

CITY OF NILES, MICHIGAN  
ORDINANCE NO.

AN ORDINANCE TO AUTHORIZE "MEDICAL MARIHUANA FACILITIES", TO THE CITY OF NILES CODE OF ORDINANCES

THE CITY OF NILES ORDAINS:

**Section 1: Purpose and Intent**

A. Purpose. The purpose of this Ordinance is to implement the provisions of Public Act 281 of 2016, being the Michigan Medical Marihuana Facilities Licensing Act, so as to protect the public health, safety, and welfare of the residents and patients of the City by setting forth the manner in which medical marihuana facilities can be operated in the City. Further, the purpose of this Ordinance is to:

1. Provide for a means of cultivation, processing, and distribution of medical marihuana to patients who qualify to obtain, possess, and use marihuana for medical purposes under the Michigan Medical Marihuana Act, (MCL 333.26421 et seq.), the Medical Marihuana Facilities Licensing Act (MCL 333.27101 et seq.) and the Marihuana Tracking Act (MCL 333.27901 et seq.);
2. Protect public health and safety through reasonable limitations on medical marihuana commercial entity operations as they relate to noise, air and water quality, neighborhood and patient safety, security for the facility and its personnel, and other health and safety concerns;
3. Protect residential neighborhoods by limiting the location and the concentration of types of medical marihuana commercial entities to specific areas of the City;
4. Impose fees to defray and recover the cost to the City of the administrative and enforcement costs associated with medical marihuana facilities;
5. Coordinate with laws and regulations that may be enacted by the State addressing medical marihuana; and
6. To restrict the issuance of medical marihuana facility licenses only to individuals and entities that have demonstrated an intent and ability to comply with this Ordinance.

B. Legislative Intent. This Ordinance authorizes the establishment of medical marihuana facilities within the City of Niles consistent with the provisions of the qualifying State of Michigan legislation; and subject to the following:

1. Medical marihuana cultivation and processing can have an impact on health, safety, and community resources, and this Ordinance is intended to permit medical marihuana cultivation and processing where it will have a minimal impact.
2. Use, distribution, cultivation, production, possession, and transportation of medical

marihuana remains illegal under Federal law and medical marihuana remains classified as a “controlled substance” by federal law.

3. The regulations for medical marihuana commercial entities are not adequate at the State level to address the impacts on the City of the commercialization of medical marihuana, making it appropriate for local regulation of the impact of medical marihuana commercial entities on communities.
  4. Nothing in this Ordinance is intended to promote or condone the distribution, or possession of marihuana in violation of any applicable law.
  5. This Ordinance is to be construed to protect the public over medical marihuana facility interests. Operation of a medical marihuana facility is a revocable privilege and not a right in the City. There is no property right for an individual or facility to engage or obtain a license to engage in medical marihuana as a commercial enterprise in the City.
  6. Because medical marihuana is a heavily regulated industry in the City, all licensees are assumed to be fully aware of the law; the City shall not therefore be required to issue warnings before issuing citations for violations of this Ordinance.
- C. Relationship to Federal Law. As of the effective date of this ordinance, marihuana is classified as a Schedule 1 controlled substance under Federal law which makes it unlawful to manufacture, distribute, cultivate, produce, possess dispense or transport marihuana. Nothing in this ordinance is intended to grant immunity from any criminal prosecution under Federal law.
- D. Relationship to State Law.
1. Except as otherwise provided by the Acts and this Ordinance, a 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 medical marihuana.
  2. Except as otherwise provided by the Acts and this Ordinance, a person who owns or leases real property upon which a medical marihuana facility is located and who has no knowledge that the licensee is violating or violated the Acts or a provision of this Ordinance, is not subject to criminal or civil prosecution under City ordinances regulating medical marihuana.
  3. Nothing in this ordinance is intended to grant immunity from criminal or civil prosecution, penalty or sanction for the cultivation, manufacture, possession, use, sale, distribution or transport of marihuana in any form, that is not in strict compliance with the Michigan Medical Marihuana Act, the Medical Marihuana Facilities Licensing Act, the Marihuana Tracking Act and all applicable rules promulgated by the State of Michigan regarding medical marihuana. Strict compliance with any applicable State law or regulation shall be deemed a requirement for the issuance or renewal of any license issued under this Ordinance,

and noncompliance with any applicable State law or regulation shall be grounds for revocation or nonrenewal of any license issued under the terms of this Ordinance.

4. A registered qualifying patient or registered caregiver is not subject to criminal prosecution or sanctions for any transfer of 2.5 ounces or less of medical marihuana to a safety compliance facility for testing.
5. In the event of any conflict, the terms of this Ordinance are preempted and the controlling authority shall be the statutory regulations set forth by the Acts or the rules adopted by the Board to implement, administer or enforce the Acts.

