

AMENDMENT TO ADULT USE MARIJUANA ORDINANCE NUMBER 2020-01

MARIJUANA ESTABLISHMENTS ALLOWED WITHIN THE BOUNDARIES OF THE CITY OF ECORSE

THE CITY OF ECORSE ORDAINS:

Sec. 1. PURPOSE

(a) The purpose of this article is to provide for marihuana establishments allowed within the City pursuant to the Michigan Regulation and Taxation of Marihuana Act (MRTMA); to promote the public health, safety, morals, and welfare of the community by regulation of these establishments; to promote social equity pursuant to the provisions of the MRTMA; to address and repair the harm caused to communities disproportionately impacted by the prohibition of marihuana by promoting employment and business ownership opportunities within these communities; to incentivize the re-development of underutilized, vacant, abandoned, or blighted buildings in the City; to increase tax revenue for the City and strengthen its tax base; to improve public safety; to establish standards and procedures consistent with the MRTMA in order to allow and regulate marihuana establishments in the City.

(b) Nothing contained within this Ordinance, or within any permit or license issued by the City, shall be construed to relieve a person of the duties, rights, and obligations imposed by the laws of the State of Michigan.

(c) In order to operate a Marihuana Business in the City of Ecorse a business must have BOTH a state license and a city operating permit. The City's application process relies heavily on the application process for state licenses administered by the Michigan Marihuana Regulatory Agency (MRA). Applicants must apply for a City Marihuana Business Permit prior to submitting their application to the Michigan Marihuana Regulatory Agency. If the City approves an application, the City Clerk will issue a Provisional Approval Certificate that is valid for one year, and the Clerk will sign the appropriate Attestation for the MRA application. After the applicant receives their Marihuana Facility or Establishment License, they must provide a copy of that license and their valid (unexpired) Provisional Approval Certificate to the City Clerk in order to get a City Operating Permit.

(d) Nothing in this chapter is intended to promote or condone the production, distribution, or possession of marihuana in violation of any applicable law. Nothing in this chapter is intended to grant immunity from any criminal prosecution under state or federal law. This chapter does not protect patients, caregivers, or the owners of properties on which a marihuana commercial operation is occurring from prosecution or having their property seized by federal law enforcement authorities.

(e) Nothing in this chapter is intended to grant immunity from criminal or civil prosecution, penalty or sanction for the cultivation, manufacture, possession, use, sale,

distribution or transport of marihuana in any form, that is not in strict compliance with the Michigan Medical Marihuana Act, the Medical Marihuana Facilities Licensing Act, the Marihuana Tracking Act, the Michigan Regulation and Taxation of Marihuana Act, and all applicable rules promulgated by the State of Michigan regarding the commercialization of marihuana. Strict compliance with all applicable state laws and regulations is deemed a requirement for the issuance or renewal of any permit issued under this chapter, and noncompliance with any applicable state law or regulation is grounds for the revocation or nonrenewal of any permit issued under the terms of this chapter.

Sec. 2. DEFINITIONS

(a) All definitions provided in Section 3 of the Michigan Regulation and Taxation of Marihuana Act are incorporated by reference into this ordinance, and the term “marijuana” is synonymous with the term “marihuana.”

(b) “MRTMA” is defined as the Michigan Regulation and Taxation of Marihuana Act.

(c) “Facility address” means the United States postal address of a physical location where a Marihuana Establishment is proposed to be located for a permit type on a permit application to the City.

(d) “Permit Type” is defined as a single category of permit an applicant is applying for, such as a microbusiness, a marihuana retailer permit, a cultivation permit, or other permits that an applicant can apply for through the City.

(e) “Applicant” is defined as an individual or entity who submits an application for a permit type to the City of Ecorse.

(f) “Application Date” is defined as the date on which the applicant submits an application for a permit at a Facility Address.

(g) “Vacant Facility Address” is defined by a Facility Address with a notarized affidavit by the owner of the land parcel upon which the Facility Address sits attesting that the average occupancy of any buildings, structures, or units contained within the land parcel upon which the Facility Address sits for the year immediately prior to the Application Date is 0. This definition is subject to the requirements of Sec. 2 (i)(1).

