

CHAPTER 115: RECREATIONAL MARIHUANA ESTABLISHMENTS

Section

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§ 115.01 DEFINITIONS.

The following words and phrases have the meanings ascribed to them when used in this chapter:

CO-LOCATION or CO-LOCATED. the siting and operation of a combination of multiple establishments or establishment types at a single location.

DESIGNATED CONSUMPTION ESTABLISHMENT. A commercial space that is licensed by LARA and authorized to permit adults 21 years of age and older to consume marihuana products at the location indicated on the state license.

EDIBLE MARIHUANA PRODUCT. Any marihuana-infused product containing marihuana that is intended for human consumption in a manner other than smoke inhalation.

EMERGENCY RULES. The emergency rules for adult-use marihuana establishments issued by LARA on or about July 3, 2019.

EXCESS MARIHUANA GROWER. A license issued by LARA to a person holding five class C marihuana grower licenses and licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.

LARA. The Department of Licensing and Regulatory Affairs and any successor department or agency within the department, including the Marihuana Regulatory Agency.

LICENSEE. A person holding a state operating license for a marihuana establishment.

MARIHUANA. All parts of the plant genus cannabis, growing or not; the seeds of that plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin. MARIHUANA does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from those stalks, fiber, oil, or cake, or any sterilized seed of the plant that is incapable of germination. MARIHUANA does not include industrial hemp.

MARIHUANA ESTABLISHMENT. A marihuana grower, marihuana safety compliance establishment, marihuana processor, marihuana microbusiness, marihuana retailer, marihuana secure transporter, or any other type of marihuana-related business licensed by LARA.

MARIHUANA EVENT ORGANIZER. A person licensed to apply for a temporary marihuana event license under the Emergency Rules.

MARIHUANA GROWER. A person licensed by LARA to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.

MARIHUANA-INFUSED PRODUCT. A topical formulation, tincture, beverage, edible substance, or similar product containing marihuana and other ingredients and that is intended for human consumption.

MARIHUANA MICROBUSINESS. A person licensed by LARA to cultivate not more than 150 marihuana plants; process and package marihuana; and sell or otherwise transfer marihuana to individuals who are 21 years of age or older or to a marihuana safety compliance establishment, but not to other marihuana establishments.

MARIHUANA PROCESSOR. A person licensed by LARA to obtain marihuana from marihuana establishments; process and package marihuana; and sell or otherwise transfer marihuana to marihuana establishments.

MARIHUANA RETAILER. A person licensed by LARA to obtain marihuana from marihuana establishments and to sell or otherwise transfer marihuana to marihuana establishments and to individuals who are 21 years of age or older.

MARIHUANA SAFETY COMPLIANCE ESTABLISHMENT. A person licensed by LARA to test marihuana, including certification for potency and the presence of contaminants.

MARIHUANA SECURE TRANSPORTER. A person licensed by LARA to obtain marihuana from marihuana establishments in order to transport marihuana to marihuana establishments.

MMMA. The Michigan Medical Marihuana Act, Initiated Law 1 of 2008, as amended, M.C.L.A. §§ 333.26424 et seq.

MMMFLA. The Michigan Medical Marihuana Facilities Licensing Act, 2016 PA 281, as amended, M.C.L.A. §§ 333.27102 et seq.

MRTMA. The Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, M.C.L.A. §§ 333.27951 et seq.

MRTMA RULES. Rules, including emergency rules, promulgated by LARA to implement the MRTMA.

PREQUALIFICATION STEP or PREQUALIFIED. The portion of the application for a state operating license pertaining to the applicant's financial background and the criminal history of the applicant and other associated persons, as provided by Emergency Rule 6.

STACKED GROWER LICENSE. More than one state operating license issued to a single licensee to operate as a grower of class C-2,000 marihuana plants as specified in each license at an establishment.

STATE OPERATING LICENSE or, unless the context requires a different meaning, LICENSE. A license that is issued by LARA under the MRTMA that allows the licensee to operate a marihuana establishment.

§ 115.02 AUTHORIZED ESTABLISHMENTS.

(A) Authorization and special use permit required. No person shall operate a marihuana establishment in the city without an authorization issued by the city pursuant to the

provisions of this chapter and a special use permit pursuant to this chapter and the city zoning ordinance. No person shall operate a temporary marihuana event in this city without an authorization issued by the city pursuant to the provisions of this chapter.