#### E. City Liability and Indemnification

1. By accepting a license issued pursuant to this Ordinance, the licensee waives and releases the City, its officers, elected officials, and employees from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of medical marihuana facility owners, operators, employees, clients or customers for a violation of State or federal laws, rules or regulations.
2. By accepting a license issued pursuant to this Ordinance, all licensees, agree to indemnify, defend and hold harmless the City, its officers, elected officials, employees, and insurers, against all liability, claims or demands arising on account of bodily injury, sickness, disease, death, property loss or damage or any other loss of any kind, including, but not limited to, any claim of diminution of property value by a property owner whose property is located in proximity to a licensed operating facility, arising out of, claimed to have arisen out of, or in any manner connected with the operation of a medical marihuana facility or use of a product cultivated, processed, distributed or sold that is subject to the license, or any claim based on an alleged injury to business or property by reason of a claimed violation of the federal Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §1964(c).
3. By accepting a license issued pursuant to the Ordinance, 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.

## Section 2 Definitions

- A. "Acts" means any or any combination thereof of the following Michigan State laws:
  1. "Michigan Medical Marihuana Act" or "MMMA" means 2008 IL1, MCL 333.26421 et seq. as, may be amended.
  2. "Michigan Medical Marihuana Facilities Licensing Act" or "MMFLA" means Public Act 282 of 2016, MCL 333.27901 et seq., as may be amended
  3. "Michigan Marihuana Tracking Act" means Public Act 282 of 2016, MCL 333.27901

et seq., as may be amended.

- B. "Applicant" means a person who applies for a State operating license. With respect to disclosures in an application, or for purposes of ineligibility for a license, the term applicant includes an officer, director, managerial employee of the applicant and a person who holds any direct or indirect ownership interest in the applicant.
- C. "Board" means the medical marihuana licensing board created pursuant to Part 3 of the MMFLA.
- D. "Caregiver" or "Registered primary caregiver" means a registered primary caregiver who has been issued a current registry identification card under the Acts, .
- E. "Cultivate" or "Cultivation" means (1) all phases of medical marihuana growth from seed to harvest; and (2) the preparation, packaging, and labeling of harvested usable medical marihuana.
- F. "Department" or "LARA" means the Michigan refers to the State of Michigan State Licensing and Regulatory Affairs, or its successor agency.
- G. "Grower" means a licensee that is a commercial entity that cultivates, dries, trims, or cures and packages medical marihuana for sale to a processor or provisioning center.
- H. "Licensee" means an individual or legal entity holding a State operating license.
- I. "Medical Marihuana" means that term as defined in section 7106 of the Public Health Code, 1978 PA 368, MCL 333.7106.
- J. "Medical marihuana commercial entity" means any and all of the following medical marihuana facilities:
  - 1. a grower
  - 2. a processor
  - 3. a secure transporter
  - 4. a provisioning center
  - 5. a safety compliance facility
- K. "Marihuana facility" means a location at which a licensee is licensed to operate under the Acts and this Ordinance.
- L. "Marihuana plant" means any plant of the species Cannabis Sativa L.
- M. "Marihuana-infused product" means a topical formulation, tincture, beverage, edible substance, or similar product containing any usable medical marihuana that is intended for human consumption in a manner other than smoke inhalation. Marihuana-infused product shall not be considered a food for purposes of the food law, 2000PA92, MCL 289.1101 et seq.
- N. "Michigan Medical Marihuana Act" or "MMMA" means 2008 IL1, MCL 333.26421 et seq. as, may be amended.

- O. "Michigan Medical Marihuana Facilities Licensing Act" or "MMFLA" means Public Act 282 of 2016, MCL 333.27901 et seq., as may be amended
- P. "Michigan Marihuana Tracking Act" means Public Act 282 of 2016, MCL 333.27901 et seq., as may be amended.
- Q. "Paraphernalia" means any equipment, product, or material of any kind that is designed for or used in growing, cultivating, producing, manufacturing, compounding, converting, storing, processing, preparing, transporting, injecting, smoking, ingesting, inhaling, or otherwise introducing into the human body, medical marihuana.
- R. "Patient" or "Registered Qualifying Patient" means a qualifying patient who has been issued a current registry identification card under the Acts or a visiting qualifying patient as that term is defined in the Acts.
- S. "Person" means an individual, corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or other legal entity.
- T. "Plant" means any living organism that produces its own food through photosynthesis and has observable root formation or is in growth material.
- U. "Processor" means a licensee that is a commercial entity that purchases medical marihuana from a grower and that extracts resin from the marihuana or creates a medical marihuana-infused product for sale and transfer in packaged form to a provisioning center.
- V. "Provisioning center" means a licensee that is a commercial entity that purchases medical marihuana or medical marihuana infused product, from a grower or processor and sells, supplies, or provides medical marihuana to registered qualifying patients, directly or through the patients' registered primary caregivers.
  - 1. Provisioning center includes any commercial property where medical marihuana or medical marihuana infused products are sold at retail to registered qualifying patients or registered primary caregivers.
  - 2. A noncommercial location used by a primary caregiver to assist a qualifying patient connected to the caregiver through the Department's medical marihuana registration process in accordance with the Acts is not a provisioning center for purposes of this Ordinance.
- W. "Registry identification card" means that term as defined in the Acts.
- X. "Rules" mean rules promulgated by the Department in consultation with the Board to implement the Acts.
- Y. "Safety compliance facility" means a licensee that is a commercial entity that receives medical 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 medical marihuana to the originating medical marihuana

facility.

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

AA. "State" means Michigan unless otherwise specified.

