

CITY OF LUNA PIER
ORDINANCE NUMBER NO. 239

AN ORDINANCE TO AUTHORIZE AND REGULATE THE ESTABLISHMENT OF MEDICAL MARIHUANA FACILITIES AND TO IMPOSE PENALTIES FOR VIOLATIONS.

The City of Luna Pier ordains:

Section 1. Title.

This Ordinance shall be known as the City of Luna Pier Medical Marijuana Facilities Ordinance.

Section 2 Purpose.

- A. It is the intent of this Ordinance to authorize the establishment of certain types of medical marihuana facilities in the City of Luna Pier and provide for the adoption of reasonable restrictions to protect the public health, safety, and general welfare of the community at large; retain the character of neighborhoods; and mitigate potential impacts on surrounding properties and persons. It is also the intent of this Ordinance to help defray administrative and enforcement costs associated with the operation of a marihuana facility in the City of Luna Pier through imposition of an annual, nonrefundable fee of not more than \$5,000.00 on each medical marihuana facility licensee. Authority for the enactment of these provisions is set forth in the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq.
- B. Nothing in this Ordinance is intended to grant immunity from criminal or civil prosecution, penalty, or sanction for the cultivation, manufacture, possession, use, sale, or distribution of marihuana, in any form, that is not in compliance with the Michigan Medical Marihuana Act, Initiated Law 1 of 2008, MCL 333.26421 et seq.; the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq.; the Marihuana Tracking Act, MCL 333.27901 et seq.; and all other applicable rules promulgated by the State of Michigan. This ordinance permits authorizations for activity based on the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq. Nothing in this Ordinance shall be construed as allowing persons to engage in conduct that endangers others or causes a public nuisance, or to allow marihuana uses and activities not in strict accordance with the express authorizations of the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq.
- C. As of the effective date of this Ordinance, marihuana remains classified as a Schedule 1 controlled substance under the Federal Controlled Substances Act, 21 U.S.C. Sec. 801 et seq., which makes it unlawful to manufacture, distribute, or dispense marihuana, or possess marihuana with intent to manufacture, distribute, or dispense marihuana. Nothing in this Ordinance is intended to

grant immunity from any criminal prosecution under state or federal laws as they may be enforced by either the federal or state governments relative to such uses and activities. Thus, the authorization of activity and the approval of a license under this Ordinance shall not have the effect of superseding or nullifying federal or state law applicable to the cultivation, manufacture, possession, use, sale, or distribution of marihuana, in any form, and all applicants and grantees of licenses are on notice that they may be subject to prosecution and civil penalty, including forfeiture of property.

Section 3 Definitions.

For the purposes of this ordinance:

- A. Any term defined by the Michigan Medical Marihuana Act, MCL 333.26421 et seq., shall have the definition given in the Michigan Medical Marihuana Act. (~~%MMA+~~)
- B. Any term defined by the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq., shall have the definition given in the Medical Marihuana Facilities Licensing Act. (~~%MFLA+~~)
- C. Any term defined by the Marihuana Tracking Act, MCL 333.27901 et seq., shall have the definition given in the Marihuana Tracking Act. (~~%MTA+~~)
- D. "Grower" means a licensee that is a commercial entity located in this state that cultivates, dries, trims, or cures and packages marihuana for sale to a processor or provisioning center.
- E. ~~%licensee+~~ means a person holding a State operating license issued under the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq.
- F. "Marijuana" or ~~%marihuana~~ means that term as defined in the Public Health Code, MCL 333.1101 et seq.; 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.
- G. ~~%Marihuana facility+~~ or ~~%MMF+~~ means an enterprise at a specific location at which a licensee is licensed to operate under the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq., including a marihuana grower, marihuana processor, marihuana provisioning center, marihuana secure transporter, or marihuana safety compliance facility. The term does not include or apply to a ~~%primary caregiver+~~ or ~~%caregiver+~~ as that term is defined in the Michigan Medical Marihuana Act, MCL 333.26421 et seq.
- H. "Person" means an individual, corporation, limited liability company,

partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or other legal entity.

- I. "Processor" means a licensee that is a commercial entity located in Michigan that purchases marihuana from a grower and that extracts resin from the marihuana or creates a marihuana-infused product for sale and transfer in packaged form to a provisioning center.
- J. "Provisioning center" means a licensee that is a commercial entity located in Michigan that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualifying patients, directly or through the patients' registered primary caregivers. Provisioning center includes any commercial property where marihuana is sold at retail to registered qualifying patients or registered primary caregivers. A noncommercial location used by a primary caregiver to assist a qualifying patient connected to the caregiver in accordance with the Michigan Medical Marihuana Act, MCL 333.26421 et seq., is not a provisioning center for purposes of this ordinance.
- K. "Safety compliance facility" means a licensee that is a commercial entity that receives marihuana from a marihuana facility or registered primary caregiver, tests it for contaminants and for tetrahydrocannabinol and other cannabinoids, returns the test results, and may return the marihuana to the marihuana facility.
- L. "Secure transporter" means a licensee that is a commercial entity located in this state that stores marihuana and transports marihuana between marihuana facilities for a fee.

