

**CITY OF LOWELL
KENT COUNTY, MICHIGAN**

ORDINANCE NO. 19-06

AN ORDINANCE TO AMEND SECTION 2.10, "DEFINITIONS, I" AND SECTION 2.14, "DEFINITIONS, M" OF CHAPTER 2, "DEFINITIONS;" TO AMEND SECTION 12.03, "SPECIAL LAND USES" OF "CHAPTER 12, C-3 – GENERAL BUSINESS DISTRICT;" TO AMEND SECTION 12A.03, "SPECIAL LAND USES," OF CHAPTER 12A, "L-I – LIGHT INDUSTRIAL DISTRICT;" TO AMEND SECTION 13.03, "SPECIAL LAND USES" OF CHAPTER 13, "I - INDUSTRIAL DISTRICT;" TO AMEND SECTION 14A.03, "SPECIAL LAND USES," OF CHAPTER 14A, "RE - RIVER'S EDGE DISTRICT;" AND TO AMEND SECTION 17.03, "SITE DESIGN STANDARDS" OF CHAPTER 17, "SPECIAL LAND USES" OF APPENDIX A, "ZONING," OF THE CODE OF ORDINANCES OF THE CITY OF LOWELL

Councilmember SALZWEDEL supported by Councilmember YANKOVICH moved the adoption of the following ordinance:

THE CITY OF LOWELL ORDAINS:

Section 1. Amendment of Section 2.10. Section 2.10 of Chapter 2 of Appendix A, "Zoning," of the Code of Ordinances of the City of Lowell is amended to include a new definition, which is inserted in alphabetical order, and which reads as follows:

Industrial hemp. A plant of the genus cannabis and any part of that plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration that does not exceed 0.3% on a dry-weight basis, or per volume or weight of marijuana-infused product, or the combined percent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus cannabis regardless of moisture content.

Section 2. Amendment of Section 2.14. Section 2.14 of Chapter 2 of Appendix A, "Zoning," of the Code of Ordinances of the City of Lowell is amended to include the following new definitions, which are inserted in alphabetical order, and which read as follows:

Marihuana. All parts of the plant of the genus cannabis, growing or not; the seeds of the 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, including marijuana concentrate and marijuana-infused products. For purposes of this ordinance, marijuana does not include:

- A. 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;

B. industrial hemp; or

C. any other ingredient combined with marihuana to prepare topical or oral administrations, food, drink, or other products.

Marihuana accessories. Any equipment, product, material, or combination of equipment, products, or materials, which is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marihuana into the human body.

Marihuana concentrate. The resin extracted from any part of the plant of the genus cannabis.

Marihuana establishment or adult use marihuana establishment. A marihuana grower, marihuana safety compliance facility, marihuana processor, marihuana microbusiness, marihuana retailer, marihuana secure transporter, or any other type of marihuana-related business licensed by the city.

Marihuana grower. A person licensed 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 licensee. A person holding a valid license for an adult use marihuana establishment issued by the State of Michigan.

Marihuana microbusiness. A person licensed 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 facility, but not to other marihuana establishments.

Marihuana processor. A person licensed to obtain marihuana from marihuana establishments; process and package marihuana; and sell or otherwise transfer marihuana to marihuana establishments.

Marihuana retailer. a person licensed 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 secure transporter. A person licensed to obtain marihuana from marihuana establishments in order to transport marihuana to marihuana establishments.

Marihuana safety compliance facility. A person licensed to test marihuana, including certification for potency and the presence of contaminants.

Section 3. Amendment of Section 12.03. Section 12.03 of Chapter 12 of Appendix A, “Zoning,” of the Code of Ordinances of the City of Lowell is amended to include the following subsection R, which reads as follows:

R. Adult use marihuana establishments.

Section 4. Amendment of Section 12A.03. Section 12A.03 of Chapter 12A of Appendix A, “Zoning,” of the Code of Ordinances of the City of Lowell is amended to include the following subsection I, which reads as follows:

I. Adult use marihuana establishments.

Section 5. Amendment of Section 13.03. Section 13.03 of Chapter 13 of Appendix A, “Zoning,” of the Code of Ordinances of the City of Lowell is amended to include the following subsection H, which reads as follows:

H. Adult use marihuana establishments.

Section 6. Amendment of Section 14A.03. Section 14A.03 of Chapter 14A of Appendix A, “Zoning,” of the Code of Ordinances of the City of Lowell is amended to include the following subsection B, which reads as follows:

B. Adult use marihuana establishments.

Section 7. Amendment of Section 17.04. Section 17.04 of Chapter 17 of Appendix A, “Zoning,” of the Code of Ordinances of the City of Lowell is amended to include the following subsection FF, which reads as follows:

FF. Adult use Marihuana Establishment

1. **Purpose and Intent.** The purpose of this section is to protect the public health, safety, and welfare, protect neighborhood character, minimize negative community impacts, and enact effective regulatory and enforcement controls through minimum land use

requirements for adult use marihuana establishments in the city of Lowell. Marihuana establishments, as defined pursuant to Section 3 (h) of the Michigan Regulation and Taxation of Marihuana Act (MTRMA), include a marihuana grower, safety compliance facility, processor, microbusiness, retailer, or a secure transporter, or other establishment types permitted by applicable Rules for Adult Use Marihuana Establishments, as amended, promulgated by the State of Michigan Department Licensing and Regulatory Affairs (LARA).

2. License Required.

- a. In addition to the special land use permit required by this section, a license issued by the city of Lowell pursuant to Chapter 28 of the city of Lowell Code of Ordinances shall be required prior to operating any marihuana establishment in the city of Lowell, along with any other licenses or permits required by any other federal, state, or local agency having jurisdiction.
- b. The issuance of a special land use permit pursuant to this section does not create an exception, defense, or immunity to any person in regard to any potential civil or criminal liability.
- c. It shall be unlawful for any person to operate a marihuana establishment in the city without obtaining both a license to operate pursuant to the requirements of Chapter 28 of the city of Lowell Code of Ordinances, and a special land use permit pursuant to the requirements of this section.
- d. A separate special land use permit shall be required for each geographic location.
- e. The planning commission may approve a special land use permit for multiple marihuana establishments at the same geographic location and/or in one building, provided that all appropriate licenses are obtained from (LARA and the city of Lowell).

3. Application Requirements. An application for an adult use marihuana establishment special land use shall be accompanied by a site plan pursuant to Section 18.05, along with any additional information necessary to describe the proposed establishment. At a minimum, the following materials shall be submitted as part of an application, in addition to the special land use application requirements of Section 17.02(A).

- a. Verification. A signed statement by the applicant indicating the proposed establishment type, including any requested special licenses, provided that such special licenses are authorized by the city of Lowell and by applicable Rules for Adult Use Marihuana Establishments, as amended, promulgated by LARA.
- b. Consent. A notarized statement by the property owner that acknowledges use of the property for a marihuana establishment and agreement to indemnify, defend and hold harmless the city, its officers, elected officials, employees, and insurers, against all liability, claims or demands arising out of, or in connection to, the operation of a marihuana establishment. Written consent shall also include approval of the owner and operator for the city to inspect the establishment at any time during normal business hours to ensure compliance with applicable laws and regulations.

- c. State License. A copy of official paperwork issued by LARA indicating that the applicant has successfully completed the application for a state operating license. Copies of all documents submitted to LARA in connection with the initial license application, subsequent renewal applications, or investigations conducted by LARA shall be provided to the city.
 - d. A provisional license issued by the city of Lowell pursuant to Chapter 28 of the city of Lowell code of ordinances is not required in order to apply for special land use approval for a marihuana establishment. When a license from the city has not yet been obtained prior to applying for a special land use, the planning commission shall require a license from the city of Lowell as a condition of special land use approval.
4. Additional Site Plan Requirements. In addition to the site plan requirements in Section 18.04, the following information shall also be submitted:
- a. A map, drawn to scale, containing all preschools and K-12 public or private schools near the proposed marihuana establishment location and a 1,000-foot isolation radius drawn around the proposed location to show an appropriate setback distance.
 - b. A narrative describing how the enclosed areas with marihuana have been secured and how permitted individuals will be given access.
 - c. A detailed security plan that addresses all security measures of the marihuana establishment in compliance with all applicable Rules for Adult Use Marihuana Establishments, as amended, promulgated by LARA.
 - d. A lighting plan showing the lighting outside of the marihuana establishment for security purposes and compliance with section 4.24 and any other applicable city requirements.
 - e. Existing and proposed building elevations, including building materials, window calculations, descriptions of glass to be used, and other pertinent information that describes building construction or structural alterations.
 - f. A floor plan of the marihuana establishment detailing the locations of the following:
 - i. All entrances and exits to the establishment;
 - ii. The location of any windows, skylights, and roof hatches;
 - iii. The location of all cameras, and their field of view;
 - iv. The location of all alarm inputs (door contacts, motion detectors, duress/hold up devices) and alarm sirens;
 - v. The location of the digital video recorder and alarm control panel, including the location of the off-site storage or network service provider for storage of the required copies of surveillance recordings; and
 - vi. Restricted and public areas.
 - vii. Any proposed outdoor growing areas

