

**CITY OF LOWELL
KENT COUNTY, MICHIGAN**

ORDINANCE NO. 19-07

**AN ORDINANCE TO ADD CHAPTER 28, “ADULT USE MARIHUANA
ESTABLISHMENTS” TO THE
CODE OF ORDINANCES OF THE CITY OF LOWELL**

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

THE CITY OF LOWELL ORDAINS:

Section 1. Addition of Chapter 28 to the Code. Chapter 28, “Adult Use Marihuana Establishments” is added to the Code of Ordinances of the City of Lowell to read as follows:

Chapter 28 - Adult Use Marihuana Establishments

Sec. 28-1 Purpose and Intent.

(a) The purpose of this Chapter is to implement the provisions of the Michigan Regulation and Taxation of Marihuana Act, Prop 1 of 2018, so as to protect the public health, safety, and welfare of the residents of the City by setting forth the manner in which recreational marihuana establishments can be operated in the City. Further, the purpose of this Chapter is to:

- (1) Provide a means to regulate and control the commercial production and distribution of marihuana, the lawful production of related products as set forth in, and for purposes of implementing, the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951 et. seq. (hereafter referred to as the “MRTMA” or the “Act”);
- (2) Protect public health and safety through reasonable limitations on marihuana commercial entity operations, and limitations upon other marihuana-related activities provided for by the MRTMA, as they relate to noise, air and water quality, neighborhood safety, security for the establishment and its personnel, and other health and safety concerns;
- (3) Impose fees to defray and recover the costs to the City of the administrative and enforcement costs associated with marihuana establishments, and permitted marihuana activities as provided for in the MRTMA;

- (4) Coordinate with laws and regulations that may be enacted by the State addressing marihuana, including but not limited to the Department of Licensing and Regulatory Affairs Marihuana Regulatory Agency Adult – Use Marihuana Establishments Emergency Rules (LARA Rules), as amended from time to time; and
 - (5) To restrict the issuance of marihuana establishment licenses only to individuals and entities that have demonstrated an intent and ability to comply with this Chapter, and with State law and regulation, without monitoring by City officials.
- (b) This Chapter authorizes the establishment of recreational marihuana establishments within the City of Lowell, Michigan, consistent with the provisions of the MRTMA, and with regulations and LARA Rules enacted by the State; and subject to the following:
- (1) Marihuana cultivation, processing, transportation and sale can have an impact on health, safety, and community resources, and this Chapter is intended to permit marihuana cultivation, processing, transportation and sale where it will have minimal detrimental impact;
 - (2) Use, distribution, cultivation, production, possession, and transportation of marihuana remain illegal under Federal law, and marihuana remains classified as a "controlled substance" by federal law;
 - (3) The regulations for marihuana commercial entities may not be adequate at the state level to address the impacts on the City of the commercialization of marihuana, making it appropriate for local regulation of the impact of marihuana commercial entities;
 - (4) Nothing in this Chapter is intended to promote or condone the production, distribution, sale or possession of marihuana in violation of any applicable law;
 - (5) This Chapter is to be construed to protect the public over marihuana establishment interests. Operation of a marihuana establishment is a revocable privilege and not a right in the City. There is no property right for an individual or establishment to engage or obtain a license to engage in marihuana as a commercial enterprise in the City; and
 - (6) Because marihuana is a heavily regulated industry in the City, all licensees are assumed to be fully aware of the law; the City shall not therefore be required to issue warnings before issuing citations for violations of this Chapter.
- (c) As of the effective date of this ordinance, marihuana is classified as a Schedule 1 controlled substance under Federal law which makes it unlawful to manufacture, distribute, cultivate, produce, possess dispense or transport marihuana. Nothing in this ordinance is intended to grant immunity from any criminal prosecution under Federal law.
- (d) Relationship to State Law.

(1) Except as otherwise provided by the MRTMA and this Chapter, a licensee and its employees and agents who are operating within the scope of a valid State-issued operating license are not subject to criminal or civil prosecution under City ordinances regulating marihuana.

(2) Except as otherwise provided by the MRTMA and this Chapter, a person who owns or leases real property upon which a marihuana establishment is located and who has no knowledge that the licensee is violating or violated the MRTMA or a provision of this Chapter, is not subject to criminal or civil prosecution under City ordinances regulating marihuana.

(3) Nothing in this ordinance 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 or hemp in any form, that is not in strict compliance with the MRTMA, the Michigan Medical Marihuana Act, the Medical Marihuana Establishments Licensing Act, the Marihuana Tracking Act, and all applicable rules promulgated by the State of Michigan regarding marihuana. Strict compliance with any applicable State law or regulation shall be deemed a requirement for the issuance or renewal of any license issued under this Chapter, and noncompliance with any applicable State law or regulation shall be grounds for revocation or nonrenewal of any license issued under the terms of this Chapter.

(4) A person is not subject to criminal prosecution or sanctions under City ordinance for purchasing marihuana from a marihuana retailer consistent with the terms of the MRTMA if the quantity purchased is within the limits established under the MRTMA.