(B) Establishments eligible for authorization. The following marihuana establishments may be authorized to operate in the city, subject to this chapter:

- (1) Growers operating under Class A licenses (unlimited);
- (2) Growers operating under Class B licenses (unlimited);
- (3) Growers operating under Class C licenses (unlimited);
- (4) Retailers (unlimited);
- (5) Processors (unlimited);
- (6) Secure transporters (unlimited);
- (7) Safety compliance establishments (unlimited);
- (8) Microbusinesses (unlimited);
- (9) Zero designated consumption establishments;
- (10) Zero excess marihuana growers.

(C) Co-location and stacked licenses. Co-location and stacked grower licenses are permitted in the City.

(D) Final authorization from city required. The authorization process described in § 115.03 determines the locations in the city at which establishments may operate. A proposed establishment is not eligible to operate until the clerk grants final authorization pursuant to section § 115.03(F) and until the applicant receives a special use permit under the city zoning ordinance and all required approvals and licenses from LARA.

§ 115.03 APPLICATION FOR AUTHORIZATION.

(A) Timing of submission. Beginning on January 6, 2020, a person may apply for authorization to operate an establishment within the city by complying with the requirements of this section.

(B) Required application materials. An application is not considered complete until all of the following are received by the City Clerk:

- (1) A nonrefundable application fee in an amount established by resolution of the City Commission.
- (2) An advance of the annual administrative fee established in § 115.05(D).
- (3) A photocopy of a valid, unexpired driver's license or state issued identification card for all owners, directors, and officers of the proposed establishment.
- (4) A signed application (available in the clerk's office), which must include all of the following information and documents:
 - (a) If the applicant is an individual, the applicant's name; date of birth; Social Security number; physical address, including residential and any business address; copy of government-issued photo identification; email address; one or more phone numbers, including emergency contact information;
 - (b) If the applicant is not an individual, the names; dates of birth; physical addresses, including residential and any business address; copy of government-issued photo identifications; email address; and one or more phone numbers of each stakeholder of the

applicant, including designation of the highest ranking representative as an emergency contact person; contact information for the emergency contact person; articles of incorporation or organization; assumed name registration; Internal Revenue Service EIN confirmation letter; copy of the operating agreement of the applicant, if a limited liability company; copy of the partnership agreement, if a partnership; names and addresses of the beneficiaries, if a trust, or a copy of the bylaws or shareholder agreement, if a corporation;

(c) The name, address, tax identification number, and current zoning designations of the proposed marijuana establishment;

(d) The name and address of the current property owner of record;

(e) If the current property owner is different than the applicant (e.g. where the applicant has a lease, option, land contract, or other future interest in the property), the property owner's signature is required in addition to the applicant's.

1. An applicant may submit applications for multiple properties.

2. However, only one application shall be submitted per property, unless the applications are for proposed co-located establishments.

(f) The proposed establishment type;

(g) If the proposed establishment type involves stacked growing licenses, the number of licenses sought;

(h) A complete list of all marijuana permits and licenses held by the applicant;

(i) Written consent for the city to inspect the establishment at any time during normal business hours to ensure compliance with applicable laws and regulations;

(j) A location area map of the marijuana establishment and surrounding area that identifies the relative locations and the distances (closest property line to the subject marijuana establishment's building) to the closest real property comprising a public or private elementary, vocational or secondary school;

(k) A copy of all documents submitted by the applicant to LARA in connection with the application for a state operating license under the MRTMA (including documents submitted for prequalification);

(l) A copy of all documents submitted by the applicant to LARA in connection with the application for a state operating license under the MMFLA, if applicable;

(m) A copy of all documents issued by LARA indicating that the applicant has been prequalified for a state operating license under the MRTMA;

(n) Any other information reasonably requested by the City relevant to the processing or consideration of the application.

(C) Initial receipt period. For any establishment type subject to numerical limitations under § 115.02, the initial receipt period shall commence on January 6, 2020, and shall end at the close of business on Friday, February 28, 2020.

(D) Clerk action upon receipt. The clerk will accept and receive any complete application that includes the information and documents required by § 115.03(B), unless the city has already received an application for the same property (other than an application for a proposed co-located establishment) from another applicant. Upon receiving a complete application, the clerk will time- and date-stamp the application and inform the applicant of the following:

- (1) The number of existing establishments of the proposed establishment type currently operating within the city;
- (2) The number of pending applications for the desired establishment type; and
- (3) The process by which an applicant will be selected pursuant to division (E) of this section.