(h) “Individuals disproportionately impacted by marihuana prohibition” is defined as individuals who meet at least one of the three criteria contained in the Marijuana Regulatory Agency’s Social Equity Program, which includes: Individuals who have resided in disproportionately impacted communities for the last five years; individuals with a prior marihuana related conviction; individuals with at least two prior years of caregiver experience under the State of Michigan’s medical marijuana program.

(i) "Percentage Occupancy," or "Percentage Occupied," which may be used interchangeably in this ordinance, shall be defined as the occupancy percentage of a Facility Address for the year immediately prior to the Application Date, which shall consist of the percentage occupancy of any buildings, structures, or units contained within the parcel upon which the Facility Address sits for the year immediately prior to the Application Date. The Percentage Occupancy shall be calculated using the average square footage of any buildings, structures, or units contained within the parcel upon which the Facility Address sits that is occupied over the year immediately prior to the Application Date, utilizing a method determined by the Clerk. This method of determining Percentage Occupancy shall be subject to the following requirements of this ordinance:

(1) Construction activity, renovation activity, or storage activity at the Facility Address building(s), structure(s), or unit(s) shall not be considered occupancy or counted as part of a Facility Address's Percentage Occupancy or occupancy. However, storage units which are part of commercial storage businesses where rent is paid for the use of a storage space shall be considered occupancy and shall count towards Percentage Occupancy.

(2) The determination of "Percentage Occupancy" or "Percentage Occupied" shall require a notarized affidavit from the land parcel Owner that the Facility Address sits on attesting and providing supporting documentation, if possible, to the occupancy of any buildings, structures, or units contained within the parcel upon which the Facility Address sits for the year immediately prior to the Application Date.

(3) For the purposes of calculating "Percentage Occupancy" or "Percentage Occupied," decimal places should be rounded down.

(j) "Land parcel" or "Parcel" shall be defined as the land parcel, with an associated tax identification number, allocated by the appropriate governmental body, and held with the Clerk, the Register of Deeds, or other appropriate governmental body, for purposes of tracking the use of land within the City.

(k) "Owner" means a legal holder of fee simple title to real property on which an Applicant desires to place a Marijuana Establishment. Only an Owner may have a Marijuana Establishment located on his or her property and only an Owner or the Owner's designated agent may submit an Application for a Permit Type to the City of Escorse.

Sec. 3. ACTS PROHIBITED

(a) No person shall operate a Marihuana Establishment in the City without first obtaining any relevant license pursuant to the MRTMA and in accordance with the provisions of this Ordinance. A separate state license and city permit is required for each Marihuana Establishment.

(b) Pursuant to the requirements of the MRTMA, a proposed marijuana establishment may not be located within an area zoned exclusively for residential use nor within 1,000 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12, nor shall a retail or provisioning center be located within 1,000 feet of a church, park, liquor store or childcare center, unless the City Council adopts an ordinance that reduces the distance requirement.

(c) A permitted marijuana establishment in the City shall not display a green cross nor anything that resembles a marijuana plant nor any spelling of the word “marihuana” or “marijuana” on any public billboards or signs for the establishment.

Sec. 4. AUTHORIZATION OF MARIHUANA FACILITIES

(a) Pursuant to the Michigan Regulation and Taxation of Marijuana Act (MRTMA), the City enacts this ordinance to set the number of state licensed marijuana establishments to be authorized and allowed to operate within its boundaries, as follows:

(1) Marijuana safety compliance facility - 1

(2) Marijuana secure transporter - 1

(3) Marijuana microbusiness [maximum 150 plants with processing and retail sales] - 3

(4) Marijuana retailer - maximum of 10 permits allowed

(5) Marijuana processor - 3

(6) Class A Marijuana grower [maximum 100 plants] – 2

(7) Class B Marijuana grower [maximum 500 plants] – 2

(8) Class C Marijuana grower [maximum 2,000 plants] – 5

(b) Nothing in this Ordinance shall be read to prohibit a Marijuana Establishment from operating at a location shared with another Marijuana Establishment.