BB. "State operating license" or, unless the context requires a different meaning, "license" means a license that is issued under the Acts and this Ordinance that allows the licensee to operate as 1 of the following medical marihuana commercial entities, as specified in the license:

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

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

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

DD. "True party of interest" means:

1. For an individual or sole proprietorship: the proprietor and spouse.
2. For a partnership and limited liability partnership: all partners and their spouses. For a limited partnership and limited liability limited partnership all general and limited partners and their spouses. For a limited liability company: all members, managers and their spouses.
3. For privately held corporation: all corporate officers or persons with equivalent titles and their spouses and all stockholders and their spouses.
4. For a publically held corporation: all corporate officers or persons with equivalent titles and their spouses.
5. For a multilevel ownership enterprise: any entity or person that receives or has the

right to receive a percentage of the gross or net profit from the enterprise during any full or partial calendar or fiscal year.

6. For a nonprofit corporation: all individuals and entities with membership or shareholder rights in accordance with the articles of incorporation or the bylaws and their spouses.
7. For a trust: the names of the beneficiaries. However, "true party of interest" does not mean:

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

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

### SECTION 3 Licensing of Medical Marihuana Facilities

A. 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
Provisioning Center	Two (2)
Safety Compliance Facility	No limit
Secure Transporter	No limit

1. Provided that while there is no limit on the number of growers and or processors, no more than two (2) structures in the City of Niles Industrial Park may house grow, processing or provisioning facilities or any combination thereof, at any given time.
2. No medical marihuana facility 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 for which licensure is being sought.
3. A licensee shall not operate a medical marihuana facility at any place in the City other than the address provided in the application on file with the City Clerk.

**B. License and Annual Fee Required**

1. No person shall establish or operate a medical marijuana commercial entity in the City without first having obtained from the City and the State a license for each such facility to be operated. License certificates shall be kept current and publically displayed within the facility. Failure to maintain or display a current license certificate shall be a violation of this Ordinance.
2. An annual nonrefundable fee to defray the administrative and enforcement costs associated with medical marijuana facilities located in the City of not more than \$5,000 per licensed facility as set by resolution adopted by the City Council.
3. The annual nonrefundable fee required under this Section shall be due and payable with the application for a license and upon the application for renewal of any such license under this Ordinance.
4. The license fee requirement set forth in this Ordinance 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.
5. The issuance of any license pursuant to this Ordinance 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 marijuana under federal law.
6. A separate license shall be required for each activity or premise from which a medical marijuana facility is operated.

**Section 3.A General License Application Requirements**

- A. A person seeking a license pursuant to the Acts and the provisions of this Ordinance shall submit an application to the City on forms provided by the City. At the time of application, each applicant shall pay a nonrefundable application fee to defray the costs incurred by the City for background investigations and inspection of the proposed premises, as well as any other costs associated with the processing of the application. In addition, the applicant shall present a suitable form of identification.
  1. Applicants must submit an initial review fee not to exceed \$2,500 with their application for a provisional license.
  2. Upon approval by the State, a final fee not to exceed \$2,500 must be submitted prior to starting operations.
- 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 Police Chief or their designee. Such information is required for the applicant, the proposed manager of the



medical marihuana commercial entity, and all persons who are true parties of interest in the medical marihuana commercial entity that is the subject of the application:

1. The name, address, date of birth, business address, business telephone number, social security number, and, if applicable, federal tax identification number;
2. If the applicant is a business entity, information regarding the entity, including, without limitation, the name and address of the entity, its legal status, and proof of registration with, or a certificate of good standing from, the State of Michigan, as applicable;
3. The identity of every person having any ownership interest in the applicant with respect to which the license is sought.
4. If the applicant is not the owner of the proposed licensed premises, a notarized Statement from the owner of such property authorizing the use of the property for a medical 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 "to scale" diagram of the proposed licensed premises, no larger than eleven (11) inches by seventeen (17) inches, showing, without limitation, building layout, all entryways and exits to the proposed licensed premises, loading zones and all areas in which medical marihuana will be stored, grown, manufactured or dispensed.
7. An approved Special Land Use (SLU) Permit from the City of Niles Planning Commission as well an approved Building Permit by the City of Niles Building Official as appropriate.
8. Proof of Insurance. A licensee shall at all time 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 per occurrence and a \$2,000,000 aggregate limit issued from a company licensed to do business in Michigan having an AM Best rating of at least A-.
  - a. 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.
  - b. The policy shall name the City of Niles 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 (5) business days in the event of expiration or cancellation of coverage.