(5) In the event of any conflict, the terms of this Chapter are preempted and the controlling authority shall be the statutory regulations set forth by the MRTMA or the rules adopted by the Board (Michigan Department of Licensing and Regulatory Affairs, "LARA" or "Department")(LARA Rules) to implement, administer or enforce the MRTMA.

(e) City liability and indemnification.

(1) By accepting a license issued pursuant to this Chapter, 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 marihuana establishment owners, operators, employees, clients or customers for a violation of state or federal laws, rules or regulations.

(2) By accepting a license issued pursuant to this Chapter, all licensees agree to indemnify, defend and hold harmless the City, 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 to a licensed operating

establishment, arising out of, claimed to have arisen out of, or in any manner connected with the operation of a marihuana 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 a claimed violation of the federal Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §1964(c) or any other alleged violation of law .

(3) By accepting a license issued pursuant to the Chapter, 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.

Sec. 28-2 Definitions.

The following words, terms and phrases when used in this Chapter shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicant means a person who applies for a state operating license. With respect to disclosures in an application, or for purposes of ineligibility for a license, the term applicant includes an officer, director, and managerial employee of the applicant and a person who holds any direct or indirect ownership interest in the applicant, as more specifically set forth in the LARA Rules.

Board means the marihuana licensing board, as anticipated by the MRTMA to be created at LARA in order to regulate and administer state licenses.

Cultivate or *cultivation* means to propagate, breed, grow, harvest, dry, cure, or separate parts of the marihuana plant by manual or mechanical means.

Department or *Agency* means the Michigan Department of Licensing and Regulatory Affairs (LARA), or its successor agency.

Designated consumption establishment means a commercial space that is licensed by the agency and authorized to permit adults 21 years of age and older to consume marihuana products at the location indicated on the state license.

Excess marihuana grower means a license issued to a person holding 5 class C marihuana grower licenses and licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.

Grower means a person licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.

Licensee means a person holding a state operating license.

Marihuana means 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 marihuana concentrate and marihuana-infused products. For purposes of this ordinance, marihuana does not include: (1) 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; (2) industrial hemp; or (3) any other ingredient combined with marihuana to prepare topical or oral administrations, food, drink, or other products.

Marihuana accessories means 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 means the resin extracted from any part of the plant of the genus *cannabis*.

Marihuana establishment means a marihuana grower, marihuana safety compliance facility, marihuana processor, marihuana microbusiness, marihuana retailer, marijuana secure transporter, marihuana designated consumption establishment, or any other type of marihuana-related business licensed by the department.

Marihuana event organizer means a person licensed to apply for a temporary marihuana event license under these rules.

Marihuana-infused product means a topical formulation, tincture, beverage, edible substance, or similar product containing marihuana and other ingredients and that is intended for human consumption.

Marihuana microbusiness means 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.

Michigan Marihuana Act or *MMMA* means 2008 IL 1, MCL 333.26421 et seq., as may be amended.

Michigan Marihuana Facilities Licensing Act or *MMFLA* means Public Act 281 of 2016, MCL 333.27101 et seq., as may be amended.

Michigan Marihuana Tracking Act means Public Act 282 of 2016, MCL 333.27901 et seq., as may be amended.

Marihuana Processor means a person licensed to obtain marihuana from marihuana establishments; process and package marihuana; and sell or otherwise transfer marihuana to marihuana establishments.

Marihuana retailer means 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.

Person means an individual, corporation, limited liability company, partnership of any type, trust, or other legal entity.

Rules mean rules promulgated by the Department in consultation with the Board to implement this act, including the LARA Rules as may be amended from time to time.

Safety compliance establishment means a person licensed to test marihuana, including certification for potency and the presence of contaminants.

Secure transporter means a person licensed to obtain marihuana from marihuana establishments in order to transport marihuana to marihuana establishments.

Stacked license means more than 1 State license issued to a single licensee to operate as a class C marihuana grower as specified in each State license at a marihuana establishment.

State operating license or, unless the context requires a different meaning, *license*, means a license issued by the department that allows a person to operate a marihuana establishment.

Temporary marihuana event license means a State license held by a marihuana event organizer for an event where the onsite sale or consumption of marihuana products, or both, are authorized at the location indicated on the State license during the dates indicated on the State license.

True party of interest means:

- (1) For an individual or sole proprietorship: the proprietor and spouse.
- (2) For a partnership and limited liability partnership: all partners and their spouses.
- (3) For a limited partnership and limited liability limited partnership: all general and limited partners and their spouses.
- (4) For a limited liability company: all members, managers, not including a member holding a direct or indirect ownership interest of 10% or less and who does not exercise control over or participate in the management of the company, and their spouses.

- (5) For a privately held corporation: all corporate officers or persons with equivalent titles and their spouses and all stockholders and their spouses.
- (6) For a publicly held corporation: all corporate officers or persons with equivalent titles and their spouses.
- (7) For a multilevel ownership enterprise: any entity or person that receives or has the right to receive a percentage of the gross or net profit from the enterprise during any full or partial calendar or fiscal year.
- (8) For a nonprofit corporation: all individuals and entities with membership or shareholder rights in accordance with the articles of incorporation or the bylaws and their spouses.
- (9) For a trust: the names of the beneficiaries.