- g. The applicant's procedures for accepting delivery of marihuana at the establishment, including procedures for how and where it is received, where it is stored, and how the transaction is recorded.
5. General Provisions. Adult use marihuana establishments shall be subject to the following requirements:
- a. Security. The marihuana establishment shall comply with all applicable security requirements contained in applicable Rules for Adult Use Marihuana Establishments, as amended, promulgated by LARA.
 - i. All marihuana and marihuana accessories shall be located within an enclosed, locked area, inaccessible on all sides, and equipped with locks that permit access only by the licensed operator or their employees, agents of LARA, law enforcement officers, emergency personnel, and other authorized individuals, as reviewed and approved by the city.
 - ii. Marihuana establishments shall use commercial-grade, nonresidential door locks on all points of entry and exit to the permitted premises.
 - iii. Security cameras are required to be installed and operated in marihuana establishments 24 hours per day, 365 days per year, and shall be directed to record only the subject property. Required security cameras may not be directed to public rights-of-way as applicable, except as required to comply with applicable Rules for Adult Use Marihuana Establishments, as amended, promulgated by LARA.
 - b. Separation distances. The distances described in this subsection shall be computed by measuring a straight line from the nearest property line of the land used for the purposes stated in this subsection to the nearest property line of the parcel used as a marihuana establishment. The following minimum-distancing regulations shall apply to all marihuana establishments. A marihuana establishment shall not be located within:
 - i. 1,000 feet of a preschool or child care center, whether or not it is within the city of Lowell;
 - ii. 1,000 feet of a public or private K-12 school, whether or not it is within the city of Lowell;
 - iii. 500 feet of a property within the C-2, Central Business District as illustrated on the City of Lowell Zoning Map.
- Exception. The requirements above do not apply if the marihuana establishment was lawfully established prior to the location of an establishment or zoning district specified in items i - iii above.
- c. Odors. The marihuana establishment shall be designed to provide sufficient odor absorbing ventilation and exhaust systems so that any odor generated inside the establishment is not detected outside the building in which it operates, on adjacent

public rights-of-way, private road easements, or within other units located within the same building as the establishment if it occupies only a portion of the building. Odors must be controlled and eliminated by the following methods:

- i. The building must be equipped with an activated air scrubbing and carbon filtration system that eliminates all odors prior to leaving the building. Fan(s) must be sized for cubic feet per minute (CFM) equivalent to the volume of the building (length multiplied by width multiplied by height) divided by three. The filter(s) shall be rated for the applicable CFM.
 - ii. Air scrubbing and filtration systems must be maintained in working order and must be in use at all times. Filters must be changed per manufacturers' recommendation to ensure optimal performance.
 - iii. Negative air pressure must be maintained inside the building.
 1. At a ratio of 1:4 between the air intake (CFM) and exhaust fan (CFM), or a similar ratio as approved by the planning commission.
 2. A minimum negative pressure of 0.01" water column relative to the building exterior and to adjacent spaces without product.
 3. A minimum exhaust rate of 0.2 CFM per square foot of floor area or greater.
 - iv. Doors and windows must remain closed, except for the minimum time length needed to allow people to ingress or egress the building.
 - v. The planning commission may approve an alternative odor control system if a mechanical engineer licensed in the State of Michigan submits a report that sufficiently demonstrates the alternative system will be equal or superior to the air scrubbing and carbon filtration system otherwise required above.
- d. The marijuana establishment shall be operated and maintained at all times so that any by-products or waste of any kind shall be properly and lawfully kept and disposed of so as to preclude any risk of harm to the public health, safety, or welfare.
 - e. The marijuana establishment shall not be operated out of a residence or any building used wholly or partially for residential purposes.
 - f. Any portion of the structure where energy usage and heat exceed typical residential use, such as a grow room, and the storage of any chemicals such as herbicides, pesticides, and fertilizers shall be subject to inspection and approval by the Fire Department to insure compliance with applicable fire codes. Any fuel, fertilizer, pesticide, fungicide, rodenticide, herbicide, or other substance toxic to wildlife, children, or pets shall be stored in a secured and locked area and be in compliance with State pesticide laws and regulations.
 - g. A marijuana establishment shall not be operated from a business which also sells alcoholic beverages or tobacco products.
 - h. No drive-through facilities shall be permitted.

