

CITY OF LUDINGTON

MASON COUNTY

ORDINANCE NO. ____ - 22

AN ORDINANCE TO AMEND CHAPTER 32 – RECREATIONAL MARIHUANA OF THE CODE OF ORDINANCES OF THE CITY OF LUDINGTON TO AUTHORIZE CERTAIN MARIHUANA FACILITIES WITHIN THE CITY OF LUDINGTON

THE CITY OF LUDINGTON ORDAINS:

Section 1. Findings & Purpose.

The City Council of the City of Ludington hereby finds and determines that the State of Michigan has adopted constitutional amendments, state-wide legislation, and specific regulations authorizing (*inter alia*) the possession, propagation, sale, transportation, and consumption of medical marihuana and adult-use recreational marihuana; that the City has previously adopted certain limited regulations in the form of Chapters 31 and 32 of the City Code that govern Medical Marihuana and Recreational Marihuana, respectively; that the City has formed an ad hoc committee to conduct a thorough review and analysis of these laws, regulations, and ordinances, and the potential amendment and/or development of additional local standards, rules, and regulations to further govern those authorized activities within the City limits of the City of Ludington; that the Marihuana Ad Hoc Committee has completed their review and has proposed certain regulations for consideration by the City Council; and that the City has determined that regulation of certain businesses, facilities, and activities authorized pursuant to the Michigan Regulation and Taxation of Marihuana Act (being the publicly Initiated Law 1 of 2018, codified at MCL §333.27951 *et seq.*; aka. the “MRTMA”) is necessary in order to serve the interests of the City, the City’s residents and business owners, and the community as a whole.

Section 2. Amendment of Chapter 32. Chapter 32 of the Code of Ordinances of the City of Ludington is hereby amended by striking and/or removing the current language of said Chapter (consisting of Sections 32-1, 32-2, and 32-3) in its entirety and replacing same with the following new Sections 32-1 through 32-31:

Section 32-1. Purpose and intent.

- (a) The purpose of this chapter is to implement the provisions of the Michigan Regulation and Taxation of Marihuana Act (being the publicly Initiated Law 1 of 2018, codified at MCL §333.27951 *et seq.*; hereinafter, the “MRTMA” or “Act”), 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 MRTMA;
 - (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 (hereinafter, "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 Ludington, Michigan, consistent with the provisions of the MRTMA and with the rules and regulations adopted by the state pursuant to the MRTMA and other Michigan law, 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 chapter, 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 chapter 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 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 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 and the rules adopted by the Michigan Department of Licensing and Regulatory Affairs (hereinafter, "LARA" or "Department") to implement, administer, and/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.*

Section 32-2. 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:

Any term defined by the Michigan Regulation and Taxation of Marihuana Act, MCL §333.27951 *et seq.*, as amended (MRTMA), shall have the definition given in said Act.

Any term defined by the Medical Marihuana Facilities Licensing Act, PA 281 of 2016, MCL §333.27101 *et seq.*, as amended (MMFLA), shall have the definition given in said Act.

Any term defined by the Marihuana Tracking Act, PA 282 of 2016, MCL §333.27901 *et seq.*, as amended (MTA), shall have the definition given in the said Act.

Applicant means a person who applies for an adult use marihuana permit from the City under this Chapter:

- a. For purposes of this definition, an applicant includes a managerial employee of the applicant, a person who holds a direct or indirect ownership interest of more than ten (10%) in the applicant, and the following for each type of applicant:
 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, not including a limited partner holding a direct or indirect ownership interest of ten (10%) percent or less and who does not exercise control over or participate in the management of the company, and their spouses.
 4. For a limited liability company: all members and managers, not including a member holding a direct or indirect ownership interest of ten (10) percent 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, all directors and their spouses, and all stockholders, not including those holding a direct or indirect ownership interest of ten (10%) percent or less, and their spouses.
 6. For a publicly held corporation: all corporate officers or persons with equivalent titles and their spouses, all directors and their spouses, and all stockholders, not including those holding a direct or indirect ownership interest of ten percent or less, and their spouses.
 7. For a multilevel ownership enterprise: any entity or person that receives or has the right to receive more than ten (10%) percent 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: trustees, any individual or body able to control and direct the affairs of the trust, and any beneficiary who receives or has the right to receive more than ten (10%) percent of the gross or net profit of the trust during any full or partial calendar or fiscal year and their spouses.

b. For purposes of this definition, an applicant does not include:

1. A person who provides financing to an applicant or licensee under a bona fide financing agreement at a reasonable rate, unless the person exercises control over or participates in the management of the marihuana business.
2. A franchisor who grants a franchise to an applicant, if 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. Nothing in this subrule shall be construed to preclude a franchisor from charging an applicant who is a franchisee a fixed fee. As used in this definition, the terms “franchise,” “franchisor,” and “franchisee” shall have the meanings set forth in section 2 of the Franchise Investment Law (Public Act 269 of 1974; MCL §445.1502).
3. A person or entity receiving reasonable payment for rent on a fixed basis under a bona fide lease or rental obligation, unless the person exercises control over or participates in the management of the marihuana 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 percentage of profits as an employee if the employee does not meet the definition of “managerial employee” under the LARA Rules and the employee does not receive more than ten (10%) percent of the gross or net profit from the licensee during any full or partial calendar or fiscal year.
6. 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 twenty-five (25%)

percent 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.

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 twenty-one (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 five (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.

Industrial Hemp means 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 marihuana-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.

