.
- B. Only one sign per street frontage, which complies with the size restrictions set forth in the City Zoning Code, is permitted for a provisioning center or safety compliance center. Neon or gas lighted and flashing signs are prohibited.

§ 20B-22. 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. Prior to commencing operations, a description of the security plan for the facility shall be submitted to the Department of Public Safety. The security plan shall include details of a video surveillance system to be

5. **Editor's Note: See Appendix A, Zoning Ordinance, of the City of Kalamazoo Code.**

employed at the facility and procedures that meet or exceed applicable state rules addressing security.

- C. The security system shall be maintained in good working order and provide twenty-four-hour-per-day coverage. A separate security system is required for each facility.

§ 20B-23. Fire suppression; hazardous materials.

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

§ 20B-24. Waste management.

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

§ 20B-25. Visibility of activities.

- A. All activities of marijuana commercial operations, including, without limitation, the cultivating, growing, processing, displaying, manufacturing, selling, and storage of marijuana and marijuana-infused products, shall be conducted indoors and out of public view.
- B. No medical marijuana, marijuana-infused product, or paraphernalia shall be displayed or kept in a business so as to be visible from outside the licensed premises.

§ 20B-26. Odor control.

- A. A grower or a processor shall install and maintain in operable condition an appropriate exhaust ventilation system which precludes the emission of detectable marihuana odor resulting from any growth or production process or operations from the premises.
- B. No medical marihuana facility shall permit the emission of marihuana odor to result in detectable odors that leave the facility premises upon which they originated and interfere with the reasonable and comfortable use and enjoyment of another's property.
- C. 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.

§ 20B-27. 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 Kalamazoo Department of Public Safety within 24 hours of occurrence, or its discovery, whichever is sooner. The failure to timely report criminal activity is a violation of this chapter and may result in sanctions up to and including the suspension, revocation or nonrenewal of the facility's City operating license.

§ 20B-28. 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 chapter 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 chapter or any other applicable law, rule, or regulation. For purposes of this chapter, 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 chapter 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

premises without a search warrant, and consent to seizure of any surveillance records, camera recordings, reports, or other materials required as a condition of a medical marihuana 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 chapter, the MMFLA, or applicable state administrative rules.

§ 20B-29. 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 marihuana, the additional or stricter regulation shall control the establishment or operation of any marihuana 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 permit under this article, and noncompliance with any applicable state law or regulation shall be grounds for revocation or suspension of any permit issued hereunder.

§ 20B-30. Grant of administrative authority.

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

§ 20B-31. Violations and penalties.

- A. Any person, including, but not limited to, any licensee, manager or employee of a marihuana commercial operation, or any customer of such business, who violates any of the provisions of this article shall be responsible for a municipal civil infraction punishable by a civil fine of \$500, plus court-imposed costs and any other relief that may be imposed by the court for the first violation; and \$1,000, plus court-imposed costs and any other relief that may be imposed by the court for a subsequent violation committed within one year of any previous offense.
- B. In addition to any civil fine imposed for a municipal civil infraction violation, a violation of this chapter shall also be sufficient grounds the suspension, revocation or nonrenewal of the facility's City operating permit.

- C. In addition to the possible denial, suspension, revocation or nonrenewal of a license under the provisions of this chapter, the City Attorney is authorized to seek such other relief that may be available and provided by law or equity, including filing a public nuisance action or seeking injunctive relief against a person alleged to be in violation of this chapter or the City Zoning Code.⁶

6. Editor's Note: See Appendix A, Zoning Ordinance, of the City of Kalamazoo Code.

ARTICLE V

Temporary Operation of Medical Marihuana Facilities**§ 20B-32. Purpose and intent.**

- A. The purpose of this article is to authorize the temporary operation of a certain type of medical marihuana facility in the City of Kalamazoo pursuant to the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq. (MMFLA) and the Emergency Rules promulgated by the Michigan Department of Licensing and Regulatory Affairs (LARA) on December 4, 2017, implementing the MMFLA.
- B. So as to permit the continued operation of medical marihuana facilities that may be currently operating, the Department of Licensing and Regulatory Affairs (LARA) issued Emergency Rule 19, that set forth certain requirements, which if satisfied allowed the temporary operation of an existing medical marihuana facility until such time as it applies for and obtains a state operating license.
- C. An authorizing ordinance could not be adopted before December 15, 2017, which was the date set by the Emergency Rules by which a municipality had to adopt an ordinance to permit the continued temporary operation of existing unlicensed medical marihuana facilities operating in the City.