However, *true party of interest* does not mean:

- (1) A person who provides financing to an applicant or licensee under a bona fide financing agreement at a reasonable rate.
- (2) A franchisor who grants a franchise to an applicant, provided that the franchisor does not have the right to receive royalties based upon the sale of marihuana or marihuana-infused products by the applicant who is a franchisee.
- (3) A person or entity receiving reasonable payment for rent on a fixed basis under a bona fide lease or rental obligation, unless the lessor or property manager exercises control over or participates in the management of the business.
- (4) A person receiving reasonable payment under a licensing agreement or contract approved by the agency concerning the licensing of intellectual property including, but not limited to, brands and recipes.
- (5) A person who receives a bonus as an employee if the employee is on a fixed wage or salary and the bonus is not more than 25% of the employee's pre-bonus annual compensation or if the bonus is based on a written incentive or bonus program that is not out of the ordinary for the services rendered.

Sec. 28-3 License Application Process.

Applications must be complete and shall be considered in the order in which they are received. Among the criteria to be considered in determining whether the applications are complete are the following:

- (1) Applicant must submit detailed application materials and plans (including plans which address the provisions of this Chapter and related provisions, such as current ownership of the property, security, lighting, processing, site plans, record-

keeping, disposal, water/utility, ventilation, odor, etc.) which illustrate the likely success of the proposed business, in harmony with surrounding properties at the proposed site;

(2) Applicant must not be currently in default/arrears on any taxes or fees otherwise due to the City, and must not have a history of noncompliance or violations with City Ordinances or applicable laws; and applicant must not have been served with any complaint or notice filed by or with any public body, regarding the delinquency in the payment of any tax required under federal, state or local law;

(3) Applicant must indicate whether it has a history of criminal convictions/pleas, other than as specified by the MRTMA, MCL 333.27958;

(4) Applicant must indicate whether it has ever applied for or has been granted any commercial license or certificate issued by a licensing authority in Michigan or any other jurisdiction, that has been denied, restricted, suspended, revoked, or not renewed, or has proceedings pending related to such;

(5) Applicant must indicate whether it has filed, or had filed against it/him/her, a proceeding for bankruptcy or been involved in any formal process to adjust, defer, suspend or otherwise work out payment of a debt in the past seven years;

(6) Other criteria, published by the office of the City Manager on the City's website, prior to the selection process, as may be determined to be pertinent to the selection process, including but not limited to the criteria developed and considered by LARA in the issuance of licenses under MRTMA, or under any other marihuana-related licensing process, such as the Michigan Medical Marihuana Act.

Sec. 28-4 Location eligibility.

(a) No marihuana establishment shall be eligible to be issued a license unless the applicant complies, for the parcel in question, with all other City regulations, including zoning and land use regulations.

(b) A licensee shall not operate a marihuana establishment at any place in the City other than the address provided in the application on file with the City Clerk.

Sec. 28-5 License and annual fee required.

No person shall establish or operate a marihuana commercial entity in the City without first having obtained from the City and the State a license for each such establishment to be operated. License certificates shall be kept current and publically displayed within the establishment. Failure to maintain or display a current license certificate shall be a violation of this Chapter. City licenses are required as follows:

(a) An annual nonrefundable fee must be paid to defray the administrative and enforcement costs associated with marihuana establishments located in the City in the amount of \$5,000 per license. If more than one type of marihuana establishment is located at a certain location, each shall require a separate license.

(b) The annual nonrefundable fee required under this section shall be due and payable with the application for a license and upon the application for renewal of any such license under this Chapter.

(c) The license 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 other federal, state, or City law or ordinance, including, by way of example, any applicable zoning or building permits.

(d) The issuance of any license pursuant to this Chapter does not create an exception, defense, or immunity to any person in regard to any potential criminal liability the person may have for the production, distribution, or possession of marihuana under federal law.

(e) Licenses may be allowed to be stacked for multiple uses per premise, subject to the City's determination that such uses are compatible together at that location, are consistent on a shared basis with all the provisions of the MRTMA and each use is consistent is consistent with all zoning, land use and other provisions of the City Code of Ordinances. If those conditions are met, more than one different marihuana establishment may be located on one parcel. Unless higher performance is required by applicable law, there must be a minimum of a one-hour fire separation wall between any marihuana establishment and any adjacent business.

Sec. 28-6 General license application requirements.

(a) A person seeking a license pursuant to the MRTMA and the provisions of this Chapter shall submit an application to the City on forms provided by the City. At the time of application, each applicant shall pay a nonrefundable application fee to defray the costs incurred by the City for background investigations and inspection of the proposed premises, as well as any other costs associated with the processing of the application. In addition, the applicant shall present a suitable form of identification.

(b) The applicant shall also provide the following information, under the penalty of perjury, on the City-issued form. Such information is required for the applicant, the proposed manager of the marihuana commercial entity, and all persons who are true parties of interest in the marihuana commercial entity that is the subject of the application:

(1) The name, address, date of birth, business address, business telephone number, driver's license, and, if applicable, federal tax identification number;

(2) If the applicant is a business entity, information regarding the entity, including, without limitation, the name and address of the entity, its legal status,

and proof of registration with, or a certificate of good standing from, the State of Michigan, as applicable;

(3) The identity of every person having any ownership interest in the applicant with respect to which the license is sought.