Sec. 5. PERMIT APPLICATIONS

(a) Any person seeking to operate a Marijuana Establishment may file an application with the Clerk upon a form provided by the City for one facility permit type per application. The application shall include the following information in order for the application to be considered complete:

(1) The full name, date of birth, physical address, email address, and telephone number of the owner and applicant in the case of an individual; or, in the case of an entity, all stakeholders thereof.

(2) If the owner and applicant is an entity, the entity's articles of incorporation or organizational documents.

(3) If the applicant is an entity, the entity's employee identification number.

(4) An affidavit that neither the applicant nor any stakeholder of the applicant is in default to the City.

(5) The facility location and Facility Address for which the applicant is applying for a permit.

(6) A notarized affidavit from the owner of the land parcel upon which the Facility Address sits attesting and providing supporting documentation, if possible, to the occupancy of any buildings, structures, or units contained within the parcel upon which the Facility Address sits for the year immediately prior to the Application Date.

(7) A location area map that identifies the relative location(s) of, and distance(s) from, the school(s) nearest to the Facility Address.

(8) The permit type for which the applicant is applying.

(9) Documentation of ownership, lease agreement, or other legal arrangement permitting the applicant to apply for a permit on behalf of the owner and any and all municipal permits or approvals needed for the Facility Address listed on the application.

(10) Except as provided by law, all materials submitted to the City as part of an application shall be exempt from disclosure under the Freedom of Information Act.

(11) A social equity plan that details how the applicant plans on furthering the social equity objectives of this ordinance in terms of promoting business and employment opportunities for communities that have been negatively disproportionately impacted by marijuana prohibition and promoting the hiring of individuals who have been negatively disproportionately impacted by marijuana prohibition.

(12) Documentation of ownership of the applicant by an individual or individuals that have been disproportionately impacted by marijuana prohibition. To verify proof of residency in a disproportionately impacted community as defined by the Marijuana Regulatory agency, W-2 forms, mortgages, deeds, property tax documents, lease or rental agreements, or voter registration may be used. To verify a marijuana-related conviction, a copy of judgment of sentence is required. To verify two years

of caregiver experience, the applicant must give authorization of Release of MMMP Information and provide the appropriate supporting documentation.

(13) A to-scale diagram of the proposed licensed premises showing, without limitation, the building floor plan and layout, all entryways, doorways, or passageways, and means of public entry and exits to the proposed licensed premises, loading zones, available on-site parking spaces, fencing at the premises, and all areas in which marihuana will be stored, grown, manufactured or dispensed;

(14) A lighting plan showing the lighting outside of the marihuana business for security purposes and compliance with applicable City outdoor lighting requirements;

A scale drawing of the proposed facility plan detailing the location of basic security features, entrances and exits, dimensions, and proposed layout of the facility.

Sec. 6. APPLICATION FEE

(a) A nonrefundable application fee shall be paid upon filing of each application to defray costs incurred by the City to process the application. The initial application fee shall be in the amount of \$4000, with an additional \$1000 paid upon approval of a provisional municipal permit as a Marihuana Establishment within the City.

(b) An applicant with ownership interests that meet all three of the State of Michigan's social equity criteria as outlined in this ordinance shall be entitled to a reduced first time initial application fee of \$250, with an additional \$4750 paid upon approval of a full municipal permit as a Marijuana Establishment within the City by the Department.

(c) There shall be an annual nonrefundable fee to defray the administrative and enforcement costs associated with marihuana businesses located in the City of \$5,000 per licensed business, or as set by resolution adopted by the City Council. The annual nonrefundable fee required under this section is due and payable upon the application for renewal of any such permit under this chapter. The permit and fee requirements of this chapter apply to all marihuana commercial businesses, whether operated for profit or not for profit.

(d) The permit fee requirement set forth in this chapter shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any state regulatory agency, or by City ordinance, including, by way of example, any applicable fees for site plan review, zoning review, inspections, or building permits.

Sec. 7. APPLICATION REVIEW

(a) The Ecorse City Clerk shall review each application to ensure that it is complete, that the information required in Sec. 5 of this ordinance has been submitted, and that the application fee has been paid. The Clerk may deny an application for failure to pay the initial application fee.