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:

- 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 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 or *Adult Use Marihuana Establishment* means 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 Department.

Marihuana Grower means a person licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments. A “Class A” marihuana grower license authorizes the licensee to grow up to 100 marihuana plants. A “Class B” marihuana grower license authorizes the licensee to grow up to 500 marihuana plants. A “Class C” marihuana grower license authorizes the licensee to grow up to 2,000 marihuana plants.

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 Licensee or *Licensee* means a person holding a valid license for an adult use marihuana establishment issued by the State of Michigan.

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.

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.

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

Marihuana Safety Compliance Facility means a person licensed to test marihuana, including certification for potency and the presence of contaminants.

Michigan Marihuana Act or *MMMA* means Initiated Law 1 of 2008, 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.

Municipal License means a license issued pursuant to Section 6 of the Act (MCL §333.27956) that allows a person to operate a marihuana establishment in the City of Ludington.

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

Rules means the rules promulgated by the Department in consultation with the Board to implement the 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 one (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.

Section 32-3. Authorization of Marihuana Establishments. The city hereby authorizes, subject to the issuance of a municipal license by the City Manager, the following types of marihuana establishments within the boundaries of the City of

Ludington, pursuant to Section 6.1. of the Act; the establishments authorized pursuant to this ordinance relate only to the Act:

- (a) Class A Marihuana Grower;
- (b) Class B Marihuana Grower;
- (c) Class C Marihuana Grower;
- (d) Excess Marihuana Grower;
- (e) Marihuana Processor;
- (f) Marihuana Retailer;
- (g) Marihuana Safety Compliance Facility; and
- (h) Marihuana Secure Transporter.

Section 32-4. License Required for Recreational Marihuana Establishment.

- (a) It shall be unlawful to operate a marihuana establishment in the City of Ludington without first obtaining a municipal license to operate pursuant to this ordinance, having a validly issued state license in good standing, and having paid all applicable fees.
- (b) No person who is employed by the city, acts as a consultant for the city or acts as an advisor to the city, and is involved in the implementation, administration or enforcement of this ordinance shall have an interest, directly or indirectly, in a Marihuana Establishment.

Section 32-5. Permitted Locations.

- (a) All municipal licenses for marihuana establishments shall be issued for a specific physical location, which shall be designated as the licensed premises. The permissibility of a license in a specific location is contingent on the requirements provided in the City of Ludington Zoning Ordinance.
- (b) 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, but not limited to, zoning and land use regulations.
- (c) 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.

Section 32-6. Separation Distances. The distances described in this section shall be computed by measuring a straight line from the nearest property line of the land used for the purposes stated in this section 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) No Marihuana Retailer may be located within five hundred feet (500') of another Marihuana Retailer.
- (b) A marihuana establishment shall not be located within:
 - (1) An area zoned exclusively for residential use;
 - (2) 500 feet of a licensed preschool or licensed child care center, whether or not it is within the City of Ludington;
 - (3) 500 feet of a public or private K-12 school, whether or not it is within the City of Ludington;
- (c) Exception: the requirements above do not apply if the marihuana establishment was lawfully established prior to the location of an establishment or zoning district in subparagraphs (b)(1) – (b)(3) above.

Section 32-7. Municipal License Application.

- (a) Municipal license applications for adult-use marihuana establishments shall be received by the city during a period specifically designated by the City Manager for that purpose, and at no other time. Except as otherwise provided herein, the City manager shall be responsible for establishing the procedure for receiving, reviewing, and processing applications and licenses, establishing the beginning and ending dates during which applications will initially be received, establishing the beginning and ending dates during which applications may be received each year, and providing public notice regarding the licensing process and of the time period within which the City will receive applications.
- (b) Every applicant for a municipal license to operate a marihuana establishment shall file an application in the office of the city clerk upon a form provided by the City Manager, and shall submit one original and five (5) copies of said application and all associated attachments and materials. The application shall include:
 - (1) A nonrefundable fee in the amount of Five Thousand Dollars (\$5,000.00), to be paid annually by each marihuana establishment authorized within the City. This fee shall be required for each license proposed for each establishment

approved by the City, and shall be in addition to, and not in lieu of, any other fees for licensing or permitting requirements, including (but not limited to) site plan review, zoning, or building permits;

- (2) If the applicant is an individual, the applicant's name; date of birth; Social Security number; physical address, including residential and any business address; copy of government-issued photo identification; email address; one or more phone numbers, including emergency contact information;
- (3) If the applicant is not an individual, the names; dates of birth; physical addresses, including residential and any business address; copy of government-issued photo identifications; email address; and one or more phone numbers of each person holding ownership interest in the applicant, including designation of the highest ranking representative as an emergency contact person; contact information for the emergency contact person; articles of incorporation or organization; assumed name registration; Internal Revenue Service EIN confirmation letter; copy of the operating agreement of the applicant, if a limited liability company; copy of the partnership agreement, if a partnership; names and addresses of the beneficiaries, if a trust, or a copy of the bylaws or shareholder agreement, if a corporation;
- (4) The name and address of the proposed marihuana establishment;
- (5) A notice of prequalification status approval from the Department, as defined under the state rules, specifically the Emergency Rules of July 3, 2019, Rule 6, Section 2 (if applicable);
- (6) A copy of the Special Land Use Permit issued by the City of Ludington Planning Commission, or the application materials submitted therefore by the applicant;
- (7) A location area map of the marihuana establishment and surrounding area that identifies the relative locations and the distances (as measured from the parcel lines of the individual properties) to the closest real property comprising a public or private elementary, vocational or secondary school;
- (8) A signed acknowledgment that the applicant is aware and understands that all matters related to marihuana growing, cultivation, possession, testing, safety compliance and transporting, are currently subject to state and federal laws, rules and regulations, and that the approval or granting of a license hereunder does not exonerate or exculpate the applicant from abiding by the provisions and requirements and penalties associated with those laws, rules, and regulations, or exposure to any penalties associated therewith; and further, the applicant waives and forever releases any claim, demand, action, legal redress, or recourse against the city, its elected and appointed officials, and its employees and agents for any claims, damages, liabilities, causes of action,