(4) If the applicant is not the owner of the proposed licensed premises, a notarized statement from the owner of such property authorizing the use of the property for a marihuana establishment;

(5) A copy of any deed reflecting the applicant's ownership of, or lease reflecting the right of the applicant to possess, or an option reflecting the applicant's right to purchase or lease, the proposed licensed premises;

(6) A stamped or sealed 24 inch by 36 inch drawing of the proposed licensed premises showing, without limitation, building layout, all entryways and exits to the proposed licensed premises, loading zones and all areas in which marihuana will be stored, grown, manufactured or dispensed;

(7) A comprehensive establishment operation plan for the marihuana commercial entity which shall contain, at a minimum, the following:

a. A security plan indicating how the applicant will comply with the requirements of this Chapter and any other applicable law, rule, or regulation. The security plan shall include details of security arrangements and will be protected from disclosure as provided under the Michigan Freedom of Information Act, MCL 15.231 et seq. If the City finds that such documents are subject to disclosure, it will attempt to provide at least 2 business days' notice to the applicant prior to such disclosure.

b. For grower and processing establishments, a plan that specifies the methods to be used to prevent the growth of harmful mold and compliance with limitations on discharge into the wastewater system of the City;

c. A lighting plan showing the lighting outside of the marihuana establishment for security purposes and compliance with applicable City requirements;

d. A plan for disposal of any marihuana or marihuana-infused product that is not sold to a customer, in a manner that protects any portion thereof from being possessed or ingested by any person or animal.

e. A plan for ventilation of the marihuana establishment that describes the ventilation systems that will be used to prevent any odor of marihuana off the premises of the business. For marihuana establishments that grow marihuana plants, such plan shall also include all ventilation systems used to control the environment for the plants and describe how such systems operate with the systems preventing any odor leaving the premises. For

marihuana businesses that produce marihuana-infused products, such plan shall also include all ventilation systems used to mitigate noxious gases or other fumes used or created as part of the production process.

f. A description of all toxic, flammable, or other materials regulated by a federal, state, or local authority that would have jurisdiction over the business if it was not a marihuana business, that will be used or kept at the marihuana business, the location of such materials, and how such materials will be stored.

g. For grower and processing establishments, an applicant must submit electrical plans for load review to Lowell Light & Power for a primary/secondary load study. After the load study has been conducted, applicants must prepay all costs associated with overbuilds that are necessary to meet the applicant's required load before construction is to start. Associated costs may include:

1. Overbuild of primary/secondary utility lines and their supporting structures.
2. KVA cost (Transformer(s)).
3. All labor and equipment cost.
4. Lowell Light & Power reserve the right to deny electric service to any applicant based on failure to meet load acceptance review or load requirements that are not conducive to the location.

(8) Prior to making a modification to a structure that would require a building permit or which would alter or change items required by this subsection, the licensee shall submit to the City and have approved a completed application for modification of premises in the form provided by the City.

(9) Proof of Insurance. A licensee shall at all times maintain full force and effect for duration of the license, worker's compensation insurance as required by state law, and general liability insurance with minimum limits of \$1,000,000 per occurrence and a \$2,000,000 aggregate limit issued from a company licensed to do business in Michigan. A licensee shall provide proof of insurance to the City Clerk in the form of a certificate of insurance evidencing the existence of a valid and effective policy which discloses the limits of each policy, the name of the insurer, the effective date and expiration date of each policy, the policy number, and the names of the additional insureds. The policy shall name the City of Lowell and its officials and employees as additional insureds to the limits required by this section. A licensee or its insurance broker shall notify the City of any cancellation or reduction in coverage within seven days of receipt of insurer's notification to that effect. The licensee, permittee, or lessee shall forthwith obtain and submit proof of substitute insurance to the City Clerk within 5 business days in the event of expiration or cancellation of coverage.

(10) Whether an applicant has been indicted for, charged with, arrested for, or convicted of, pled guilty or nolo contendere to, forfeited bail concerning any criminal offense under the laws of any jurisdiction, either felony or controlled-substance-related misdemeanor, not including traffic violations, regardless of whether the offense has been reversed on appeal or otherwise, including the date, the name and location of the court, arresting agency, and prosecuting agency, the case caption, the docket number, the offense, the disposition, and the location and length of incarceration. Prior criminal history will be addressed/considered consistent with the provisions of the MRTMA, including but not limited to MCL 333.27958(1)(c).

(11) Whether an applicant has ever applied for or has been granted any commercial license or certificate issued by a licensing authority in Michigan or any other jurisdiction that has been denied, restricted, suspended, revoked, or not renewed and a statement describing the facts and circumstances concerning the application, denial, restriction, suspension, revocation, or nonrenewal, including the licensing authority, the date each action was taken, and the reason for each action.

(12) Whether an applicant has filed, or been served with, a complaint or other notice filed with any public body, regarding the delinquency in the payment of, or a dispute over the filings concerning the payment of, any tax required under federal, state, or local law, including the amount, type of tax, taxing agency, and time periods involved.