9. Whether an applicant has been indicted for, charged with, arrested for, or convicted of, plead guilty or nolo contendere to, forfeited bail concerning any criminal offense under the laws of any jurisdiction, either felony or controlled-substance-related misdemeanor, not including traffic violations, regardless of whether the offense has been reversed on appeal or otherwise, including the date, the name and location of the court, arresting agency, and prosecuting agency, the case caption, the docket number, the offense, the disposition, and the location and length of incarceration.
  10. Whether an applicant has ever applied for or has been granted any commercial license or certificate issued by a licensing authority in Michigan or any other jurisdiction that has been denied, restricted, suspended, revoked, or not renewed and a Statement describing the facts and circumstances concerning the application, denial, restriction, suspension, revocation, or nonrenewal, including the licensing authority, the date each action was taken, and the reason for each action.
  11. Whether an applicant has filed, or been served with, a complaint or other notice filed with any public body, regarding the delinquency in the payment of, or a dispute over the filings concerning the payment of, any tax required under federal, State or local law, including the amount, type of tax, taxing agency, and time period intervals involved.
  12. A description of the type of medical marihuana facility; and the anticipated or actual number of employees.
  13. An acknowledgement and consent that the City, including the Niles Police Department, may conduct a background investigation, including a criminal history check, and that the City may be entitled to full and complete disclosure of all financial records of the medical marihuana commercial entity, which may include any/all records of deposit, withdrawals, balances and loans upon request; and
  14. Any additional information that the City Clerk, Police Chief, Fire Chief, Public Works Director, Zoning Administrator, Building Official, Utilities Director, City Administrator and/or City Attorney or their designees reasonably determines to be necessary in connection with the investigation and review of the application.
- C. Consistent with the Acts and Freedom of Information Act, MCL 15.231 et seq., the information provided to the City Clerk pursuant to this section relative to licensure is exempt from disclosure.
- D. All medical marihuana commercial entities shall obtain all other required permits of licenses related to the operation of the medical marihuana commercial entity, including, without limitation, any development approvals or building permits required by any applicable code or ordinance.
- E. If the City Clerk identifies a deficiency in an application, the applicant shall have five (5)

business days to correct the deficiency after notification by the City Clerk.

- F. Upon an applicant's completion of the above-provided form and furnishing of all required information and documentation, the City Clerk shall accept the application.
- G. Upon receipt of a completed application, the application will be distributed 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.

### **Section 3.B Denial of Application**

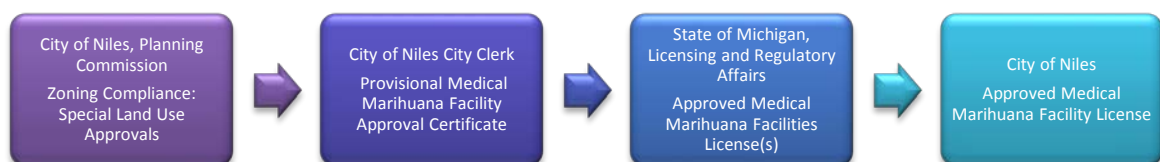
- A. The City Clerk shall reject any application that does not meet the requirements of the Acts or this Ordinance, or any pertinent provision of any State of Michigan or City of Niles laws, rules or regulations.
- B. An applicant is ineligible to receive a license under this Ordinance if any of the following circumstances exist regarding a true party of interest of the applicant:
  - 1. Conviction of or release from incarceration for a felony under the laws of Michigan, any other State or the United States within the past ten (10) years or conviction of a controlled substance related felony within the past ten (10) years.
  - 2. Within the past five (5) years, conviction of a misdemeanor involving a controlled substance, theft, dishonesty, or fraud in any State or been found responsible for violating a local ordinance in any State involving a controlled substance, dishonesty, theft or fraud that substantially corresponds to a misdemeanor in that State.
  - 3. The applicant has knowingly submitted an application for a license that contains false, misleading or fraudulent information, or who has intentionally omitted pertinent information for the application for a license.
  - 4. Is a member of the Board
  - 5. The applicant fails to provide and maintain adequate premises liability and casualty insurance for its proposed medical marijuana facility.
  - 6. Holds an elective office of a governmental unit of this State, another State, or the federal government; is a member of or employed by a regulatory body of a governmental unit in this State, another State, or the federal government; or is employed by a governmental unit of this State. This subdivision does not apply to an elected officer of or employee of a federally recognized Indian tribe or to an elected precinct delegate.
  - 7. The applicant, if an individual, has been a resident of this State for less than a continuous 2-year period immediately preceding the date of filing the application. This requirement does not apply after June 30, 2018.
  - 8. The applicant fails to meet other criteria established by State-issued rule.

C. Denial of Application; Due Process

- a. Any applicant whose application is denied because of missing, incomplete, erroneous, false, misleading or negligent information or because of a lack of submission of full fees due, does not have the right to appeal the decision.
- b. Those applicants denied a license based on qualifications, may appeal the decision.
  - i. 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 staff consider. City staff shall hear and decide questions or requests for due process that arise and make a decision upon the claim.
  - ii. Upon determination by City staff, the applicant has the right to request further due process. The City Administrator shall hear and decide questions or requests for due process that arise after City staff have reviewed and provided a decision and the applicant wishes to further appeal the denial.
  - iii. Should the applicant request further guidance, the City Council shall hear and decide questions or requests for due process that arise after City Administrator has reviewed and provided a decision that the applicant wishes to further appeal.
    - 1. This shall be conducted at a public meeting of the Council and a concurring vote of a majority of the members of the City Council is necessary to reverse an order, requirement, decision or determination of an administrative official in the interpretation of this Ordinance.
    - 2. The applicant must be present at the designated Council meeting or forfeits their right to due process.
    - 3. The decision of the City Council is final.