Section 4 Authorization of Facilities and Fee.

- A. The following Medical Marihuana Facilities may be authorized to operate in the City of Luna Pier by the holder of a state operating license, subject to compliance with PA 281 of 2016, as may be amended, the Rules promulgated thereunder, the City of Luna Pier Zoning Ordinance, as amended, and this Ordinance:

<u>Facility</u>	<u>Number</u>
Provisioning Center	1
Grower	1
Processor	1
Safety Compliance Facility	1
Secure Transporter	1

The City reserves the right to amend the number of MMF~~s~~ to accommodate a ~~no-~~located+or ~~stacked~~+location.

- B. An annual nonrefundable fee shall be paid by each marihuana facility licensed under this Ordinance in an annual amount of not more than \$5,000.00 as set forth in the City of Luna Pier Fee Schedule as approved by the City Council. City Council shall designate 50% of the licensing fee funds for public safety and the remaining funds to be placed into the City of Luna Pier~~s~~ general fund.

Section 5 Requirements and Procedures for Issuing Licenses.

- A. No person shall operate a marihuana facility in the City of Luna Pier without a valid marihuana facility license issued by the City of Luna Pier pursuant to the provisions of this Ordinance as authorized by the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq.
- B. A marihuana facility license issued under this Ordinance is valid for one year and transfers of the license require approval by the City Council.
- C. The procedure in processing a request for a marihuana facility license will involve three steps, application, provisional license and city marihuana facility license as follows:

1) Application.

- a) File an application with the City Clerk~~s~~ office upon a form provided by the City of Luna Pier and submittal of the annual nonrefundable fee.
- b) Upon the applicant~~s~~ completion of the application form and furnishing all required information and documentation, the City Clerk~~s~~ office shall accept the application.
- c) The City Clerk~~s~~ office shall refer the application to the Building Official to verify that the proposed facility is located in a zoning district that allows such use. The Building Official shall respond to the City Clerk~~s~~ office within 10 business days.
- d) The City Clerk~~s~~ office shall act to approve or deny an application not later than fifteen (15) business days from the date the fully completed application was accepted.
- e) If approved, the City Clerk~~s~~ office shall issue the applicant a provisional license.

2) Standards for Issuance of Provisional License.

The Clerk shall issue a Provisional License under this Ordinance when, from a consideration of the application and from such other information as may

otherwise be obtained, the Clerk determines that:

- a) The application (including any required attachments and submissions) is complete and signed by the applicant;
- b) The Applicant has paid the nonrefundable application fee and any other fees required;
- c) The application does not contain a material falsehood or misrepresentation;
- d) The proposed located of the Facility is allowed by the City's zoning and other ordinances.

3) Provisional License.

- a) A provisional license means only that the application satisfies sub-paragraph C 2) above.
- b) When the City Clerk determines that the requirements of sub-paragraph C 2) have been met, the City Clerk shall issue or deny the provisional license within 15 days.
- c) A provisional license will lapse and be void if all other permits and approvals are not diligently pursued as follows:

Existing structure with no site changes	90 days
Existing structure with minimal site changes approved by the Planning Commission and substantially completed within	180 days
Proposed construction of a structure requiring site plan approval by the Planning Commission substantially complete within	1 year

4) Marihuana Facility License.

A Provisional License issued pursuant to this Ordinance does not eliminate the need for the Applicant to obtain other required licenses and permits related to the operation of the facility(ies) sought to be approved hereunder, including, without limitation, any and all necessary business registration and licenses, building permits, mechanical permits, plumbing permits, or electrical permits. Before a Marihuana Facility License can be issued, the applicant must:

- 1) Submit a photocopy of the applicant's valid and current license issued by the State of Michigan in accordance with the Medical Marihuana Facilities

Licensing Act, MCL 333.27101 et seq., along with a government-issued photographed identification.

- 2) Obtain site plan approval and any other necessary zoning approval or permits under the Ordinance.
- 3) Obtain the approvals of the following:
 - (a) Fire Department, Fire Chief.
 - (b) Police Department, Police Chief.
 - (c) City Engineering Consultant (site plan reviews only).
- 4) Submit a notarized statement acknowledging that the Applicant and the employees of the Facility(ies) may be subject to prosecution under federal marijuana laws.
- 5) Submit a notarized statement acknowledging that the City of Luna Pier accepts no legal liability in connection with the approval and subsequent operation of the Facility.

A provisional license shall be replaced by a City Marihuana Facility License upon completion of all requirements of this Ordinance and the issuance of a MMFLA license by the State of Michigan.

Section 6 Denial or Revocation of License and Appeal Process.