(13) A description of the type of marihuana establishment and the anticipated or actual number of employees.

(14) An acknowledgment and consent that the City may conduct a background investigation, including a criminal history check, and that the City will be entitled to full and complete disclosure of all financial records of the marihuana commercial entity, including records of deposit, withdrawals, balances and loans; and

(15) Any additional information that the City Manager or Police Department reasonably determines to be necessary in connection with the investigation and review of the application.

(c) Consistent with the MRTMA, including but not limited to MCL 333.27959 (7), and the Freedom of Information Act, MCL 15.231 et seq. the information provided to the City Clerk pursuant to this section relative to licensure is exempt from disclosure.

(d) All marihuana commercial entities shall be required to obtain all other required permits or licenses related to the operation of the marihuana commercial entity, including, without limitation, any development approvals or building permits required by any applicable code or ordinance.

(e) If a deficiency is identified in an application, the applicant shall have five (5) business days to correct the deficiency after notification.

(f) Upon an applicant's completion of the above-provided form and furnishing of all required information and documentation, the City Clerk shall accept the application and assign it an application number by establishment type.

(g) Upon receipt of a completed application, the City Clerk shall circulate the application to the Planning Department, Police Department, Assessing Department, Department of Public Works (as well as any other City department or consultants that the Office of the City Manager may determine is pertinent to review of such applications) to determine whether the application is in full compliance with all applicable laws, rules and regulations.

Sec. 28-7 Denial of application.

(a) The City Clerk, 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 Chapter, the City Code of Ordinances or other applicable law or regulations. The City Clerk 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 Chapter if any of the following circumstances exist regarding a true party of interest of the applicant:

(1) Conviction of or release from incarceration for a felony under the laws of this state, any other state, or the United States within the past 10 years or conviction of a controlled substance-related felony within the past 10 years, except that, consistent with MCL 333.27958 (1)(c), a prior conviction solely for a marihuana-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.

(2) 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 a misdemeanor in that state.

(3) 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.

(4) 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 provisions.

(5) The applicant fails to provide and maintain adequate premises liability and casualty insurance for its proposed marihuana establishment.

(6) Holds an elective office of a governmental unit of this state, 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.

(7) The applicant does not meet the MRTMA provisions concerning eligible license applicants, including but not limited to the provisions of MCL 333.27959, including the provisions of subsection (6) of that statute, which set forth time periods within which only certain applicants may obtain licenses.

(8) 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.

Sec. 28-8 Issuance of provisional approval certificate.

(a) Complete applications for a marihuana establishment license determined to be in full compliance with the requirements of this Chapter shall be issued a provisional marihuana establishment approval certificate in accordance with the procedures specified in this Section.

(b) The City Clerk, upon approval by the City Council, shall issue a provisional marihuana establishment approval certificate if the inspection, background checks, and all other information available to the City verify that the applicant has submitted a full and complete application, has made improvements to the business location consistent with the application, complies with applicable zoning and location requirements, and is prepared to operate the business as set forth in the application, all in compliance with this Code and any other applicable law, rule, or regulation.

(c) Applications whose inspection, background checks, and all other information available to the City verify that the applicant has submitted a full and complete application, has made improvements to the business location consistent with the application, complies with applicable zoning and location requirements, and is prepared to operate the business as set forth in the application, all in compliance with this Code and any other applicable law, rule, or regulation shall be evaluated by City staff for recommendation to approve or deny a provisional marihuana establishment approval certificate.

(d) A provisional marihuana establishment approval certificate means only that the applicant has submitted a valid application for a marihuana establishment license, and is eligible to receive the appropriate marihuana establishment license from the Board. The applicant shall not locate or operate a marihuana establishment in the City without obtaining a license approved by the Board and issued by the State. A provisional certificate issued by the City will expire and be void after 12 months if State license approval is not

diligently pursued to completion by the applicant within such time, or on the date that State license approval is denied to the applicant, whichever first occurs.

(e) The conditions of an approval of a marihuana business license shall include, at a minimum, operation of the business in compliance with all of the plans and information made part of the application.

Sec. 28-9 Issuance of City marihuana establishment operating license.

(a) An applicant holding an unexpired provisional certificate issued pursuant to this Chapter and for which the Board has granted the appropriate marihuana establishment State operating license shall provide proof of same to the City Clerk.

(b) Inspection. An inspection of the proposed marihuana establishment by the City shall be required prior to issuance of the City operating license. Such inspection shall occur after the premises are ready for operation, but prior to the stocking of the business with any marihuana, and prior to the opening of the business to the public. The inspection is to verify that the business establishments are constructed and can be operated in accordance with the application submitted and the applicable requirements of the code and any other applicable law, rule, or regulation.

(c) After verification that the business establishments are constructed and can be operated in accordance with the application submitted and the applicable requirements of the code and any other applicable law, rule, or regulation, the City Clerk shall issue a City marihuana operating license whose term shall run concurrent with the State operating license for the establishment.

(d) Maintaining a valid marihuana establishment license issued by the State is a condition for the issuance and maintenance of the City marihuana establishment operating license issued under this Chapter and the continued operation of any marihuana establishment.

Sec. 28-10 License forfeiture.