**Section 3.C Issuance of Provisional Approval Certificate**

- A. Prior to opening any medical marihuana business in the City of Niles, all proper permitting, licensing, fee submission and compliance documents must be finalized and approved. The submission process for provisional medical marihuana facility approvals is as follows:



- a. Compliance with all City of Niles Zoning Regulations proven by obtaining an approved Special Land Use zoning compliance permit from the City of Niles Planning Commission. See accompanying City of Niles zoning regulations.
- b. A provisional medical marihuana facility approval certificate must be obtained from the City of Niles City Clerk
  - i. Complete applications for a medical marihuana facility license determined to be in full compliance with the requirements of this Ordinance shall be issued a provisional medical marihuana facility approval certificate in accordance with the procedures specified in this Section.
  - ii. 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 application, has made improvements to the business location consistent with the application, complies with applicable zoning and location requirements, and is prepared to operate the business as set forth in the application, all in compliance with the City Code of Ordinances and any other applicable law, rule, or regulation.
  - iii. A provisional medical marihuana facility approval certificate means only that the applicant has submitted a valid application for a medical marihuana facility license, and is eligible to receive the appropriate medical marihuana facility license from the Board.
    - 1. The applicant shall not locate or operate a medical marihuana facility in the City without obtaining a license approved by the Board and issued by the State.
    - 2. A provisional certificate issued by the City on or before December 31, 2018 will expire and be void after one (1) year, or will expire and be void after six (6) months for a provisional license issued 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.
  - iv. The conditions of an approval of a medical marihuana business license shall include, at a minimum, operation of the business in compliance with all of the plans and information made part of the application.

**Section 3.D Issuance of City Medical Marihuana Facility Operating License**

- A. An applicant holding an unexpired provisional certificate issued pursuant to this Ordinance and for which the Board has granted the appropriate medical marihuana facility State operating license shall provide proof of same to the City Clerk.

- B. Inspection. An inspection of the proposed medical marihuana facility by the City shall be required prior to issuance of the City operating license. Such inspection shall occur after the premises are ready for operation, but prior to the stocking of the business with any medical marihuana, and prior to the opening of the business to any patients or the public. The inspection is to verify that the business facilities are constructed and can be operated in accordance with the application submitted and the applicable requirements of the code and any other applicable law, rule, or regulation.
- C. After verification that the business facilities are constructed and can be operated in accordance with the application submitted and the applicable requirements of the code and any other applicable law, rule, or regulation, the City Clerk shall issue a City medical marihuana operating license whose term shall run concurrent with the State operating license for the facility.
- D. Maintaining a valid medical marihuana facility license issued by the State is a condition for the issuance and maintenance of the City medical marihuana facility operating license issued under this Ordinance and the continued operation of any medical marihuana facility.
- E. The City of Niles will authorize approved medical marihuana businesses license(s) to entities in the following order and on the condition that a license and facility location are available in the City per the City's Zoning Ordinance:
  - a. On or after December 15, 2017 the proposed medical marihuana facility has completed and received approvals as outlined in this Ordinance as verified by the City Clerk or their designee; **and**
  - b. Paid all licensing fees due to the City of Niles; **and**
  - c. The entity(ies) holds an approved and fully authorized State of Michigan; Department of Licensing and Regulatory Affairs approved Medical Marihuana Facility License to the City Clerk; **and**
  - d. An approved certificate of occupancy from the City of Niles Fire Chief and/or Building Official.

**Section 3.E License Forfeiture**

In the event that a medical marihuana facility 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 and the license is not eligible for renewal.

**Section 3.F License Renewal**

- A. A City medical marihuana facility operating license shall run concurrent with the State operating medical marihuana license issued for the facility, unless revoked as provided by law.
- B. A valid medical marihuana facility license may be renewed on an annual basis by a renewal application upon a form provided by the City and payment of an annual license fee.

- a. An application to renew a marihuana facility license shall be filed at least ninety (90) days prior to the date of its expiration. The annual renewal fee shall be assigned by the City Council and not to exceed \$5,000.
  - i. In the event that the renewal application is not submitted in accordance with this section, the City will assess a late fee of \$25.00/day for each day that the renewal application is submitted late.
  - ii. 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 exceed \$2,000, in addition to the daily late fees outlined in Section III.F.B.i and annual renewal fee.
  - iii. In the event that an application is not received within five (5) business days of expiration, the license will be revoked and all operations must immediately cease by Order of the Police Chief.
  - iv. A notice of local revocation will be issued to the State of Michigan and the licensee will have to resubmit all documentation and receive all approvals as a new entity should they wish to reopen their business.
  
- D. Prior to the issuance of a renewed medical marihuana facility license by the City, the premises shall be inspected to assure that it and its systems are in compliance with the requirements of this Ordinance.

**Section 3.G Transfer, Sale or Purchase of License**

- A. A medical marihuana business license is valid only for the owner named thereon, the type of business disclosed on the application for the license, and the location for which the license is issued. The licensees of a medical marihuana business license are only those persons disclosed in the application or subsequently disclosed to the City in accordance with this Ordinance.
  