- A. Denial. An application may be denied by the City Clerk in writing setting forth the grounds for such denial for one or more of the following criteria:
 - 1) A failure to meet the conditions or maintain compliance with the standards and requirements established by this ordinance in reference to the operation of a licensed facility; or
 - 2) One or more violations of the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq., or any city ordinance on the premises; or
 - 3) Maintenance of a nuisance on the premises; or
 - 4) Nonpayment of real and/or personal property taxes, fines, liens, income tax, hydrant and sprinkler fees or any fees owed to the City; or
 - 5) A demonstrated history of excessive calls for public safety (police, fire and ambulance); or
 - 6) Applicant has made or provided false information in the application or has

otherwise become disqualified for the issuance of a marihuana facility license.

B. Revocation. A Marihuana Facility License may be revoked by the City Clerk based on the following:

- 1) Violation of the standards for approval in Section 5 of this ordinance.
- 2) Denial, suspension, revocation or restriction of license by the State of Michigan.
- 3) A violation of the MMFLA, MMMA, MTA, any state or local regulations, the provisions of this ordinance or the provisions of a license.
- 4) Operations have ceased at the Facility for more than 90 days.
- 5) Ownership of the Facility has been transferred without the new owner obtaining a Marihuana Facility License pursuant this Ordinance.
- 6) The existence of any of the criteria listed in paragraph A above.

C. Notice of Decision.

The Clerk shall notify the Applicant of the decision to deny or revoke a Marihuana Facility License within ten (10) business days of rendering the decision. Notice shall be given by mailing a copy of the Clerk's decision to the Applicant or License holder by certified mail and/or personal service postage prepaid, at the address shown in the application. Notice is deemed to have been properly given upon mailing by certified mail and/or personal service.

D. Appeal Process.

An Applicant or Licensee has the right to appeal the Clerk's denial of an application for or the revocation of a Marihuana Facility License to the Luna Pier City Council.

- 1) Any person whose application or license has been denied, suspended, revoked or restricted by the State of Michigan has no recourse through the appeal process with the City of Luna Pier.
- 2) Any person whose application or license has been denied or revoked under Section 4 or Section 5 by the City of Luna Pier will have thirty (30) days from the date of the notice to file a written appeal to the City of Luna Pier.
- 3) The Applicant or Licensee shall be provided with not less than ten (10) days prior written notice of the appeal hearing to be held by the City Council.

- 4) The burden of proof in an appeal filed under this section shall be on the Applicant or Licensee.
- 5) If the Luna Pier City Council finds by a preponderance of the evidence that the decision of the Clerk was correct, the Luna Pier City Council shall uphold the decision of the Clerk. If the Luna Pier City Council finds by a preponderance of the evidence that the decision of the Clerk was incorrect, the Clerk's decision shall be set aside and the Provisional License or MMF License issued (if it was previously denied) or reinstated (if it was previously revoked).
- 6) Any decision made by the Luna Pier City Council pursuant to this section shall be a final decision and may be appealed to a court of competent jurisdiction by any person within thirty (30) days of the date of the City Council decision. The Applicant's or Licensee's failure to timely appeal the decision is a waiver of the Applicant's or Licensee's right to contest the denial of the application or the revocation of the Marihuana Facility License. The burden of proof is an abuse of discretion.
- 7) Any person whose license has been denied or revoked shall not be able to reapply for any type of license allowed under this Ordinance for one year from the date a denial or revocation became effective.

Section 7 License Renewal.

- A. A marihuana facility license shall be valid for one year from the date of issuance, unless revoked as provided by law.
- B. A valid marihuana facility license may be renewed on an annual basis by submitting a renewal application upon a form provided by the City of Luna Pier and payment of the annual license fee. Application to renew a marihuana facility license shall be filed at least thirty (30) days prior to the date of its expiration.
- C. Renewal may be denied for any of the reasons listed in Section 6, Paragraphs A or B.

Section 8 Applicability.

The provisions of this Ordinance shall be applicable to all persons and facilities described herein, regardless of whether the operations or activities associated with a marihuana facility were established without authorization before the effective date of this Ordinance.

Section 9 Penalties and Enforcement

- A. Any person who violates any of the provisions of this Ordinance shall be responsible for a municipal civil infraction and subject to the payment of a civil fine in accordance with a fee and fine schedule duly adopted by City Council and added to this or the Building Fee Ordinance schedule. A violator of this Ordinance shall also be subject to such additional sanctions, remedies and judicial orders as are authorized under Michigan law.
- B. A violation of this Ordinance is deemed to be a nuisance per se. In addition to any other remedy available at law, the City of Luna Pier may bring an action for an injunction or other process against a person to restrain, prevent, or abate any violation of this Ordinance.
- C. This Ordinance shall be enforced and administered by the City of Luna Pier Police Department or such other City of Luna Pier official as may be designated from time to time by resolution of the Luna Pier City Council.

Section 10 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 the enforceability of the remaining sections, provisions, phrases or words of this Ordinance.

Section 11 Effective Date.

This Ordinance shall become effective twenty (20) days after final passage and publication.

I hereby certify that this ordinance was passed at a regular meeting of the City Council of the City of Luna Pier, Michigan held on _____, the _____ day of _____, 2018.

DeAnn Parran, City Clerk

Published: _____
Effective Date: _____