(b) The initial application window for Marihuana Establishments shall open within 10 days after enactment of this ordinance. If the Ecorse City Clerk fails to make an application form available, applicants may file the paperwork and information required in Section 5 of this ordinance under the title "City of Ecorse Marihuana Establishment Application" with the City Clerk. The initial application window shall close after 60 days. After provisional permits have been awarded to applicants who apply within the initial application window, the City Clerk shall set a date for a new 30 day application window and evaluate applicants pursuant to the requirements of this ordinance. The second application window shall be publicized with thirty days notice prior to the opening of the second application window. Subsequent application windows shall open at the discretion of the Clerk and operate under the requirements of this ordinance. The Clerk shall consider, among other factors in this Ordinance and otherwise, the following in reviewing Applications.

(1) **APPLICATION COMPLETENESS:** Application completeness refers to the content and sufficiency of the information required to be in the application under the provisions of Sec. 5 of this ordinance.

2) **SOCIAL EQUITY:** This section refers to whether the applicant consists of individual owners who have been disproportionately impacted by the prohibition of marihuana in Michigan, including those with prior arrests related to marihuana, as defined by the Marihuana Regulatory Agency's Social Equity Program and in this ordinance.

(3) **REDEVELOPMENT:** This section refers to whether the facility address of an applicant is currently underutilized, vacant, unoccupied, or blighted.

(c) At the closing of the 30-day application window, the Clerk shall begin processing applications for permits to operate a Marihuana Establishment. The Clerk shall first award provisional permits, provided that each applicant has not been prohibited from operating at the location of their Facility Address by the City's land use regulations, the requirements of this ordinance, or the requirements of the MRTMA.

(d) A provisional permit may be used to satisfy the licensing requirements for an applicant going through the Department's licensing process for a Marihuana Establishment. A provisional permit shall automatically become a full municipal permit when the Marihuana Regulatory Agency issues a permit for the marihuana establishment at the Facility Address.

(e) The Clerk may engage professional expert assistance in performing the Clerk's duties and responsibilities under this Ordinance.

Sec. 8. PERMIT REQUIREMENTS

(a) A Marihuana Establishment permitted under this article shall be subject to the following conditions:

- (1) Compliance with the requirements of this Ordinance, other applicable City ordinances and codes, and applicable state laws;
- (2) For a Marihuana Establishment, compliance with the provisions of the MRTMA and any rules promulgated thereunder;
- (3) Operating hours for Marihuana Establishments shall not exceed the hours between 9:00 AM and 9:00 PM daily;
- (4) Operation of a Marihuana Establishment shall not, either directly or indirectly, cause or create any noise, dust, vibration, glare, fumes, or odors constituting a nuisance and also objectively detectable to human senses beyond the boundaries of the property on which the facility is operated.

Sec. 9. PERMITS GENERALLY

(a) A permit that is issued under this Ordinance shall be posted at all times inside the Marihuana Establishment in a conspicuous location near the entrance.

(b) The term of a permit shall be for one calendar year subject to review by the Clerk upon continued compliance with this Ordinance.

(c) Permits or provisional permit holders may transfer a permit issued under this Ordinance to a location at a different Facility Address upon receiving written approval from the City Clerk and pursuant to rules of the MRTMA and rules promulgated by the Department. In order to request municipal approval to transfer a permit location to a new Facility Address, the permittee must make a written request to the Clerk, indicating the current location of the or Marihuana Establishment and the proposed new location.

(d) Permits or provisional permit holders may transfer a permit or provisional permit issued under this Ordinance to a different individual or entity, and the permittee or provisional permittee shall notify the Clerk of the transfer. The Clerk will permit a permit or provisional permit transfer, provided that and conditional upon the new entity or individual owner must first file an application with the Clerk upon a form provided by the City for one facility permit per application and the transferee meets all the requirements of this ordinance and the City Zoning Ordinance, and thereafter remains in compliance with this ordinance, the Zoning ordinance and the MRTMA and the rules of the Department. Upon receiving the written request, the City Clerk will forward a copy of the request to affected service areas and departments of the City to determine whether the

proposed location complies with all applicable laws, rules and regulations. No permit transfer will be approved unless the proposed location meets the standards identified in this chapter and the City Zoning Code. The Clerk shall grant the new permit owner or provisional permit owner the same rights as the previous permit owner or provisional permit owner.