damages, or attorney fees that the applicant may incur as a result of the violation by the applicant, its stakeholders and agents of those laws, rules, and regulations; and

- (9) Any other information which may be required by the City Manager.
- (c) Information requested in the application shall be provided for each individual identified under the definition of applicant in the application.
- (d) No person shall be issued a municipal license without first having obtained from the City of Ludington Planning Commission a Special Land Use Permit authorizing the location for the establishment pursuant to the City of Ludington Zoning Ordinance.
- (e) If an application is incomplete or missing information, the City Manager shall notify the applicant of the incomplete or missing information in writing by mail or electronic mail sent to the address provided by the applicant in the application for notification. The applicant shall have ten business days from the date of mailing of the written notice to provide the incomplete or missing information to the city.
- (f) Upon an applicant's completion of the above-described form and furnishing of all required information and materials, the city clerk shall file the same and assign it a sequential application number by establishment type based on the date and time of acceptance.
- (g) If the application is denied, the City Manager shall issue a written notice of denial to the applicant. All communications will be sent by first class mail to the address for the applicant provided on the application.
- (h) Municipal license holders shall report any other change in the information required by this ordinance to the City Manager within 10 business days of the change. Failure to do so may result in suspension or revocation of the license.

Section 32-8. License Application Evaluation.

- (a) Section 9.4 of the Act (MCL 333.27959.4) requires that the city establish a competitive process to select applicants who are best suited to operate in compliance with the Act and this ordinance, when more applicants have applied for a category of permits than the number of permits available. Pursuant to this requirement, the city requires that applicants provide information so that it may complete the required competitive process. The application evaluation criteria shall be based upon all information provided with the application, and the criteria contained in the scoring matrix adopted by the City Council by resolution. It is the applicant's responsibility to provide any necessary information to the city so that the city may make informed decisions in the competitive process.

- (b) Upon receipt of a completed marihuana establishment application meeting the requirements of this ordinance, the City Manager shall refer a copy of the application to each of the following for their review: the police chief or designee, the fire chief or designee, the city treasurer or designee and the zoning administrator or designee. Each application shall be reviewed in conjunction with an Adult Use Marihuana Scoring Matrix adopted by the City Council by resolution. In the event the City Manager, Police Chief, Fire Chief, City Treasurer, and Zoning Administrator (and/or their designee(s)) hold a meeting for the purpose of discussing the evaluation(s) and review(s) of completed license applications received by the City, such a meeting(s) shall be held subject to Michigan's Open Meetings Act (MCL §15.261, *et seq.*).
- (1) A municipal license will not be granted until the application materials have been reviewed and approved by the Fire Department, which will inspect the plans of the proposed location for compliance with all laws for which they are charged with enforcement, and the fire chief or his designee has conducted all inspections deemed necessary.
 - (2) A municipal license will not be granted until the applicant(s) has passed a criminal background check conducted by the Ludington Police Department.
 - (3) A municipal license will not be granted until the city treasurer verifies, that the applicant does not owe to the city any taxes or other default.
- (c) The City may engage professional expert consultant assistance in performing any of the duties and responsibilities under this chapter as desired by the official charged with such duties and responsibilities.
- (d) The city shall evaluate each application using an "Adult Use Marihuana Scoring Matrix" adopted by the City Council by resolution. Once the application has been scored, the points received by each applicant shall be totaled and ranked in order of most points to least points. The City Manager shall then issue the appropriate license(s) beginning at the top of the list and issuing a permit to the highest ranked applicant(s). The City Manager shall not issue a permit when an application has received fewer than 70 percent of the total possible points available in the scoring matrix adopted by the City Council by resolution.
- (e) In the event that multiple applications are evaluated equally in the competitive process, the scoring-tied applications will be entered into a random draw using procedures set by the City Manager. The application randomly selected shall be eligible to receive the license applied for consistent with this chapter.
- (f) For those applicants not receiving a permit, the City Manager shall send each such applicant a notice of denial setting forth specific reasons why the city did not issue the permit within sixty (60) days after receipt of a complete application.

- (g) Should a permit for an adult-use marihuana establishment become available due to expiration, revocation, or non-renewal, the City Manager shall set an application period to receive applications for an adult-use marihuana establishment. All properly submitted and complete applications shall be subject to examination and review by the City in accordance with this ordinance.

Section 32-9. Provisional License; Municipal License to Operate Marihuana Establishment.