In the event that a marihuana establishment does not commence operations within one year of issuance of a City operating license, the license shall be deemed forfeited; the business may not commence operations and the license is not eligible for renewal.

Sec. 28-11 License renewal.

(a) A City marihuana establishment operating license shall run concurrently with the State operating marijuana license issued for the establishment, unless revoked as provided by law.

(b) A valid marihuana establishment license may be renewed on an annual basis by a renewal application upon a form provided by the City and payment of the annual license fee. An application to renew a marihuana establishment license shall be filed at least thirty (30) days prior to the date of its expiration.

(c) Prior to the issuance of a renewed marihuana establishment license by the City, the premises shall be inspected to assure that it and its systems are in compliance with the requirements of this Chapter and the City Code of Ordinances.

Sec. 28-12 Transfer, sale or purchase of license.

(a) A marihuana business license is valid only for the owner named thereon, the type of business disclosed on the application for the license, and the location for which the license is issued. The licensees of a marihuana business license are only those persons disclosed in the application or subsequently disclosed to the City in accordance with this Chapter.

(b) Each operating license is exclusive to the licensee, and a licensee or any other person must submit an application for licensure with the City Clerk before a license is transferred, sold, or purchased. The attempted transfer, sale, or other conveyance of an interest in a license without prior application with the City Clerk is grounds for suspension or revocation of the license.

Sec. 28-13 License as revocable privilege.

An operating license granted by this Chapter is a revocable privilege granted by the City and is not a property right. Granting a license does not create or vest any right, title, franchise, or other property interest. Each license is exclusive to the licensee, and a licensee or any other person must apply for and receive the City's approval before a license is transferred, sold, or purchased. A licensee or any other person shall not lease, pledge, or borrow or loan money against a license. The attempted transfer, sale, or other conveyance of an interest in a license without prior Board approval is grounds for suspension or revocation of the license or for other sanction considered appropriate by the City.

Sec. 28-14 Denial, nonrenewal, suspension or revocation of license.

(a) The City may, after notice and hearing, deny, suspend, revoke or refuse to renew a license for any of the following reasons:

(1) The applicant or licensee, or his or her agent, manager or employee, has violated, does not meet, or has failed to comply with, any of the terms, requirements, conditions or provisions of this Chapter or with any applicable State or local law or regulation;

(2) The applicant or licensee, or his or her agent, manager or employee, has failed to comply with any special terms or conditions of its license pursuant to an order of the State or local licensing authority, including those terms and conditions that were established at the time of issuance of the license and those imposed as a result of any disciplinary proceedings held subsequent to the date of issuance of the license; or

(3) The marihuana commercial entity has been operated in a manner that adversely affects the public health, safety or welfare.

(b) Evidence to support a finding under this section may include, without limitation, a continuing pattern of conduct, a continuing pattern of drug-related criminal conduct within the premises of the marihuana commercial entity or in the immediate area surrounding such business, a continuing pattern of criminal conduct directly related to or arising from the operation of the marihuana commercial entity, or an ongoing nuisance condition emanating from or caused by the marihuana commercial entity. Criminal conduct shall be limited to the violation of a State law or regulation or City ordinance.

(c) Denial of an application, or nonrenewal, suspension or revocation of an existing license may be appealed to a court of competent jurisdiction.

Sec. 28-15 Grower license.

Applicable standards for grower establishments:

(1) A grower shall comply with all of the provisions of the MRTMA and LARA Rules, and shall comply with the following:

a. No pesticides or insecticides which are prohibited by applicable law for fertilization or production of edible produce shall be used on any marihuana cultivated, produced, or distributed by a marihuana business.

b. A marihuana business shall be ventilated so that the odor of marihuana cannot be detected by a person with a normal sense of smell at the exterior of the marihuana business or at any adjoining use or property.

Sec. 28-16 Processor license.

Applicable standards for processor establishments shall be as set forth in the MRTMA and LARA Rules.

Sec. 28-17 Secure transporter license.

Applicable standards for secure transporter shall be as set forth in the MRTMA and LARA Rules.

Sec. 28-18 Marihuana retailer license.

Applicable standards for marihuana retailers shall be as set forth in the MRTMA and LARA Rules.

Sec. 28-19 Safety compliance establishment license.

Applicable standards for safety compliance shall be as set forth in the MRTMA and LARA Rules.

Sec. 28-20 Microbusiness License.

Applicable standards for a marihuana microbusiness shall be as set forth in the MRTMA and LARA Rules.

Sec. 28-21 Special Licenses.

Applicable standards for Special Licenses (Designated Consumption Establishment Licenses, Excess Marihuana Grower Licenses, Marihuana Event Organizer License, and Temporary Marihuana Event Licenses) shall be as dictated by the MRTMA and LARA Rules:

Sec. 28-22 Compliance with rules; inspections.