§ 20B-33. Limitation on types of medical marihuana facilities.

To enable and insure the continued access to lab-tested medical marihuana to registered patients and primary caregivers without disruption, the City Commission deems this chapter necessary for the protection of the public health, safety and welfare. As such, this chapter is limited to permitting the continued operation of operating safety compliance centers in existence and operating on December 4, 2017. As used in this article, "safety compliance center" means a commercial entity that receives marihuana from registered patients and/or primary caregivers, tests it for contaminants and for tetrahydrocannabinol and other cannabinoids, and provides the test results.

§ 20B-34. Conditions required.

- A. A safety compliance center is allowed to temporarily continue operations in the City only in compliance with the following conditions:
 - (1) The facility is a safety compliance center and has been in operation within the City at its present location on a continuous basis for at least one year prior to and including December 4, 2017.
 - (2) The owner or principal of the facility files a signed and notarized affidavit with the City Clerk verifying that the above conditions are satisfied. Upon the filing of the affidavit required by this section, the City Clerk or the designee of the City Clerk is authorized to sign the LARA-issued attestation form required by Emergency Rule 19.

- (3) The owner or principal of a facility operating pursuant to this article shall apply for prequalification for a state operating license no later than February 15, 2018.
- B. If by June 15, 2018, the City has not adopted an ordinance pursuant to Section 205 of the MMFLA authorizing safety compliance facilities to operate in the City, or the owner or principal of a facility operating pursuant to this article having applied for a state operating license and such having been denied or not having been issued, the safety compliance center is operating without a license and shall cease operations.
- C. Any temporary operation after June 15, 2018, is considered unlicensed activity. Unlicensed activity may result in a referral to the State Police or Kalamazoo Department of Public Safety for investigation and prosecution of unlicensed activity. This section shall survive any repeal or sunset of this article.

§ 20B-35. Compliance with subsequent ordinances.

A medical marijuana facility temporarily operating under this article is subject to all conditions and requirements contained under any subsequent ordinance addressing medical marijuana facilities adopted by the City. Further, nothing in this article shall be construed as a guarantee for any permit, zoning approval or any other approval required by a medical marijuana facility from the City under a subsequently adopted medical marijuana licensing or zoning ordinance.

§ 20B-36. Effective date; retroactive effect of article.

- A. Because the issuance of the Emergency Rules on December 4, 2017, did not permit the City to timely comply with the City Charter requirements addressing the adoption of ordinances so as to authorize temporary operation of existing safety compliance centers prior to December 15, 2017, this article is deemed adopted on December 14, 2017, nunc pro tunc, and given retroactive effect to that date.
- B. This article is intended to allow for the temporary operation of certain medical marijuana facilities pursuant to the requirements of Emergency Rule 19 issued by LARA on December 4, 2017, so as to permit a municipality to adopt an ordinance authorizing the continued temporary operation of unlicensed medical marijuana facilities while municipalities considered adopting an ordinance pursuant to Section 205 of the MMFLA after December 15, 2017. Should any section or part of this article be found by any state board or agency to deprive an otherwise qualifying safety compliance center from being able to continue temporary operations under the Emergency Rule, the City may, at its option, choose to amend this article so as to correct such deficiency. Such an amendment shall be retroactive to the date of adoption of this article, being December 14, 2017, so as to comply with the Emergency Rule.

§ 20B-37. Sunset of article.

Except for § 20B-34C, the provisions of this Article V shall sunset and be of no further legal effect after June 15, 2018.