- (a) The City Manager shall act to approve or deny an application not later than sixty (60) days from the date the completed application complying with the requirements of Sec. 32-7 is filed. If approved, the City Manager shall issue the applicant a provisional license, which does not convey the ability to operate a marihuana establishment.
- (b) A provisional license will be accompanied by a completed attestation form, in compliance with the Act and the state rules, specifically the Emergency Rules of July 3, 2019, Rule 8, Section 1(e)(iii), and will facilitate the application process for a state license.
- (c) At the time the City Manager receives verification that the applicant has received a valid state license, the City Manager will provide the applicant with a municipal license, which conveys the ability to operate a marihuana establishment.
- (d) Municipal licenses will be issued for the term of one year and will run concurrently with the term of the applicant's state license. Municipal licenses may be renewed upon receipt of a complete renewal application and renewal fee for any marihuana establishment in good standing. Successive renewals will each be valid for one year.
- (e) Maintaining a valid state license is a condition for the maintenance of a municipal license under this ordinance and continued operation of a marihuana establishment. A provisional license does not authorize operations until a final license is issued, which will only occur upon issuance of the appropriate state license.

Section 32-10. Grounds for Denial.

- (a) Applications received may be denied by the City Manager if the applicant, upon written notice, fails to provide missing or incomplete information within the time specified in this chapter. The City Manager may deny an application for any of the following reasons:
 - (1) The applicant has not been prequalified for a marihuana establishment state license by LARA.

- (2) The applicant did not pay the required application fee at the time of submission of the application.
 - (3) The applicant has not provided satisfactory proof that the applicant has or will have lawful possession of the premises proposed for the location of the marihuana establishment for the period during which the license will be issued.
 - (4) The applicant's proposed location does not comply with the zoning of this code.
 - (5) The applicant has not satisfactorily complied with all of the licensure requirements in this chapter.
 - (6) The City Manager determines that the applicant has submitted an application containing false, misleading, or fraudulent information, or has intentionally omitted pertinent information on the application for an adult-use marihuana establishment license.
 - (7) The applicant is delinquent in the payment of any taxes, fees or other charges owed to or collected by the City.
 - (8) The comprehensive operating plan submitted by the applicant with the application does not comply with the requirements for a marihuana establishment plan as required by the Rules, the requirements of this chapter, or the Act.
 - (9) The applicant proposes the sale, consumption, or serving of food or alcohol at the marihuana establishment.
 - (10) The application submitted by the applicant fails to demonstrate that the applicant is best suited to operate in compliance with the Act within the City of Ludington when scored in accordance with the competitive Adult Use Marihuana Scoring Matrix as adopted and approved by the City Council.
- (b) Notice of denial of an application shall be sent to the applicant in writing by mail or electronic mail to the last known address of the applicant on file with the City.

Section 32-11. Operational Standards Applicable to All Adult Use Marihuana Establishments. All marihuana establishments shall, at a minimum, comply with the following operational standards:

- (a) Marihuana establishments shall be open for inspection upon request by any individual designated by the City Manager for determination of compliance with all applicable laws, rules, and regulations during the stated hours of operation/use and at such other

- times as anyone is present on the premises. Inspections may include inspection of the establishment premises, surveillance records, camera recordings, reports, records, or other materials required as a condition of a permit under this chapter or a state operating license. Acceptance of a marijuana establishment permit, leasing, or any other consent to use of property to a marijuana establishment constitutes consent to such inspections and the seizure of any surveillance records, camera recordings, reports, records, or other materials required as a condition of the permit under this article or a state operating license without a search warrant. The person issued a permit, or an employee or agent thereof shall not hinder or obstruct a law enforcement officer or employee of the City from conducting inspections pursuant to this chapter, and shall not refuse, fail, or neglect to cooperate with a law enforcement officer or City employee in the performance of their duties in enforcing this chapter, the Act, or applicable state administrative rules.
- (b) Marijuana establishments shall conduct the activities of the marijuana establishment, including, without limitation, the cultivation, growing, processing, displaying, manufacturing, selling, storage of marijuana and marijuana-infused products, and storage of all materials used in the cultivation, growing, processing, displaying, manufacturing, selling, storage of marijuana and marijuana-infused products indoors in a building and out of public view.
 - (c) No alcohol or tobacco products may be sold, used, or consumed on the premises of the marijuana establishment. No marijuana or marijuana-infused products may be used or consumed on the premises of the marijuana establishment, and a sign shall be posted on the premises of each retail establishment indicating that consumption is prohibited on the premises.
 - (d) Subject to the laws of this state, before hiring a prospective employee, a permittee shall conduct a background check of the prospective employee. If the background check indicates the prospective employee has been convicted of an offense involving the distribution of a controlled substance to a minor, the permittee shall not hire the prospective employee. Permittee shall maintain records of all such completed background checks. All employees must be 21 years of age and older.
 - (e) Access to the marijuana establishment shall be restricted to the permittee, employees of the permittee, individuals 21 years of age and older, the state police, local law and code enforcement officers and any other designee(s) of the City Manager, and LARA, through its investigators, agents, auditors.
 - (f) All marijuana establishments shall comply with all provisions of the permit, this chapter, state law, and Rules. Failure to comply shall be grounds for non-renewal or denial of a permit, revocation, suspension, or restriction of a permit.
 - (g) The business, operations, marketing, and advertising of all marijuana establishments and marijuana products shall comply at all times with applicable state law and regulations, and this chapter.