- i. The marihuana establishment shall comply at all times and in all circumstances with the MTRMA and the Rules for Adult Use Marihuana Establishments, as amended, promulgated by LARA.
- j. The Planning Commission may require additional landscape buffers or screening beyond what is required in Section 4.26 of the Zoning Ordinance.
- k. The owner and/or licensee shall maintain clear and adequate records and documentation demonstrating that all cannabis or cannabis products have been obtained from and are provided to other permitted and licensed cannabis operations. The city shall have the right to examine, monitor, and audit such records and documentation, which shall be made available to the city upon request.
- l. All necessary building, electrical, plumbing, and mechanical permits shall be obtained for any portion of the structure which contains electrical wiring, lighting, and/or watering devices that support the cultivation growing or harvesting of marihuana.
- m. In the event of any conflict, the terms of this ordinance are preempted and the controlling authority shall be the statutory regulations set forth by the MRTMA or the adopted Rules for Adult Use Marihuana Establishments, as amended, promulgated by LARA.

6. Effect of Permit.

- a. A special land use permit for a marihuana establishment is valid only for the location identified on the license and cannot be transferred to another location within the city without a new special land use permit.
- b. A special land use permit does not prohibit prosecution by the federal government of its laws or prosecution by state authorities for violations of the act or other violations not protected by the MTRMA.
- c. Compliance with city ordinances and state statutes is a condition of maintenance of a special land use permit, and a license may be suspended or revoked pursuant to section 17.02(L) if such ordinances and statutes are violated.
- d. Nothing contained herein is intended to limit the city's ability to prosecute code violations that may have been the cause of the suspension or any other code violations not protected by MTRMA.

7. Violations. Failure to comply with the requirements of this section shall be considered a violation of the zoning ordinance.

- a. Request for revocation of state operating license. If at any time an authorized establishment violates this section or any other applicable city ordinance, the city may request that LARA revoke or refrain from renewing the establishment's state operating license.
- b. Any approval granted for a marihuana establishment may be revoked or suspended automatically for either of the following reasons:

- i. Revocation or suspension of the licensee's authorization to operate by LARA.
- ii. A finding by LARA that a rule or regulation has been violated by the licensee. After an automatic revocation of a special land use approval, a new special land use application shall be required for an establishment to commence operation at the same location.
- iii. Other violations of the zoning ordinance, special land use permit, or conditions imposed thereon by the planning commission.

Section 8. Publication. After its adoption, the City Clerk shall publish this ordinance or a summary thereof, as permitted by law, along with its date of adoption in the *Lowell Ledger*, a newspaper of general circulation in the City, at least ten (10) days before its effective date.

Section 9. Effective Date. This ordinance shall take effect ten (10) days after it, or a summary thereof, as permitted by law, along with the date of its adoption, is published in the *Lowell Ledger*, a newspaper of general circulation in the City.

YEAS: Councilmembers Yankovich, Chambers, Canfield, Mayor DeVore, and Councilmember Salzwedel

NAYS: Councilmembers None

ABSTAIN: Councilmembers None

ABSENT: Councilmembers None

ORDINANCE DECLARED ADOPTED.

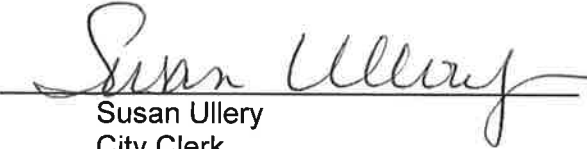
Dated: October 21, 2019


Susan Ullery
City Clerk

CERTIFICATION

I, the undersigned City Clerk of the City of Lowell, Michigan (the "City"), certify that the above ordinance is a true and complete copy of an ordinance adopted at a regular meeting of the Lowell City Council held on October 21, 2019, pursuant to notice given in compliance with Act 267 of the Public Acts of Michigan of 1976, as amended, and notice of its adoption, including a summary of its contents and its effective date, was published in the *Lowell Ledger*, on October 23, 2019. I further certify that the above ordinance was entered into the Ordinance Book of the City on November 2, 2019, and was effective November 2, 2019, ten (10) days after publication.

Dated: October 21, 2019



Susan Ullery
City Clerk