(E) Conditional authorization and competitive process. The clerk will conditionally authorize establishments as follows:

(1) If, after close of business on the end date of the initial receipt period, the city has received more applications for a given establishment type than would be permitted under § 115.02, the city will decide among competing applications by a competitive process intended to select applicants who are best suited to operate in compliance with the MRTMA in the city. The city will provide applicants with 21 calendar days' notice that the applicants must provide supplemental written information and documentation to the city indicating whether the applicant satisfies each of the following criteria:

Scoring category	Available points
Current medical marihuana facility license status in the City and history of compliance with City and state regulations associated with existing medical marihuana facility licenses held in the City.	10 points
Background of the applicant, including past ownership interest in a business or businesses operating in the State of Michigan; past compliance with business licensing requirements, including marihuana business licenses issued by LARA; and residency in the City or Isabella County for at least one year.	10 points
Human resources, including the number of full-time equivalent employees.	10 points
Physical investment, including the applicant's proposed tangible capital investment; the current and proposed condition of the proposed location; and the applicant's ownership stake in the physical location of the establishment.	20 points
Area impact, including the proximity of the establishment to properties zoned or used residentially; and plans for litter control, loitering, neighborhood outreach, noise mitigation, odor mitigation, resident safety, and traffic mitigation.	10 points
Business operations, including a business plan; financing plan; marketing and promotion plan, with an emphasis on reducing exposure to minors; and strategic plan.	10 points
Establishment design, including the provision of glazing, landscaping, and screening above City minimum requirements; the use of durable building materials; compliance with the Americans with Disabilities Act; and implementation of Crime Prevention Through Environmental Design (CPTED) principles.	10 points

Energy efficiency, including Energy Star certification; Michigan Energy Code compliance; use of energy from carbon-free sources; and use of WaterSense fixtures.	10 points
Infrastructure impact, including the utilization of green infrastructure or low-impact development design principles to manage stormwater; and the provision of non-motorized transportation infrastructure in excess of City requirements.	10 points

(2) The application and all supplemental information shall be delivered to the city's Adult-Use Marihuana Establishment Selection Committee ("Selection Committee"). The Selection Committee shall be comprised of the City Clerk, the City Planner, and the Director of Public Safety. All meetings of the Selection Committee shall be conducted in accordance with the Open Meetings Act, Act 267 of 1976, M.C.L.A. §§ 15.261 et seq., as amended.

(3) Upon timely receipt of the supplemental information described in division (E)(1) of this section, the Selection Committee shall hold a public meeting and assign points for each criterion that is satisfied and shall, based on the resulting scores, select applicants who are best suited to operate in compliance with the MRTMA in the City. The City Clerk shall notify the selected applicants that they have been granted conditional authorization. In the event of a tied score, the Selection Committee shall conduct a random drawing from among the applicants with tied scores to determine which applicant shall receive conditional authorization. The city's decision to grant conditional authorization is final and is not appealable to the City Commission, City Zoning Board of Appeals, or any other city official or body.

(4) If an applicant does not timely submit the supplemental information described in division (E)(1) of this section, then the application shall be discarded and shall not be considered under division (E)(3) of this section.

(5) For any establishment type not subject to numerical limits under § 115.02, or otherwise not subject to the competitive process described in division (E)(1) of this section, the clerk will conditionally authorize establishments in the order in which applications are received.

(6) Once the clerk has issued conditional authorizations for all of the establishments of a given establishment type that would be permitted under § 115.02, the clerk will place subsequent applications at the end of the waiting list for that establishment type. Applications shall be included on the waiting list in the order designated by the Selection Committee under division (E)(3) of this section.

(F) Final authorization. The clerk will grant final authorization for the establishment if the applicant:

(1) Submits an application for special use authorization pursuant to § 154.410.B.4.b of the zoning ordinance within 90 days of receiving conditional authorization; and

(2) Obtains special use authorization within 12 months of receiving conditional authorization.

(3) Receives all required operating licenses and approvals from LARA within 18 months after conditional authorization is granted.

(4) Enters into a written agreement with the city confirming that the marijuana establishment will operate in accordance with the business plans, building plans, design standards, and all other operational standards described by the applicant in the application and in any supplemental materials submitted under division (E) of this section. The agreement shall further provide that if the establishment breaches the agreement, then the city may revoke authorization of the establishment following notice and a public hearing, and that in such event, the city shall be entitled to injunctive relief barring further operation of the establishment in the city.

(G) Expiration of conditional authorization. If the applicant for a conditionally authorized establishment fails to satisfy any of the deadlines established above, the conditional authorization will expire. The City Commission may extend any of the deadlines upon a showing of good cause.

