

Ordinance 263

AN ORDINANCE TO ALLOW ADULT USE MARIJUANA FACILITIES IN ACCORDANCE WITH STATE LAW AND THE CITY'S ZONING CODE

WHEREAS, in November 2018 Michigan voters approved Proposal 1 which allowed for the sale and use of recreational marijuana; and

WHEREAS, Voters in the City of Wayland overwhelmingly supported the passage of Proposal 1; and

WHEREAS, the law and subsequent rules created by the State of Michigan allows municipalities to regulate the sales, growth, transporting, and processing of marijuana plants and products both via licensing regulations and by zoning regulations; and

WHEREAS, the City of Wayland sees the benefit to allowing adult use marijuana facilities within the City and seeks to establish rules that promote the safe and regulated manufacturing, production, storage, testing, transportation, and sale of recreational marijuana;

WHEREAS, the City of Wayland seeks to provide safe access to recreational marijuana for eligible customers; and

WHEREAS, the City of Wayland seeks to preserve and protect the health, safety, and welfare of city residents and the general public by minimizing the unsafe or unregulated manufacturing, production, storage, testing, transportation, and sale of marijuana

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WAYLAND, MICHIGAN, WITH A MAJORITY OF ITS MEMBERS CONCURRING THAT:

A. Definitions

- a. *Co-located marijuana business* means a marijuana business with 2 or more types of state operating licenses operating within a single location.
- b. *Designated consumption establishment* means a business licensed as a designated consumption establishment under the MRTMA.
- c. *Excess marijuana grower* means a business licensed as an excess marijuana grower under the MRTMA.

- d. *Location-Specific step* means the portion of the application for a state operating under the MRTMA
- e. *Grower* means a business licensed as a grower under either the MRTMA, or both.
- f. *LARA* means the department of licensing and regulatory affairs and any successor agency to the department.
- g. *Marijuana* means, depending on the context, the same thing as “marihuana” as defined in the MRTMA.
- h. *Marijuana business* is a land use involving one or more licenses issued under the MRTMA.
- i. *Micro Business* means a person licensed under the MRTMA to cultivate not more than 150 marijuana plants, process and package marijuana, and sell or otherwise transfer marijuana to individuals who are 21 years of age or older or to a marijuana safety compliance facility, but not to other marijuana establishments.
- j. *MRTMA* means the Michigan regulation and taxation of marihuana act, 2018 IL 1, as amended MCL 333.27951 *et seq.*
- k. *Prequalification step* means the portion of the application for a state operating license under the MRTMA pertaining to the applicant’s financial background and the criminal history of the applicant or other associated persons.
- l. *Processor* means a business licensed as a processor under the MRTMA.
- m. *Retailer* means a business licensed as a retailer under the MRTMA.
- n. *Safety compliance business* means a business licensed as a safety compliance facility under the MRTMA.
- o. *Secure transporter* means a business licensed as a secured transporter under the MRTMA.
- p. *Stacked grower licenses* means two or more grower licenses issued to a single person under the MRTMA.
- q. *State operating license* or *license* means a license that is issued under the MRTMA or any rule promulgated pursuant to either statute.
- r. *Temporary marijuana event* means an event where the onsite sale or consumption of marijuana products, or both, are authorized at the location indicated on a state operating license issued under the MRTMA during the specified dates.
- s. "Class A grower" means a grower of not more than 100 marihuana plants.
- t. "Class B grower" means a grower of not more than 500 marihuana plants.
- u. "Class C grower" means a grower of not more than 2,000 marihuana plants.

B. Authorization Required:

- a. The following marijuana businesses may be authorized to operate in the City of Wayland pursuant to this chapter; growers, microbusinesses, processors, retailers, safety compliance facilities, secure transporters, on-site use, and temporary marijuana events.
 - i. The City will make available an unlimited number of licenses for each license type.
- b. No marijuana business may operate in the City of Wayland without final authorization granted by the City Manager pursuant to this ordinance. A proposed business is not eligible for a state operating license until the City Manager grants final authorization.
- c. Co-located marijuana businesses and stacked grower licenses may be permitted subject to the rules and regulations contained in this ordinance.