- (h) Marihuana products not identified and recorded in the statewide monitoring system pursuant to the Act, the Tracking Act, and the Rules are prohibited from being on the premises of any adult-use marihuana establishment, and shall not be sold or transferred by any permittee.
- (i) Any marihuana product without a batch number or identification tag pursuant to the Rules is prohibited from being at or on the premises of any adult-use marihuana establishment.
- (j) Marihuana product waste shall be destroyed, or rendered into an unusable and unrecognizable form in a manner that prevents its acquisition by any person who may not lawfully possess it, and recorded in the statewide monitoring system. Marihuana product waste shall be disposed of in a secured waste receptacle using one or more of the following:
 - a. A manned and permitted solid waste landfill;
 - b. A manned compostable materials operation or facility;
 - c. An in-vessel digester; or
 - d. Another means as permitted by the Rules.
- (k) All marihuana product waste that is hazardous waste shall be disposed of pursuant to MCL 324.11101 to 324.90106.
- (l) All marihuana product waste or marihuana products that are to be destroyed, or that LARA orders to be destroyed, shall not be sold.
- (m) All inventory of marihuana products must be stored in a secured, limited-access area or restricted-access area, and identified and tracked consistent with the statewide monitoring system under the Act, the Tracking Act, and the Rules.
- (n) All containers used to store marihuana products for transfer or sale between marihuana establishments shall meet the requirements for such containers as established in the Rules.
- (o) All chemicals or solvents must be stored separately from marihuana products and kept in a locked storage area(s).
- (p) Marihuana-infused products or materials used in direct contact with such products must have separate storage areas from toxic or flammable materials.
- (q) Each permittee shall post and keep at all times visible to the public, in a conspicuous place on the premises, a sign which shall be in the following form: “WARNING:

THE LUDINGTON POLICE DEPARTMENT MUST BE NOTIFIED IMMEDIATELY OF ALL UNLAWFUL ACTS AND DISTURBANCES IN THIS ESTABLISHMENT.” Permittees shall immediately report to the police department any unlawful act, conduct, or disturbance committed upon the premises.

- (r) Each permittee shall post and keep at all times visible to the public, in a conspicuous place on the premises, a sign which shall be in the following form: “IT IS ILLEGAL TO CONSUME MARIHUANA IN A PUBLIC PLACE, INCLUDING CITY PARKS, OR WHERE PROHIBITED BY THE PERSON WHO OWNS, OCCUPIES, OR MANAGES THE PROPERTY.”
- (s) The permittee is required to respond by phone or email within twenty-four (24) hours of contact by the City concerning its marihuana establishment at the phone number or email address provided to the City as the contact for the business. Each 24-hour period during which an owner or manager or permittee does not respond to the City shall be considered a separate violation.
- (t) No marihuana shall be used, smoked, eaten, or otherwise consumed or ingested in any manner within the marihuana establishment.
- (u) All persons working in direct contact with marihuana shall conform to hygienic practices while on duty, including but not limited to:
 - (1) Maintaining adequate personal cleanliness;
 - (2) Washing hands thoroughly in adequate hand-washing areas before starting work and at any other time when the hands may have become soiled or contaminated; and
 - (3) Refraining from having direct contact with marihuana if the person has or may have an illness, open lesion, including boils, sores or infected wounds, or any other abnormal source of microbial contamination, until the condition is corrected.

Section 32-12. Operational Standards for Marihuana Retailer. All marihuana retail establishments shall, in addition to the minimum operational standards for all marihuana establishments, comply with the following operational standards:

- (a) No retail establishment shall be open to the public between the hours of 9:00 p.m. and 9:00 a.m.
- (b) The public or common areas of the retail center must be separated from restricted or non-public areas of the establishment.

- (c) A drive-through window on the premises of a retail establishment shall not be permitted.
- (d) A retail establishment shall purchase marihuana only from a grower or processor.
- (e) A retail establishment shall sell or transfer marihuana only to individuals age 21 or older.
- (f) The sale or transfer of marihuana shall only occur after it has been tested and bears the label required for retail sale by the Act and Rules.
- (g) All transactions, current inventory, and other information of the retail establishment shall be entered into the statewide monitoring system as required by the Act, Rules, and the Marihuana Tracking Act.
- (h) Marihuana and marihuana paraphernalia shall not be sold, given away, or dispensed from any outdoor location.
- (i) A retail establishment shall have a separate room that is dedicated as the point-of-sale area for the transfer or sale of marihuana products.
- (j) All marihuana products shall be kept behind a counter or other barrier to ensure customers do not have direct access to the marihuana products.
- (k) A retail establishment shall verify the proof of age of every person entering the business with an electronic ID scanner. An “electronic ID scanner” is a device that is capable of quickly and reliably confirming the validity of an identification using computer processes that contains all of the components approved by the City Manager. For legitimate identifications that cannot be scanned, including passports, military IDs and other lawful government issued identification, use of the electronic ID scanner is not required, but the retail establishment shall be responsible for verifying that the identification provided is reliable verification of the age of the person.
- (l) If a permittee or an employee of a retail establishment has reasonable cause to believe that person is under 21 years of age and is exhibiting fraudulent proof of age in an attempt to enter a marihuana retail establishment or to obtain any marihuana or marihuana product, the permittee or employee shall be authorized to confiscate such fraudulent proof of age. Within 72 hours, any fraudulent proof of age confiscated shall be turned over to the City Police Department.
- (m) It shall be unlawful for any person to:
 - (1) Distribute marihuana to any person who shows visible signs of intoxication from alcohol, marihuana, or other drug(s); or

- (2) Fail to confiscate fraudulent proof of age. It shall be an affirmative defense if the person reasonably believed that attempts to confiscate a fraudulent proof of age would cause a threat to any person.
- (n) No retail establishment shall be operated in a manner creating dust, fumes or odors detectable to normal senses beyond the boundaries of the property on which the retail center is operated.
- (o) The license required by this ordinance shall be prominently displayed on the premises of a marihuana establishment.