(H) Waiting list and refund of administrative fee. The clerk will keep and maintain the waiting lists established pursuant to division (E) of this section until the maximum number of establishments of the type to which the list pertains are operating in the city (at which time the clerk will discard the waiting list). If a conditional authorization for a proposed establishment of that establishment type expires, the clerk will conditionally authorize the next application on the waiting list. Upon discarding the waiting list, the clerk will refund the advance of the annual administrative fee established in § 115.05(D) to all applicants remaining on the waiting list.

(I) Newly available authorizations.

(1) For establishment types for which the maximum number of establishments specified in § 115.02 are operating in the city, an authorization will become available when:

(a) The state operating license for an establishment with final authorization expires or is revoked by LARA; or

(b) This chapter is amended to authorize additional establishments of that establishment type.

(2) When an authorization becomes available as described in division (I)(1) of this section, the city clerk will establish a 30-day application period to begin within the next 60 days during which the city will accept applications from interested persons, and will publish notice of the selected application period in a newspaper of general circulation at least seven business days before the beginning of that period.

(3) During the selected application period, the clerk will accept applications using the same process described in divisions (C) and (D) above of this section. If multiple applications are received during the application period, the Selection Committee will request supplemental information and conduct a competitive selection process as outlined in § 115.03(E) above.

§ 115.04 RELOCATION OF ESTABLISHMENTS, TRANSFERS OF LICENSES, AND EXPANSION OF GROW OPERATIONS.

(A) An existing establishment may be moved to a new location in the city, subject to applicable zoning regulations and approval by LARA.

(B) A license for an existing establishment may be transferred to a new licensee that intends to continue operating at the same location, subject to approval by LARA.

(C) A licensee may expand growing operations by upgrading the class of the license (e.g., from class A to class B, or from class B to Class C), or by obtaining a stacked license. To do so, the licensee must submit a new application to the city satisfying the requirements in § 115.03(B), which shall include payment of the application fee and an advance of any additional annual administrative fee that will be owed due to the addition of stacked licenses. The application shall be conditionally approved upon receipt of all required materials.

§ 115.05 GENERAL REGULATIONS.

(A) Submission of supplementary information to the city. Applicants for city authorization and persons operating existing establishments in the city must provide the city clerk with copies of all documents submitted to LARA in connection with the initial license application, subsequent renewal applications, or investigations conducted by LARA. The documents must be provided to the clerk within seven days of submission to LARA, and may be submitted by electronic media unless otherwise requested by the clerk.

(B) Compliance with applicable laws and regulations. Adult-use marihuana establishments must be operated in compliance with the MRTMA, MRTMA rules, all conditions of the establishment's state operating licenses, and all applicable city ordinances. Compliance with the foregoing does not create immunity from prosecution by federal authorities or other authorities of competent jurisdiction.

(C) No consumption on premises. No smoking, inhalation, or other consumption of marihuana shall take place on or within the premises of any establishment. It shall be a violation of this chapter to engage in such behavior, or for a person to knowingly allow such behavior to occur. Evidence of all of the following gives rise to a rebuttable presumption that a person allowed the consumption of marihuana on or within a premises in violation of this section:

(1) The person had control over the premises or the portion of the premises where the marihuana was consumed;

(2) The person knew or reasonably should have known that the marihuana was consumed; and

(3) The person failed to take corrective action.

(D) Annual fee. A licensee must pay a fee of \$5,000, for each license used within the city in order to help defray administrative and enforcement costs. The holder of a stacked grower license must pay a separate fee in the amount of \$5,000 for each license. The initial annual fee(s) must be paid to the city clerk when the application for city approval is submitted. In each subsequent year, fees are due no later than January 31.

§ 115.06 TEMPORARY MARIHUANA EVENTS.

(A) Authorization. Temporary marihuana events are permitted in the City only as provided in this section.

(B) Prelicensure conditional approval. Pursuant to Emergency Rule 62, temporary marihuana events may only be held at a venue expressly approved by the city for the

purpose of holding a temporary marihuana event. Prior to obtaining a temporary marihuana event license from LARA, a licensed marihuana event organizer may apply to the city for preclosure venue and event approval. The application must include all of the following information:

- (1) The name of the applicant. For applicants who are business entities, the applicant shall provide the legal business name of the applicant.
 - (2) Verification that the marihuana event organizer holds a valid license from LARA.
 - (3) A non-refundable application fee in an amount established by resolution of the City Commission.
 - (4) Verification that the applicant has been licensed by LARA as a marihuana event organizer.
 - (5) The proposed date(s) and hours of operation of the temporary marihuana event;
 - (6) The proposed venue of the temporary marihuana event, including the street address, parcel number, and zoning designation;
 - (7) A list of all marihuana retailers and marihuana microbusinesses who are expected to participate in the temporary marihuana event, and verification that each retailer and microbusiness is licensed by LARA and authorized to operate in the City under this chapter;
 - (8) A diagram of the physical layout of the temporary marihuana event, which must clearly indicate:
 - (a) Where the temporary marihuana event will be taking place on the location grounds.
 - (b) All entrances and exits that will be used by participants during the event.
 - (c) All marihuana consumption areas.
 - (d) All marihuana retail areas where marihuana products will be sold.
 - (e) Where marihuana waste will be stored.
 - (f) All areas where marihuana products will be stored.
 - (g) The specific location of each marihuana retailer or marihuana microbusiness licensee who will be participating in the event.
 - (9) A description of all proposed event security and signage.
 - (10) An attestation from the applicant that the temporary marihuana event will comply with the requirements of this section, the MRTMA, the Emergency Rules, and any other administrative rules or guidelines promulgated by LARA.
 - (11) An acknowledgment from the applicant that only edible marihuana products will be sold or used at the temporary marihuana event.
 - (12) Any other information or documentation related to the proposed temporary marihuana event requested by the City.
- (C) Upon receipt of a complete application for preliminary approval, the City Commission or its designee may determine whether to approve or disapprove the proposed venue and proposed temporary marihuana event. In making this determination, the city shall consider the following nonexclusive factors:
- (1) Whether the applicant and the application satisfies the requirements of division (B) of this section;

(2) The proximity of the temporary marihuana event to residential homes, schools, daycare facilities, parks, and locations likely to be occupied by individuals younger than 21 years of age;

(3) The impact of the temporary marihuana event on surrounding properties and businesses, including but not limited to noise, odor, and traffic impacts;

(4) The impact of the temporary marihuana event on the community as a whole; and

(5) The sufficiency of the proposed security measures.

(D) If the proposed venue and event are approved, then the city shall provide a written attestation to the applicant on the form provided by LARA indicating that the applicant is authorized to engage in onsite marihuana sales to, and onsite consumption by, persons 21 years of age or older at the temporary marihuana event at the proposed location, conditioned on the applicant obtaining all required licenses from LARA and complying with the MRTMA, Emergency Rules, and any other administrative rules or guidelines promulgated by LARA.

(E) Requirements. All temporary marihuana events must satisfy the following requirements at the time of the commencement of the event and through the duration of the event:

(1) The applicant must hold a valid marihuana event organizer license issued by LARA.

(2) The applicant must hold a temporary marihuana event license from LARA for the temporary marihuana event.

(3) A temporary marihuana event may be held for a maximum of seven consecutive days.

(4) A temporary marihuana event may only operate between the hours of 8:00 a.m. and 11:00 p.m.

(5) The temporary marihuana event, and all sales and consumptions that occur during the temporary marihuana event, must comply with the requirements of the MRTMA, the Emergency Rules, and any other administrative rules or guidelines promulgated by LARA.

(6) In addition to the sign requirements imposed by LARA, all signs for the temporary marihuana event must comply with the city's zoning requirements for temporary signs.

(7) Marihuana sale and consumption at temporary marihuana events shall be limited to edible marihuana products.

§ 115.07 VIOLATIONS.

(A) Request for revocation of state operating license. If at any time an authorized establishment violates this chapter or any other applicable city ordinance, the City Commission may request that LARA revoke or refrain from renewing the establishment's state operating license.

(B) Civil infraction. It is unlawful to disobey, neglect, or refuse to comply with any provision of this chapter. A violation of this chapter is a municipal civil infraction. Each day the violation continues shall be a separate offense. Notwithstanding any other provision of this ordinance to the contrary, violators shall be subject to the following fines:

(1) First violation = \$500

(2) Second offense = \$2,500

(3) Each subsequent offense = \$5,000

(C) Other remedies. The foregoing sanctions are in addition to the city's right to seek other appropriate and proper remedies, including actions in law or equity.

§ 115.08 POLICY REVIEW IN 2023.

On or before December 31,2023, city staff shall submit a report to the City Commission regarding the administration of this ordinance and the provisions of the zoning ordinance pertaining to adult-use marihuana, and regarding any other pertinent information relating to the operation of adult-use marihuana establishments in the city. The report may include proposed ordinance amendments or other proposed policy changes.