(e) A marihuana business permit is valid only for the owner named thereon, the type of business disclosed on the application for the permit, and the location for which the permit is issued. Each operating permit is exclusive to the permittee and a permittee or any other person must apply for a permit with the City Clerk before a permit is transferred, sold, or purchased. The attempted transfer, sale, or other conveyance of an interest in a permit without prior application for a City operating permit with the City Clerk is grounds for suspension or revocation of the existing permit.

Sec. 10. ANNUAL PERMIT RENEWAL

(a) Application for a permit renewal shall be made in writing to the Clerk at least thirty (30) days prior to the expiration of an existing permit.

(b) An application for a permit renewal required by this Ordinance shall be made under oath on forms provided by the Clerk.

(c) An application for a permit renewal shall be accompanied by a renewal fee to help defray administrative and enforcement costs associated with the operation of the Marihuana Establishment, which shall be five thousand dollars (\$5,000.00) or an amount as set by resolution of the City Council.

(d) Upon receipt of a completed application for a permit renewal meeting the requirements of this Ordinance and the permit renewal fee, the Clerk shall approve the application if the following conditions are met:

(1) The permittee possesses the necessary state licenses or approvals, including those issued pursuant to the MRTMA.

(2) The permittee has operated the Marihuana Establishment in accordance with the conditions and requirements of this Ordinance.

(3) The permittee is operating the Marihuana Establishment in accordance with the MRTMA.

(4) The permit holder has not engaged in blatant and persistent violations of labor rights, collective bargaining agreements, or efforts to form a union within their permitted facility as demonstrated by repeated complaints made to the National Labor Relations Board by workers at the permitted facility.

(5) The permittee has made reasonable efforts to support communities that have been negatively disproportionately impacted by marihuana prohibition. No permittee shall fail to meet this requirement if they demonstrate that they employ a minimum of 15 percent of their workforce consisting of individuals that have been negatively disproportionately impacted by marihuana prohibition.

(e) A renewal shall be deemed approved if the City has not issued formal notice of denial within 60 days of the Application Date.

Sec. 11. PERMIT REVOCATION OR SUSPENSION.

Each Marihuana Establishment within the City for which a permit is granted shall be operated and maintained in accordance with all applicable laws, rules, and regulations. Upon any violation of this section or any section of this Ordinance, the Clerk may, after a notice and hearing, revoke or suspend such permit as hereinafter provided.

Sec. 12. NONRENEWAL, SUSPENSION OR REVOCATION OF PERMIT.

The Clerk shall notify an Applicant or permittee of the reasons for denial of an application for a permit or permit renewal or for revocation of a permit or any adverse decision under this Ordinance and provide the Applicant or permittee with the opportunity to be heard. Any Applicant or permittee aggrieved by the denial or revocation of a permit or adverse decision under this Ordinance may appeal to the Clerk, who shall appoint a hearing officer to hear and evaluate the appeal and make a recommendation to the Clerk. Such appeal shall be taken by filing with the Clerk, within fourteen (14) days after notice of the violation has been mailed to the Applicant or permittee's last known address on the records of the Clerk, a written statement setting forth fully the grounds for the appeal. The Clerk shall review the report and recommendation of the hearing officer and make a decision on the matter. The Clerk's decision may be further appealed to the City Council if applied for in writing to the City Council no later than thirty (30) days after the Clerk's decision. The review on appeal of a denial or revocation or adverse action shall be by the City pursuant to this Ordinance. Any decision by the City Council on an appeal shall be final for purposes of judicial review. The Clerk may engage professional experts to assist with the proceedings under this section.

Sec. 13. CRITERIA FOR NONRENEWAL, SUSPENSION, OR REVOCATION OF PERMIT.