- B. Each operating license is exclusive to the licensee and a licensee or any other person must submit an application for licensure with the City Clerk before a license is transferred, sold, or purchased. The attempted transfer, sale, or other conveyance of an interest in a license without prior application with the City Clerk is grounds for suspension or revocation of the license.
  
- C. After January 1, 2018 and in compliance with any/all rules issued by the Board regarding the sale, transfer or purchase of existing licenses; any entity that holds a Department issued license may transfer or sell their license to a qualifying applicant.
  - a. Any entity purchasing or receiving a transferred license must submit an application and all associated documentation and all fees.
  
  - b. The applicant who is receiving the transfer or purchasing the license must have submitted all new application fees (of not more than \$5,000 per licensed facility as

set by resolution adopted by the City Council) and received all local and State approvals on all applications and associated documentation as well as all inspections as outlined in this Ordinance and the Acts prior to beginning or taking over operations.

### **Section 3.H License as Revocable Privilege**

- A. An operating license granted by this Ordinance 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. The attempted transfer, sale, or other conveyance of an interest in a license without prior Board or City approval is grounds for suspension or revocation of the license or for other sanction considered appropriate by the City.
- E. Any effort to circumvent the protocol listed in this Ordinance and/or the City of Niles Zoning Ordinance will result in the immediate denial of application or complete revocation of the City of Niles issued Medical Marijuana Facilities License.

### **Section 3.I 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 Ordinance or with any applicable State or local law or regulation;
  - 2. The applicant or licensee, or his or her agent, manager or employee, has failed to comply with any special terms or conditions of its license pursuant to an order of the State or local licensing authority, including those terms and conditions that were established at the time of issuance of the license and those imposed as a result of any disciplinary proceedings held subsequent to the date of issuance of the license; or
  - 3. The medical marijuana commercial entity 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 of the medical marijuana commercial entity or in the immediate area surrounding such business, a continuing pattern of criminal conduct directly related to or arising from the operation of the medical marijuana commercial entity, or an ongoing nuisance condition emanating from or caused by the medical marijuana commercial entity. Criminal conduct shall be limited to the violation of a State law or regulation or City ordinance.

- C. City staff shall hear and decide questions that arise in the administration of this Ordinance, including appeals of suspension and revocations of City operating licenses.
1. Any licensee whose license has been suspended, revoked or not renewed because of missing, incomplete, erroneous, false, misleading or negligent information or because of a lack of submission of full fees due, does not have the right to appeal the decision.
  2. Those licensees denied a license based on qualifications, may appeal the decision.
    - i. 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 staff consider. City staff shall hear and decide questions or requests for due process that arise and make a decision upon the claim.
    - ii. Upon determination by City staff, the applicant has the right to request further due process. The City Administrator shall hear and decide questions or requests for due process that arise after City staff have reviewed and provided a decision and the applicant wishes to further appeal the denial.
    - iii. Should the applicant request further guidance, the City Council shall hear and decide questions or requests for due process that arise after City Administrator has reviewed and provided a decision that the applicant wishes to further appeal.
      1. This shall be conducted at a public meeting of the Council and a concurring vote of a majority of the members of the City Council is necessary to reverse an order, requirement, decision or determination of an administrative official in the interpretation of this Ordinance.
      2. The applicant must be present at the designated Council meeting or forfeits their right to due process.
      3. The decision of the City Council is final.

## **SECTION 4 Specific Medical Marihuana Facility Requirements**

### **Section IV4A Grower License**

- A. A grower may not hold more than one (1) class of grower license.
- B. An applicant and each investor in a grower license cannot have an interest in a secure transporter or safety compliance facility.
- C. A grower shall comply with the following:
  - 1. Until December 31, 2021, have an active employee who is an individual who has a minimum of two (2) years experience as a registered primary caregiver.
  - 2. While holding a license as a grower, not be a registered caregiver and not employ an individual who is simultaneously a registered primary caregiver.
  - 3. Enter all transactions, current inventory, and other information into the Michigan Statewide monitoring/tracking system as required by the Acts.
  - 4. Sell or transfer medical marihuana seeds or medical marihuana plants only to another grower by means of a licensed secure transporter.
  - 5. Sell or transfer medical marihuana, other than seeds, only to a licensed processor or provisioning center by means of a licensed secure transporter.
  - 6. The sale or transfer of medical marihuana waste must be conducted in a manner prescribed by the Acts, Department and/or Board. Absolutely no medical marihuana based waste products may be disposed of in a traditional waste elimination receptacle (trash can, dumpster, etc.).
  - 7. No pesticides or insecticides which are prohibited by applicable law for fertilization or production of edible produce shall be used on any marihuana cultivated, produced, or distributed by a medical marihuana business.
  - 8. A medical marihuana business shall be ventilated so that the odor of medical marihuana cannot be detected by a person with a normal sense of smell at the exterior of the medical marihuana business or at any adjoining use or property as outlined in the City's Zoning Ordinance.