C. Application Process

- a. Submission: A person may apply for authorization to operate a marijuana business within the City by submitting the following items to the City Clerk. These items may be submitted to the Clerk before applying for requisite zoning approvals
 - i. A copy of official paperwork issued by LARA indicating the applicant has successfully completed the prequalification step of the application for a state operating license.
 - ii. A signed statement from the applicant indicating:
 - 1. The current property owner of record for the proposed business location.
 - 2. 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. Only one application shall be submitted per property, unless the applications are for proposed co-located businesses.
 - 3. The address, tax identification number, parcel id number, and zoning designation of the proposed business location
 - 4. The type or types of state operating licenses that the applicant is seeking at the proposed business location.
 - 5. If the proposed business involves stacked grower licenses, the number of licenses sought

- iii. An advance of the annual administrative fee of \$5,000 per license sought.
- iv. Conditional authorization: The Clerk will accept and review the application for completeness. If all conditions are met the Clerk may recommend approval to the City Manager who shall then grant conditional authorization.
- v. Final authorization: The City Manager shall grant final authorization for the business if the applicant meets the two following requirements:
 - 1. All required zoning approvals are obtained within one year of the date of conditional authorization.
 - 2. Applicant receives state operating license within one year of the date of receiving conditional authorization.
- vi. Expiration of conditional authorization: If the applicant for a conditionally authorized business fails to satisfy any of the deadlines above the conditional authorization will expire and a new application shall be required.

D. Denial of application

- a. The City Manager, following recommendations from the above referenced departments shall reject any application that does not meet the requirements of the MRTMA, the rules promulgated by LARA, this ordinance or other applicable ordinances, or other applicable laws or regulations. The City Manager shall reject any application that contains any false, misleading, or incomplete information
- b. Subject to the provisions of the MRTMA, an applicant is ineligible to receive a license under this ordinance if any of the following circumstances exist regarding an applicant:
 - i. Conviction of or release from incarceration for a felony under the laws of this state, or any other state, within the past 10 years of conviction of a controlled substance-related felony within the past 10 years, except that consisted with MCL 333.27958(1)(c), a prior conviction solely for a marijuana related offense does not disqualify an individual or otherwise affect eligibility for licensure, unless the offense involved distribution of a controlled substance to a minor.
 - ii. Other than as set forth in MCL 333.27958(1)(c), within the past 5 years, conviction of a misdemeanor involving a controlled substance, theft, dishonesty, or fraud in any state or having been found responsible for violating a local ordinance in any state involving a controlled substance, dishonesty, theft, or fraud that substantially corresponds to misdemeanor in that state.

- iii. The applicant has knowingly submitted an application for a license that contains false, misleading, or fraudulent information, or who has intentionally omitted pertinent information on the application for a license.
- iv. Is a member of the Board or, as contemplated by MCL 333.27957 is an individual involved in the implementation, administration, or enforcement of the MRTMA process.
- v. Holds an elective or appointed office of a governmental unit of this state, the City of Wayland, 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
- vi. The applicant does not meet the MRTMA provisions concerning eligible license applicants, including but not limited to the provisions of MCL 333.27959, including provisions of subsection (6) of that statute, which set forth time periods within which only certain applicants may obtain licenses.
- vii. The applicant is an owner of, or has an interest in, such business or entity which, pursuant to the provisions of MCL 333.27959(3)(d), would make the applicant ineligible for the license for which the applicant has applied, or the applicant otherwise fails to meet other criteria established by State law.

E. Relocation of Businesses, Transfers of Licenses, and Expansion of Grow Operations

- a. An existing business may be moved to a new location in the City subject to applicable zoning regulations and required approvals by LARA.
- b. A license for an existing business may be transferred to a new license that intends to continue operating at the same location, subject to approval by LARA.
- c. No further City approvals are required for the relocations and license transfers described in this section.

- d. A licensee may expand growing operations by upgrading the class of the license, or by obtaining a stacked license. To do so, the licensee must submit a new application to the City satisfying the requirements for new applications as delineated hereinabove, which shall include payment of any additional annual administrative fees that will be owed due to the addition of stacked licenses. The application shall be conditionally approved upon receipt of all required materials.

F. General Regulations

- a. Submission of supplementary information to the City: Applicants that have received conditional authorization and licensees operating in the City must provide the Clerk with copies of all documents submitted to LARA in connection with the license application, subsequent renewal applications, or investigations conducted by LARA. The documents must be provided to the Clerk within seven (7) 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: Marijuana businesses must be operated in compliance with the MRTMA, as applicable, all applicable rules promulgated by LARA, all conditions of the business's state operating licenses, and all applicable ordinances and codes of the City of Wayland. Compliance with the foregoing does not create or imply immunity from prosecution by federal authorities or other authorities of competent jurisdiction.
- c. No consumption on premises: No smoking, inhalation, or other consumption of marijuana shall take place on or within the premises of any marijuana business unless such activity is authorized by a temporary marijuana event license or an on-site consumption license associated with a temporary marijuana event. It shall be a violation of this ordinance 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 marijuana on or within a premises in violation of this section if;
 - i. The person had control over the premises or the portion of the premises where the marijuana was consumed; and
 - ii. The person knew or reasonably should have known that the marijuana was consumed; and
 - iii. The person failed to take corrective action.
- d. Annual Fee: A licensee must pay a fee of \$5,000, for each licensed 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 Clerk when the application for approval is submitted. In each subsequent year, fees are due on the date on which the licensee submits an application to LARA for renewal of the state operating license. The City may revoke an operating license if the permit fee is more than thirty (30) days delinquent.