- (a) A licensee shall strictly comply with the rules and emergency rules that may from time to time be promulgated by the Department.
- (b) If it is determined that the Marihuana Tracking Act applies, or LARA promulgates rules or regulations which require such, a licensee shall adopt and use the statewide monitoring system of inventory control and tracking authorized by the Marihuana Tracking Act so as to provide the capability for the licensee to comply with the State requirements applicable to the type of license held by the licensee.
- (c) A marihuana establishment and all articles of property in the establishment are subject to inspection, search and examination at any time by a member of the Lowell Police Department or the Department of State Police.
- (d) Any failure by a licensee to comply with Department rules or the provisions of this Chapter is a violation of this Chapter and any infraction or violation, however slight, is sufficient grounds for suspension and revocation of licensure under this Chapter.

Sec. 28-23 Signage and advertising.

All signage and advertising for a marihuana establishment shall comply with all applicable provisions of this Code and applicable zoning and land use provisions. In addition, it shall be unlawful for any licensee to:

- (1) Use advertising material that is misleading, deceptive or false or that, as evidenced by the content of the advertising material or by the medium or the manner in which the advertising material is disseminated, is designed to appeal to minors;
- (2) Advertise in a manner that is inconsistent with the provisions of the MRTMA or LARA rules.

Sec. 28-24 Warning signs.

There shall be posted in a conspicuous location in each establishment a legible sign containing the content of this section warning that:

- (1) The possession, use or distribution of marihuana is a violation of federal law;
- (2) It is illegal under State law to drive a motor vehicle or to operate machinery when under the influence of, or impaired by, marihuana; and
- (3) No one under the age of twenty-one (21) years is permitted on the premises.

Sec. 28-25 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:

- (1) Cameras. The marihuana business shall install and use security cameras to monitor and record all areas of the premises (except in restrooms) where persons may gain or attempt to gain access to marihuana or cash maintained by the marihuana 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 offsite location in the City or through a service over a network that provides on-demand access, commonly referred to as a "cloud." The offsite 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.

(2) Use of safe for storage. The marihuana business shall install and use a safe for storage of any processed marihuana 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 marihuana-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.

(3) Alarm system. The marihuana 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.

Sec. 28-26 Visibility of activities; control of emissions.

(a) All activities of marihuana commercial entities, including, without limitation, the cultivating, growing, processing, sale, displaying, manufacturing, selling, and storage of marihuana and marihuana-infused products shall be conducted consistent with the MRTMA, including but not limited to MCL 333.27961 concerning activities, to be conducted outside of public view.

(b) No marihuana or marihuana accessories shall be displayed or kept in a business so as to be visible from outside the licensed premises.

(c) Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting a marihuana commercial entity must be provided at all times. In the event that any odors, debris, dust, fluids or other substances exit a marihuana commercial entity, the owner of the subject premises and the licensee shall be jointly and severally liable for such conditions and shall be responsible for immediate, full clean-up and correction of such condition. The licensee shall properly dispose of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations.

Sec. 28-27 Marihuana cultivation.

(a) Cultivation, generally.

- (1) Marihuana cultivation shall be conducted consistent with the MRTMA, including but not limited to MCL 333.27961, and all LARA rules, within an enclosed, secured area;
 - (2) Marihuana cultivation shall comply with all applicable requirements of the laws and regulations of the City and the State.
- (b) All marihuana products kept on premises where marihuana plants are grown shall be stored in a locked and enclosed space.
- (c) No marihuana cultivation activity shall result in the emission of any gas, vapors, odors, smoke, dust, heat or glare that is noticeable at or beyond the property line of the dwelling at which the cultivation occurs. Sufficient measures and means of preventing the escape of such substances from a dwelling must be provided at all times. In the event that any gas, vapors, odors, smoke, dust, heat or glare or other substances exit a dwelling, the owner of the subject premises shall be liable for such conditions and shall be responsible for immediate, full clean-up and correction of such condition. The owner shall properly dispose of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations. In the event there is a lessee of the subject premises, the owner and the lessee shall be jointly and severally liable for such conditions.

Sec. 28-28 Odor control.

- (a) No person, tenant, occupant, or property owner shall permit the emission of marihuana odor from any source to result in detectable odors that leave the premises upon which they originated and interfere with the reasonable and comfortable use and enjoyment of another's property.
- (b) Whether or not 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.
- (c) A grower or a processor shall install and maintain in operable condition a system which precludes the emission of marihuana odor from the premises.

Sec. 28-29 Separation of licensed premises.

A grower establishment and processor establishment are separate marihuana commercial entities requiring separate licenses and separate premises. In addition to all other application requirements for separate premises, each business shall:

- (1) Have separate operations, ventilation, security, and fire suppression systems, and separate access from a public area.

- (2) Be divided within a building from floor to roof. Unless higher performance is required by applicable law, there must be a minimum of a one-hour fire separation between a marihuana business and any adjacent business.

Sec. 28-30 Prohibited acts.

- (a) It shall be unlawful for any licensee to permit the consumption of alcohol beverages on the licensed premises.
- (b) It shall be unlawful for any licensee holding a marihuana retailer license, or for any agent, manager or employee thereof, to:
 - (1) sell, give, dispense or otherwise distribute marihuana or marihuana accessories from any outdoor location;
 - (2) display marihuana or marihuana accessories so as to be visible from a public place outside of the marihuana establishment;
- (c) It shall be unlawful for retail marihuana establishments to distribute marihuana or marihuana-infused products to a consumer free of charge.
- (d) It shall be unlawful for any licensee to permit the consumption of retail marihuana or retail marihuana products on the licensed premises.
- (e) It shall be unlawful for any licensee to sell marihuana or marihuana products at a licensed marihuana retailer or microbusiness at any time other than between the hours of 7:00 a.m. and 9:00 p.m. daily.