### **Section 4.B Processor License**

- A. A processor license authorizes the purchase or transfer of medical marihuana only from a licensed grower and sale or transfer of marihuana-infused products or medical marihuana only to a licensed provisioning center.
- B. The applicant and each investor in a processor license cannot have an interest in a secure transporter or safety compliance facility.
- C. A processor shall comply with all of the following:

1. Until December 31, 2021, have as an active employee an individual who has, a minimum of 2 years' experience as a registered primary caregiver who does not hold a current/valid registered primary caregiver license in any State.
2. While holding a license as a processor, not be a registered primary caregiver and not employ an individual who is simultaneously a registered primary caregiver.
3. Enter all transactions, current inventory, and other information into the Statewide monitoring/tracking system as required in this act, rules, and the Acts.
4. Transfer medical marihuana and medical marihuana-infused products only by means of a licensed secure transporter.

#### **Section 4.C Secure Transporter License**

- A. A secure transporter license authorizes the storage and transport of medical marihuana, marihuana-infused products and money associated with the purchase or sale of medical marihuana and medical marihuana-infused products between medical marihuana facilities at the request of a person with legal custody of the medical marihuana, medical marihuana-infused products or money. It does not authorize transport to a registered qualifying patient or registered primary caregiver who is not a licensee.
- B. An applicant and each investor with an interest in secure transporter license cannot have an interest in a grower, processor, provisioning center or safety compliance facility and cannot be a registered qualifying patient or a registered primary caregiver.
- C. A secure transporter which operates from a medical 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.
- D. A secure transporter shall comply with all of the following:
  1. Each driver transporting medical marihuana, medical marihuana-infused products, or money related to the purchase or sale of medical marihuana or medical marihuana-infused products must have a chauffeur's license issued by the State of Michigan.
  2. Each employee of a secure transporter who has custody of medical marihuana, medical marihuana-infused products or money that is related to the purchase or sale of medical marihuana or medical marihuana-infused products shall not have been convicted of or released from incarceration for a felony under the laws of this State, any other State, or the United States within the past five (5) years or have been convicted of a misdemeanor involving a controlled substance within the past five (5) years.
  3. Each vehicle shall be operated with a two- (2) person crew with at least one (1) individual remaining with the vehicle at all times during the transportation of

medical marihuana or medical marihuana-infused products.

4. A route plan and manifest shall be entered into the Statewide monitoring/tracking system, and a copy shall be carried in the transporting vehicle and presented to a law enforcement officer upon request.
5. The medical marihuana and medical marihuana-infused products shall be transported in (one) 1 or more sealed containers and shall not be accessible while in transit.
6. A secure transporting vehicle shall not bear markings or other indication that it is carrying medical marihuana or medical marihuana-infused product.
7. A secure transporter is subject to administrative inspection by a law enforcement officer at any point during the transportation of medical marihuana or medical marihuana-infused products to determine compliance with this Act.
8. A secure transporter shall enter all transactions, current inventory, and other information into the Statewide monitoring/tracking system as required by the Acts.
9. When determining and reporting the route to take, a secure transporter shall select the most direct route that provides efficiency and safety.

#### **Section 4.D Provisioning Center License**

- A. A licensed provisioning center is authorized:
  1. To purchase or transfer medical marihuana only from a licensed grower;
  2. To purchase or transfer medical marihuana or medical marihuana-infused products from a licensed processor; and
  3. Sell or transfer medical marihuana or medical marihuana-infused products only to registered qualifying patients and registered qualifying caregivers.
- B. All transfers of medical marihuana and medical marihuana-infused products to a provisioning center from a separate medical marihuana facility shall be by means of a secure transporter.
- C. A provisioning center license authorizes the provisioning center to transfer medical marihuana to or from a safety compliance facility for testing by means of a secure transporter.
- D. An applicant and each investor in a provisioning center cannot have an interest in a secure transporter or safety compliance facility.
- E. A provisioning center shall comply with all of the following:
  1. Sell or transfer medical marihuana to a registered qualifying patient or registered primary caregiver only after it has been tested and bears the label required for retail

sale.

2. Enter all transactions, current inventory, and other information into the Statewide monitoring system as required in this act, rules, and the Acts.
3. Before selling or transferring medical marijuana or medical marijuana-infused products to a registered qualifying patient or to a registered primary caregiver on behalf of a registered qualifying patient, inquire of the Statewide monitoring/tracking system to determine whether the patient and, if applicable, the care giver holds a valid, current, unexpired and unrevoked registry identification card and that the sale or transfer will not exceed the daily purchasing limit established by the Board.
4. Not allow the sale, consumption or use of alcohol or tobacco products on the premises.
5. Not allow a physician, nurse practitioner, physician's assistant or other registered medical professional to conduct medical examination or issue a medical certification document on the premises.
6. No marijuana plants shall be located in a provisioning center.

#### **Section 4.E Safety Compliance Facility License**

- A. A licensed safety compliance facility is authorized to:
  1. Receive medical marijuana from, test medical marijuana for, and return medical marijuana to a medical marijuana facility; and
  2. Receive from, test for, and return 2.5 ounces or less of medical marijuana to a registered primary caregiver.
- B. A safety compliance facility must be accredited by an entity approved by the Board by 1 year after the date the license is issued or have previously provided drug testing services to this State or this State's court system and be a vendor in good standing in regard to those services. The Board may grant a variance from this requirement upon a finding that the variance is necessary to protect and preserve the public health, safety, or welfare.
- C. An applicant and each investor with any interest in a safety compliance facility cannot have an interest in a grower, secure transporter, processor, or provisioning center.
- D. A safety compliance facility shall comply with all of the following:
  1. Perform tests to certify that medical marijuana is reasonably free of chemical residues such as fungicides and insecticides.
  2. Use validated test methods to determine tetrahydrocannabinol, tetrahydrocannabinol acid, cannabidiol, and cannabidiol acid levels.
  3. Perform tests that determine whether medical marijuana complies with the

standards the Board establishes for microbial and mycotoxin contents.