Section 32-13. Operation Standards for Marihuana Grower. All marihuana grower facilities shall, in addition to the minimum operational standards for all marihuana establishments, comply with the following operational standards:

- (a) While holding a permit for a marihuana grower facility, no permittee shall be a registered primary caregiver and shall not employ an individual who is simultaneously a registered primary caregiver.
- (b) All transactions, current inventory, and other information of the grower facility shall be entered into the statewide monitoring system as required by the Act, Rules, and the Tracking Act.
- (c) All activities and operations of the grow facilities, including cultivation, shall take place indoors within a building.
- (d) Any grower facility shall maintain a log book and/or database indicating the number of marihuana plants therein. Each marihuana plant will be tagged as required by the Act.
- (e) All necessary building, electrical plumbing and mechanical permits shall be obtained for any portion of the structure in which electrical wiring, lighting and/or watering devices that support the grower, growing or harvesting of marihuana are located.
- (f) There shall be adequate screening or other protection against the entry of pests. Rubbish shall be disposed of so as to minimize the development of odor and minimize the potential for the waste development of odor and minimize the potential for waste becoming and attractant, harborage or breeding places for pests.
- (g) Marihuana that can support the rapid growth of undesirable microorganisms shall be held in a manner that prevents the growth of these microorganisms.
- (h) The use of compressed gases such as carbon dioxide in the cultivation of marihuana shall meet the requirements of the Rules for such processes.

- (i) A grow facility shall not use any pesticides in the cultivation of marihuana that has not been approved by LARA for such purpose.

Section 32-14. Operation Standards for Marihuana Safety Compliance Facility. All marihuana safety compliance facilities shall, in addition to the minimum operational standards for all marihuana establishments, comply with the following operational standards:

- (a) A safety compliance establishment is authorized to only receive marihuana from, test marihuana for, and return marihuana to a marihuana establishment.
- (b) A safety compliance establishment must be accredited by an entity meeting State of Michigan requirements by one year after the date the license is issued or have previously provided drug testing services to the State of Michigan or Michigan's court system and be a vendor in good standing in regard to those services unless a variance from this requirement is granted by the board as provided by the Act.
- (c) A safety compliance establishment shall:
 - (1) Perform tests to certify that marihuana is reasonably free of chemical residues such as fungicides and insecticides.
 - (2) Use validated test methods to determine tetrahydrocannabinol, tetrahydrocannabinol acid, cannabidiol, and cannabidiol acid levels.
 - (3) Perform tests that determine whether marihuana complies with the standards established for microbial and mycotoxin contents.
 - (4) Perform other tests necessary to determine compliance with any other good manufacturing practices as prescribed in the Rules.
 - (5) Enter all transactions, current inventory, and other information into the statewide monitoring system as required in the Act, the Rules, and the Tracking Act.
 - (6) Have a secured laboratory space that cannot be accessed by the general public.
 - (7) Retain and employ at least one staff member with a relevant advanced degree in a medical or laboratory science.
 - (8) Comply with all provisions of the Rules regarding the testing, retesting, and sampling of marihuana and marihuana products.
 - (9) Establish an adequate chain of custody and instructions for sample and storage requirements.

Section 32-15. Operation Standards for Marihuana Processor. All marihuana processor facilities shall, in addition to the minimum operational standards for all marihuana establishments, comply with the following operational standards:

- (a) A processor shall purchase marihuana only from a grower and shall sell marihuana-infused products or marihuana only to a retail establishment.
- (b) A processor shall transfer marihuana only by means of a secure transporter.
- (c) While holding a permit for processor establishments, no permittee shall be a registered primary caregiver and shall not employ an individual who is simultaneously a registered primary caregiver.
- (d) All transactions, current inventory, and other information of the processor establishments shall be entered into the statewide monitoring system as required by the Act, the Rules, and the Tracking Act.
- (e) Processes that extract oil from marihuana plants and marihuana products using flammable gas, flammable liquid, or compressed gases of varying materials including, but not limited to, butane, propane, and carbon dioxide shall meet the requirements of the Rules for such processes.
- (f) A processor facility shall produce no products other than useable marihuana or marihuana-infused products intended for human consumption.

Section 32-16. Operation Standards for Marihuana Secure Transporter. All marihuana secure transporter establishments shall, in addition to the minimum operational standards for all marihuana establishments, comply with the following operational standards:

- (a) A secure transporter may take physical custody of marihuana or money but legal custody belongs to the transferor or transferee.
- (b) A secure transporter shall not sell or purchase marihuana products.
- (c) A secure transporter may store and transport marihuana and money associated with the purchase or sale of marihuana between marihuana establishments for a fee.
- (d) Marihuana may not be transported to a registered qualifying patient or registered primary caregiver.
- (e) Marihuana product may only be transported in a locked, secured, sealed container that is not accessible while in transit. Money associated with the purchase or sale of

marihuana product between facilities shall be locked in a sealed container kept separate from the marihuana product and only accessible to the secure transporter licensee/permittee and its employees.