e. Indemnification

- i. 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 marijuana establishment owners, operators, employees, clients, or customers for a violation of State or Federal laws, rules or regulations.
 - ii. By accepting a license issued pursuant to this Ordinance, all licensees agree to indemnify, defend and hold harmless the City of Wayland, 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 of a licensed operating establishment arising out of, claimed to have arisen out of, or in any manner connected with the operation of a marijuana establishment or use of a product cultivated, processed, distributed, or sold that is subject to the license, or any claim based on an alleged injury to business or property by reason of claimed violation of the federal Racketeer Influenced and Corrupt Organizations act, 18 U.S.C. §1964(c) or any other alleged violation of law.
 - iii. By accepting a license issued pursuant to this 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 of any alleged violation of any existing law including the federal Controlled Substances Act, 21 U.S.C §801 et seq. or Chapter 7 of the Michigan Public Health Code, MCL 333.7101 et seq.
- f. Severability: In the event that any one or more sections, provisions, phrases, or words of this Ordinance shall be found to be invalid by a court of competent jurisdiction, such holding shall not affect the validity or enforceability of the remaining sections, provisions, phrases or words of this ordinance.

G. Security Requirements

- a. Security measures at all licensed premises shall comply with the requirements of the MRTMA, including but not limited to MCL 333.27961, and all applicable rules and regulations promulgated by the Department.
- b. A description of the security plan shall be submitted with the application for a City operating license. The security system shall be maintained in good working order and provide twenty-four hours per day coverage. A separate security system is required for each establishment.
- c. The security plan must comply with all LARA Rules, and must include, at a minimum, the following security measures.
 - i. Cameras: The marijuana business shall install and use security cameras to monitor all areas of the premises (except inside the restrooms) where persons may gain or attempt to gain access to marijuana or cash maintained by the marijuana business entity. Cameras shall record operations of the business to an off-site location, as well as all potential areas of ingress or egress to the business with sufficient detail to identify facial features and clothing. Recordings from security cameras shall be maintained for a minimum of forty-five (45) days in a secure off-site location in the City or through a service over a network that provides on-demand access, commonly referred to as a "cloud". The off-site location shall be included in the security plan submitted to the City and provided to the Police Department upon request, and updated within seventy-two hours of any change of such location.
 - ii. Use of safe for storage: The marijuana business shall install and use a safe for storage of any processed marijuana and cash on the premises when the business is closed to the public. The safe shall be incorporated into the building structure or securely attached thereto. For marijuana-infused products that must be kept refrigerated or frozen the business may lock the refrigerated container or freezer in a manner authorized by the City in place of the use of a safe so long as the container is affixed to the building structure.
 - iii. Alarm System: The marijuana business shall install and use an alarm system that is monitored by a company that is staffed twenty-four hours a day, seven days a week. The security plan submitted to the City shall identify the company monitoring the alarm, including contact information, and updated within seventy-two hours of any change of monitoring company

H. Violations and Penalties

- a. Request for revocation of state operating license. If at any time an authorized business violates this ordinance or any other applicable licenses, the City may request LARA revoke or refrain from issuing the business's state operating license. Any licensee whose license is subject for revocation or non-renewal due to violations of this ordinance shall be afforded a public hearing with the City Council. Such public hearing shall be properly noticed no less than 10 days prior to the hearing date.
 - b. Civil Infraction: It is unlawful to disobey, neglect, or refuse to comply with any provision of this ordinance. A violation of this chapter is a municipal civil infraction and a nuisance per se. Each day the violation continues shall constitute a separate offense. Notwithstanding any other provision of this ordinance to the contrary, violators shall be subject to a fine of up to \$500.
 - c. Other remedies: The foregoing sanctions are in addition to the City's right to seek other and appropriate remedies, including actions in law or equity.
- I. Publication and Effective Date: The City Clerk shall cause this ordinance to be published in a newspaper of general circulation in the City, and the ordinance shall be effective thirty (30) days after enactment or publication, whichever is later.

At a regularly scheduled meeting of the Wayland City Council, Allegan County, Michigan, held on _____ in Wayland City Hall located at 103 South Main Street, Wayland, Michigan the following Ordinance was offered for adoption by _____ and seconded by _____.

Yeas:

Nays:

Mayor Timothy Bala

City Clerk, LeeAnn Clausen