4. Perform other tests necessary to determine compliance with any other good manufacturing practices as prescribed in rules.
5. Enter all transactions, current inventory, and other information into the Statewide monitoring/tracking system as required in this rule and the Acts.
6. Have a secured laboratory space that cannot be accessed by the general public.
7. Retain and employ at least one (1) staff member with a relevant advanced degree in medical or laboratory science if/as required by the Acts.

## **SECTION 5 General Requirements**

### **SECTION 5.A 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 and the City of Niles.
- B. A licensee shall adopt and use the Statewide monitoring system of inventory control and tracking authorized by the Marihuana Tracking Act so as to provide the capability for the licensee to comply with the State requirements applicable to the type of license held by the licensee.
- C. A medical marihuana facility and all articles of property in the facility are subject to inspection, search and examination at any time by a member of the Department of State Police.
- D. Any failure by a licensee to comply with Department rules or the provisions of this Ordinance is a violation of this Ordinance and any infraction or violation, however slight, is sufficient grounds for suspension and revocation of licensure under this Ordinance.

### **SECTION 5.B Prohibited Acts**

- A. It shall be unlawful for any licensee to permit the consumption of alcohol beverages on the licensed premises.
- B. It shall be unlawful for any licensee holding a provisioning venter license, or for any agent, manager, or employee thereof to:
  1. Sell, give, dispense or otherwise distribute medical marihuana or medical marihuana paraphernalia from any outdoor location;
  2. Sell, give, dispense or otherwise distribute to any patient or primary caregiver who is not a licensee more usable form of medical marihuana (including the useable medical marihuana equivalent of medical marihuana-infused products) within any seven (7) day period of time than they are allowed by the MMMA to possess.
  3. It shall be unlawful for retail medical marihuana establishments to distribute medical marihuana or medical marihuana-infused products to a consumer free of charge.

4. It shall be unlawful for any licensee to permit the consumption of retail medical marihuana or retail medical marihuana products on the licensed premises.
5. It shall be unlawful for any licensee to sell medical marihuana or medical marihuana products at a licensed provisioning center at any time other than between the hours of 7:00 a.m. and 10:00 p.m. daily.

### **SECTION 5.C 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 City of Niles Police Department within twelve hours of occurrence, or its discovery, whichever is sooner.

### **SECTION 5.D 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 City of Niles Police Department and all other City departments for the purpose of investigating and determining compliance with the provisions of this Ordinance 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 Administrator, or their designee, to conduct routine examinations and inspections of the medical marihuana business to ensure compliance with this Ordinance or any other applicable law, rule or regulation.
- C. For the purposes of this Ordinance, 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 Ordinance for the purpose of protecting the public safety, individuals operating and using the services of the medical marihuana business, and the adjoin properties and neighborhoods.
- D. Application for medical marihuana business license constitutes consent to the examination and inspection of the business as a public premise in accordance with the Acts.
- E. 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 Ordinance, the Acts, or applicable State administrative rules.

### **SECTION 5.E 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 medical 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 license under this Section, and noncompliance with any applicable State law or regulation shall be grounds for the revocation or suspension of any license issued hereunder.

**SECTION 5.F Grant of Administrative Authority**

The City Clerk is granted the power and duty through its official designee to fully and effectively implement and administer the license application process and issuance of Provisional Approval Certificates and Operating Licenses issued by the City under this Ordinance. The City Clerk, after consultation with other City departments, may promulgate such rules as necessary to implement and administer this Ordinance.

**SECTION 5.G Miscellaneous**

- A. Violations and Penalties:** In addition to the possible denial, suspension, revocation or nonrenewal of a license under the provisions of this Ordinance, any person, including, but not limited to, any licensee, manager or employee of a medical marijuana commercial entity, 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 §1.7 of this Code unless a different penalty is provided herein. "
- B. Repealer:** All former ordinances or parts of ordinances conflicting or inconsistent with the provisions of this ordinance are repealed.
- C. Severability:** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, said portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity and enforceability of the remaining portions of this ordinance.
- D. Effective Date:** The provisions of this ordinance shall become effective \_\_\_\_\_, 2017 and only if an ordinance is adopted by the City Commission amending the City Zoning Code to permit the location of medical marijuana facilities in the City.

**CERTIFICATION**

The foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Niles at a regular meeting held on \_\_\_\_\_, 2017. Public notice was given and the meeting was conducted in full compliance with the Open Meetings Act, (PA 267, 1976, M.C.L. § 15.261 et. seq). Minutes of the meeting will be available as required by the Act, and the ordinance was duly recorded, posted and authenticated by the Mayor and City Clerk as required by the Charter of said City.

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Nick Shelton, Mayor

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Linda Casperson, City Clerk