- (f) Each driver transporting marihuana must have a chauffeur's license issued by the state of Michigan.
- (g) Each employee who has custody of marihuana or money that is related to a marihuana transaction shall not have been convicted of or released from incarceration for a felony under the laws of this state, any other state, or the United States within the past five years or have been convicted of a misdemeanor involving a controlled substance within the past five years.
- (h) Each vehicle shall be operated with a two-person crew with at least one individual remaining with the vehicle at all times during the transportation of marihuana.
- (i) A route plan and manifest shall be entered into the statewide monitoring system, and a copy shall be carried in the transporting vehicle and presented to a law enforcement officer upon request.
- (j) A secure transporting vehicle shall not bear markings or other indication(s) that it is carrying marihuana or marihuana-infused product.
- (k) A secure transporter is subject to administrative inspection by a law enforcement officer at any point during the transportation of marihuana to determine compliance with the Act and this chapter.
- (l) All transactions, current inventory, and other information of the secure transporter shall be entered into the statewide monitoring system as required by the Act, the Rules, and the Tracking Act.

Section 32-17. License as revocable privilege; License forfeiture. In the event that a marihuana establishment does not commence operations within one (1) year of the issuance of a city operating license, the license may be deemed forfeited; the business may not commence operations and the license is not eligible for renewal. 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.

Section 32-18. 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 sixty (60) 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.

Section 32-19. 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.

Section 32-20. 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 Ludington 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.

Section 32-21. 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:

- (a) 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
- (b) Advertise in a manner that is inconsistent with the provisions of the MRTMA or LARA Rules.

Section 32-22. Warning Signs. There shall be posted in a conspicuous location in each establishment a legible sign containing the content of this section, warning that:

- (a) The possession, use or distribution of marihuana is a violation of federal law;
- (b) 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
- (c) No one under the age of twenty-one (21) years is permitted on the premises.

Section 32-23. 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 (24) hours per day coverage. A separate security system is required for each establishment.
- (c) The security plan must comply with all LARA Rules (including, but not limited to Rule 9 (R 420.209 Security measures; required plan; video surveillance system), as amended)), and must include, at a minimum, the following security measures:
 - (1) Video surveillance system. A video surveillance system utilizing digital or network video recorders (aka. “security cameras”) shall be installed and operated in marihuana establishments in accordance with the rules

promulgated by LARA for “Marihuana Licenses” and shall monitor and record the subject premises 24 hours per day, 365 days per year. If a marihuana establishment maintains recordings from its video surveillance system in an off-site location in the city or through a service over a network that provides on-demand access (commonly referred to as a “cloud”), all information relating to such off-site location shall be included in the security plan submitted to the city and provided to the Ludington Police Department upon request, and shall be updated within seventy-two (72) hours of any change of such location. Required security cameras may not be directed to public rights-of-way as applicable, except as required to comply with the applicable rules for such marihuana establishments promulgated by LARA, as amended.

- (2) Secured areas. 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.
- (3) Alarm system. The marihuana business shall install and use an alarm system that is monitored by a company that is staffed twenty-four (24) hours a day, seven (7) 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 (72) hours of any change of monitoring company.

Section 32-24. Visibility of Activities; odor; 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.

- (d) Marihuana 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:
- (1) 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.
 - (2) 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.
 - (3) Negative air pressure must be maintained inside the building:
 - i. 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.
 - ii. A minimum negative pressure of 0.01" water column relative to the building exterior and to adjacent spaces without product.
 - iii. A minimum exhaust rate of 0.2 CFM per square foot of floor area or greater.
 - (4) Doors and windows must remain closed, except for the minimum time length needed to allow people to ingress or egress the building.
 - (5) 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.
- (e) 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.
- (f) A grower or a processor shall install and maintain in operable condition a system which precludes the emission of marihuana odor from the premises.

Section 32-25. Prohibited Acts.

- (a) 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;
 - (3) It shall be unlawful for any licensee to permit the consumption of alcohol beverages on the licensed premises.
 - (4) It shall be unlawful for any licensee to sell marihuana or marihuana products at a licensed marihuana retailer at any time other than between the hours of 9:00 a.m. and 9:00 p.m. daily.
- (b) It shall be unlawful for retail marihuana establishments to distribute marihuana or marihuana-infused products to a consumer free of charge.
- (c) It shall be unlawful for any licensee to permit the consumption of retail marihuana or retail marihuana products on the licensed premises.

Section 32-26. 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 the State of Michigan, the Ludington Police Department, 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.
- (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 or their designee 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 their duties to enforce this chapter, the MRTMA, or applicable state administrative rules.

Section 32-27. 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 as well as the city's corresponding zoning ordinance provisions as set forth in Section 900.3:34 of Chapter IX of Appendix A of the Code of Ordinances of the City of Ludington 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 or city code provision shall be grounds for revocation or suspension of any license issued hereunder.

Section 32-28. Violations and penalties.

- (a) Any violation of this chapter is a municipal civil infraction subject to penalties imposed on municipal civil infractions as set forth in state law and in Sections 1-7. and 2-3. of the city code, including, but not limited to, a fine of not more than five hundred dollars (\$500.00) as authorized under with MCL 333.27956(2)(d).
- (b) In addition to the penalties provided in this chapter, any violation of this chapter, Section 900.3:34 of the city's zoning ordinance, the Act, or the Rules may result in the denial of an application, or the suspension, revocation, or non-renewal of a license issued under the provisions of this chapter.
- (c) In addition to the penalties provided in this chapter, any condition caused or permitted to exist in violation of this chapter, shall be deemed a new and separate offense for each day that such condition continues to exist.
- (d) In addition, any person, including any person, customer or member of the public, who acts in a manner contrary to and/or which violates the provisions of section 4 of the Act (MCL 333.27954), except as may be otherwise provided in MCL 333.27965, shall be guilty of a misdemeanor.