Sec. 28-31 Reports of crime.

Reports of all criminal activities or attempts of violation of any law at the marihuana establishment or related thereto shall be reported to Lowell Police Department within twelve hours of occurrence, or its discovery, whichever is sooner.

Sec. 28-32 Inspection of licensed premises.

- (a) 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 Police Department 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.
- (b) Consent to Inspection. Application for a marihuana business license 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 manager to conduct routine examinations and inspections

of the marihuana business to ensure compliance with this Chapter or any other applicable law, rule, or regulation. For purposes of this Chapter, examinations and inspections of marihuana businesses and recordings from security cameras in such businesses are part of the routine policy of enforcement of this Chapter for the purpose of protecting the public safety, individuals operating and using the services of the marihuana business, and the adjoining properties and neighborhood.

(c) Application for a marihuana business license constitutes consent to the examination and inspection of the business as a public premise 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 license without a search warrant.

(d) 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 MRTMA, or applicable state administrative rules.

Sec. 28-33 Additional requirements.

(a) No marihuana business may use metals, butane, propane, or other flammable product, or produce flammable vapors, to process marihuana unless the process used and the premises are verified as safe and in compliance with all applicable codes by a qualified industrial hygienist.

(b) The City shall require the business to obtain verification from a qualified industrial hygienist that the manner in which the business is producing marihuana complies with all applicable laws and does not produce noxious or dangerous gases or odors or otherwise create a danger to any person or entity in or near the businesses.

Sec. 28-34 Other laws remain applicable.

To the extent the State adopts in the future any additional or stricter law or regulation governing the sale or distribution of marihuana, the additional or stricter regulation shall control the establishment or operation of any marihuana commercial entity in the City. Compliance with any applicable State law or regulation shall be deemed an additional requirement for issuance or denial of any license under this Chapter, and noncompliance with any applicable State law or regulation shall be grounds for revocation or suspension of any license issued hereunder.

Sec. 28-35 Grant of administrative authority.

The City Manager is granted the power and duty to fully and effectively implement and administer the license application process and issuance of Provisional Approval Certificates and Operating Licenses issued by the City under this Chapter.

Sec. 28-36 Violations and penalties.

In addition to the possible denial, suspension, revocation or nonrenewal of a license under the provisions of this Chapter, consistent with MCL 333.27956(2)(d), any person or marihuana establishment, including, but not limited to, any licensee, manager or employee of a marihuana commercial entity, who violates any of the provisions of this Chapter, shall be guilty of a municipal civil infraction and a fine of not more than \$500.

In addition, any person, including any person, customer or member of the public, who violates the provisions of section 4 of the Act, MCL 333.27954, and who acts in a manner contrary to the acts prohibited therein, except as may be otherwise provided in MCL 333.27965, shall be guilty of a misdemeanor.

Notwithstanding the above, to the extent any violation or penalty set forth herein may be deemed inconsistent with any State law, or inconsistent with any rule or penalty which is promulgated by the Department, now or hereafter, including but not limited to those promulgated pursuant to MCL 333.27958, then the State law or Department rule or penalty shall govern over the provisions of this Chapter.

Sec. 28-37 Additional Provisions

(a) Notwithstanding any provision herein, to the extent it may be determined that any provision in this Chapter is in conflict with either the MRTMA, or the rules and regulations of LARA, or other provisions of law, then such provision of this Chapter as is in conflict shall be subject to and preempted by the rule or provision of law of this State.

(b) Consistent with the provisions of the MRTMA, nothing herein shall prevent any employer from disciplining any employee for violation of a workplace drug policy or for working while under the influence of marihuana, nor does anything in this Chapter prevent an employer from developing workplace policies, or from refusing to hire a person because of that person's violation of a workplace drug policy.

(c) Likewise, consistent with the MRTMA, nothing in this Chapter prevents a landlord from prohibiting or otherwise regulating the consumption, cultivation, distribution, processing, sale or display of marihuana and marihuana accessories on leased property except that a lease agreement may not prohibit a tenant from lawfully possessing and consuming marihuana by means other than smoking as set forth in the MRTMA and the LARA rules.

Section 2. 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 3. Effective Date. This ordinance shall take effect (subject to its Effective After Approval provisions) 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 Chambers, Canfield, Mayor DeVore, Salzwedel, and
Yankovich

NAYS : Councilmembers None

ABSTAIN: Councilmembers None

ABSENT: Councilmembers None

ORDINANCE DECLARED ADOPTED.

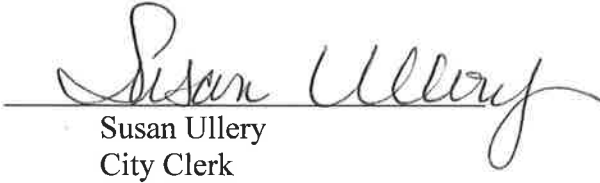
Dated: October 21, 2019


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