In addition to any other reasons set forth in this Ordinance, the City may refuse to issue a permit or refuse to grant renewal of the permit or suspend or revoke the permit for any of the following reasons:

(a) A material violation of any provision of this Ordinance.

(b) Any conviction of a disqualifying felony by the permittee or any Stakeholder of the permittee.

(c) Failure of the permittee to obtain or maintain a license from the Department pursuant to the MRTMA within one year after the issuance of a municipal permit, subject to reasonable extensions for cause.

(d) Blatant and persistent violations of labor rights, collective bargaining agreements, or efforts to form a union within a facility permitted by the City as demonstrated by repeated complaints made to the National Labor Relations Board by workers at the permitted facility.

(e) Failure of the permittee to demonstrate to the City that they have made reasonable efforts to support communities that have been disproportionately impacted by marihuana prohibition. No permittee shall fail to meet this requirement if they demonstrate that they employ at least 15 percent of their workforce of individuals that have been disproportionately impacted by marihuana prohibition.

SEC. 14. VISIBILITY AND SECURITY OF ACTIVITIES.

All activities of marihuana commercial operations shall be conducted indoors and out of public view, except cultivation may occur in an outdoor area, provided that the area is contiguous with the building containing the marihuana business operations, fully enclosed by fences or barriers that block outside visibility of the marihuana plants from public view, with no marihuana plants growing above the height of the fence or barrier and the fences are secured and only accessible to authorized persons and emergency personnel.

No marihuana, marihuana-infused product, or paraphernalia shall be displayed or kept in a business so as to be visible from outside the licensed premises.

Sec. 15. ODOR CONTROL

Growers, processors, and safety compliance facilities are required to install and maintain in operable condition an appropriate exhaust ventilation system which precludes the emission of detectable marihuana odor resulting from any grow or production process or operations from the premises. Exhaust and ventilation equipment must be installed, operated, and maintained in compliance with the Michigan Mechanical Code, R.408.30901 et seq.

B. No marihuana business shall permit the emission of marihuana odor resulting in detectable odors that leave the business premises upon which they originated and interfere with the reasonable and comfortable use and enjoyment of another's property.

C. Whether a marihuana odor emission interferes with the reasonable and comfortable use and enjoyment of a property shall be measured against the objective standards of a reasonable person of normal sensitivity.

Section 16. INSPECTION OF PREMISES

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 the Department of Public Safety and all other City departments for the purpose of investigating and determining compliance with the provisions of this chapter and any other applicable state and local laws or regulations.

Consent to inspection. Application for a marihuana business permit or operation of a marihuana business, or leasing property to a 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, Director of Public Safety, or the designee thereof, 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. For purposes of this ordinance, examinations and inspections of 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 marihuana business, and the adjoining properties and neighborhood.

Application for a marihuana business permit constitutes consent to the examination and inspection of the business as a public premises without a search warrant, and consent to seizure of any surveillance records, camera recordings, reports, or other materials required as a condition of a marihuana business permit without a search warrant.

A licensee, or an employee or agent of the licensee, shall not threaten, hinder or obstruct a law enforcement officer or a City inspector or investigator in the course of making an examination or inspection of the licensed premises and shall not refuse, fail, or neglect to cooperate with a law enforcement officer, inspector, or investigator in the performance of his or her duties to enforce this chapter, the MMFLA, MRTMA, or applicable state administrative rules.

Sec. 17. PENALTY.

- (a) Any person, including, but not limited to, any licensee, manager or employee of a marihuana commercial operation, or any customer of such business, who violates any of the provisions of this chapter shall be responsible for a municipal civil infraction punishable by a civil fine of \$500, plus court-imposed costs and any other relief that may be imposed by the court.

(b) In addition to any civil fine imposed for a municipal civil infraction violation, a violation of this chapter shall also be sufficient grounds for the suspension, revocation or nonrenewal of the City operating permit.

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

Sec. 18. SEVERABILITY

The various parts, sections and clauses of this ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

(b) All ordinances or parts of ordinances that conflict with this ordinance are repealed.

(c) This ordinance shall become effective five (5) days after enactment.