- (e) 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.
- (f) Nothing in this chapter shall prevent the city from pursuing any other remedy provided by law and equity, including an injunction, in conjunction with or in lieu of prosecuting persons under this section for violation of this chapter.

Section 32-29. Adverse Action(s); Appeal.

- (a) Any license issued under this chapter may be denied, revoked, suspended, restricted or not renewed by the City Manager after an administrative hearing if the City Manager finds and determines that grounds for such action exist. Any grounds for such action must be provided to the permittee by first class mail to the address given on the application or any address provided to the City Manager in writing subsequent to the filing of an application.
- (b) A license issued under this chapter may be denied, revoked, suspended, restricted or not renewed on any of the following bases:
 - (1) Noncompliance with the Act, Rules, or this chapter;
 - (2) Any conviction of a disqualifying felony by the licensee, stakeholder, or any person holding an ownership interest in the license;
 - (3) Commission of fraud or misrepresentation or the making of a false statement by the applicant, licensee, or any stakeholder of the applicant or licensee while engaging in any activity for which this chapter requires a permit or license or other approval;
 - (4) Failure to obtain or maintain any required permit, license, or other approval pursuant to this chapter or these codified ordinances;
 - (5) Failure of the licensee or the marihuana establishment to obtain or maintain a license or approval from the State pursuant to the Act;
 - (6) The marihuana establishment is determined by the city to have become a public nuisance or otherwise is operating in a manner detrimental to the public health, safety or welfare;
 - (7) Cultivation, processing, sale, or display of marihuana or marihuana accessories that are visible from a public place;

- (8) The marihuana establishment is operating in a substantially different manner from the materials submitted and other representations contained in the application;
 - (9) Representatives of the City are unable to access the proposed facility for license inspections;
 - (10) The licensee fails, refuses, or becomes unable to obtain site plan approval and certificate of occupancy.
- (c) Appeal of revocation, suspension, restriction or non-renewal of existing license.
- (1) Upon a determination of a violation of the conditions set forth in this chapter, the City Manager will notify the licensee of the specific violation(s) and afford the licensee an opportunity to come into compliance with the relevant regulation. Licensee must reach compliance in that time established by the City Manager, but in no event more than ten (10) days after notification to licensee by City of such violation. Absent compliance within that time established, the City Manager may then forward the recommendation for revocation, suspension, restriction or non-renewal to the City Council who shall conduct proceedings as set forth in this section prior to action on the recommendation for adverse action on the license.
 - (2) Prior to the revocation, suspension, restriction or non-renewal of the license or the filing with the MRA of an objection to the renewal of a state license or a recommendation for the revocation or other adverse action on a state license, the City shall do the following:
 - i. Serve written notice on the licensee, which shall include:
 - a. Notice of the proposed action and the reasons for the action.
 - b. Date, time and location of hearing on the matter and a statement that at the hearing, the permittee may present evidence and arguments on its behalf, confront witnesses and may be represented by a licensed attorney.
 - c. A statement requiring the licensee to notify the City Attorney's office at least seven (7) days prior to the hearing date if they intend to contest the proposed action, and to provide the names of witnesses known at the time who will testify on their behalf.
 - ii. The hearing shall be conducted by the City Council or by a hearing officer designated by the City Council. The permittee may, at his or her expense, employ a reporter to transcribe the testimony given at the hearing and make a transcript of such testimony.

- iii. In the event a hearing officer is utilized by the city, the hearing officer shall, within a reasonable amount of time following the conclusion of the hearing, submit their findings and recommendations to the Council. The City Council shall make a written resolution as to its findings and determination and mail same to permittee and the MRA.

Section 32-30. Right to Amend. The City Council of the City of Ludington reserves the right to amend or repeal this ordinance in any manner, including prohibiting or limiting the type or number of adult use marihuana establishments and state license types authorized to operate in the city.

Section 32-31. 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.

Section 3. Severability.

If any section, clause or provision of this Ordinance is declared unconstitutional or otherwise invalid by a court of competent jurisdiction, such declaration shall not affect the remainder of the Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each part, section, subsection, phrase, sentence, and clause irrespective of the fact that any one or more parts, sections, subsections, phrases, sentences, or clauses is declared invalid.

Section 4. Repealer.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

Section 5. Effective Date.

This Ordinance shall become effective twenty-one (21) days following its introduction and publication as required by law.

At a regular meeting of the City Council of the City of Ludington, Mason County, Michigan, held on the ___ th day of _____, 2022, at 6:00 p.m., the votes on this proposed Ordinance were:

AYES:

NAYES:

ABSTAINED:

THE ORDINANCE IS DECLARED ADOPTED / REJECTED.

STATE OF MICHIGAN)
COUNTY OF MASON) ss.

I, Deborah L. Luskin, the duly qualified and acting Clerk of the City of Ludington, County of Mason, State of Michigan, do hereby certify that the foregoing is a true and complete copy of the ordinance adopted by the Ludington City Council at a regular meeting held on the ____th day of _____, 2022, the original version of which is on file in my office.

IN WITNESS WHEREOF, I have hereunto set my official signature, this ____ day of _____, 2022.

Deborah L. Luskin, City Clerk
City of Ludington

DRAFT