

Ordinance # 2020-____
Recreational Marihuana

Section 1. DEFINITIONS

A. Words and phrases used herein shall have the definitions as provided for in Initiated Law 1 of 2018, MCL 333.27953 (hereafter, the “Act”) as the same may be amended from time to time, and in the Emergency Rules and Rules adopted by the Marihuana Regulatory Agency, which words and phrases are incorporated herein by reference.

1. “City Commission” shall mean the City Commission of the City of Munising.
2. “City Clerk” shall mean the Munising City Clerk.
3. “LARA” shall mean the Michigan Department of Licensing and Regulatory Affairs.
4. “Person” shall mean an individual, corporation, limited liability company, partnership of any type, trust or other legal entity.
5. “Stakeholder” shall mean a shareholder of a corporation, partner in a partnership, member of a limited liability company or individual of a sole proprietorship.
6. “Zoning Ordinance” shall mean the City of Munising Zoning Ordinance.
7. “Noise Ordinance shall mean the City of Munising Noise Ordinance.

Section 2. AUTHORIZATION OF MARIHUANA ESTABLISHMENTS AND FEE

A. The City hereby authorizes, subject to the issuance of a municipal license by the City Clerk, marihuana establishments, within the boundaries of the City, as are authorized pursuant to section 6.1. of the Act and the Emergency Rules issued by the Michigan Marihuana Regulatory Agency and any Rules issued that revise or replace those Emergency Rules. The establishments authorized pursuant to this Ordinance are relating to the Act and are not Marihuana Facilities that may be authorized pursuant to the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq.

B. A nonrefundable municipal license application fee shall be paid by each marihuana establishment applying to be licensed under this ordinance in the amount of \$5,000.00. The municipal license fee is in addition to any other fees required, including, but not limited to, zoning fees.

C. Should the City grant a marihuana establishment a municipal license, the municipal license application fee shall be considered as the fee imposed for the first year the license is granted. Prior to the expiration of the first year of the license, and as provided in this Ordinance in Section 12, the licensee may apply for an extension/renewal of the municipal license for an additional one year period at a nonrefundable fee of not more than \$5,000 as set by resolution of the City Commission to defray the administrative and enforcement costs of the City associated with the operation of the licensed marihuana establishment.

Section 3. REQUIREMENTS AND PROCEDURE FOR ISSUING MUNICIPAL LICENSE

A. No person shall operate a marihuana establishment in the City without a valid municipal license issued by the City pursuant to the provisions of this ordinance.

B. No person shall be issued a municipal license by the City without first having obtained from the City of Munising Planning Commission a Conditional Use Permit authorizing the operation of the establishment pursuant to the City of Munising Zoning Ordinance.

C. No person who holds elective City office, is a member of or employed by a regulatory body of the City, such as the Planning Commission, or is employed by the City shall have an interest, directly, or indirectly, in a Marihuana Establishment.

D. Every applicant for a municipal license to operate a marihuana establishment shall file an application in the City Clerk's office upon a form provided by the City. The application shall include:

1. The appropriate nonrefundable municipal license application fee in the amount determined by the City;
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 Stakeholder of 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, address, and type or nature of the proposed marihuana establishment;
5. A copy of the Conditional Use Permit issued by the City of Munising Planning Commission;
6. A location area map of the marihuana establishment and surrounding area that identifies the relative locations and the distances (closest property line to the subject marihuana establishment's property line) to the closest real property comprising a public or private kindergarten or any of grades 1 through 12 and establishing the marihuana establishment's property line is not closer than 1000 feet from the public or private school's property line;
7. A signed acknowledgement that the applicant 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;
8. If the applicant has a draft or final Marihuana Establishment Plan, prepared pursuant to Rule 11 of the Emergency Rules or any rule that revises or replaces Rule 11, when the application for a municipal license is filed, a copy of the draft or final Marihuana Establishment Plan.
9. Any other information which may be required by the City Clerk.

E. Upon an applicant's completion of the above-described form and furnishing of all required information and documentation, the City Clerk shall file the application. The City Clerk shall act to approve or deny an application not later than twenty-one (21) days from the date the completed application is filed. If approved, the City Clerk shall issue

the applicant a provisional License and subsequently a final license after issuance by the state of Michigan of an operating license. If the application is denied, the City Clerk shall issue a written notice of denial to the Applicant and mail the same by first class mail to the address for the Applicant provided in the application.

F. Should the City Clerk deny an application, the Applicant shall have fourteen (14) days from the mailing of the denial to appeal the denial to the City Manager by filing a notice of appeal with the City Manager's Office. The City Manager may require additional information or act upon the appeal based upon the information supplied to the City Clerk. Should the City Manager reverse the decision of the City Clerk, the City Clerk shall issue a provisional license. Should the City Manager affirm the decision of the City Clerk, the City Manager shall mail a written notice affirming the decision by first class mail to the address for the Applicant provided in the application.

G. The Applicant shall have fourteen (14) days from the mailing of a decision by the City Manager affirming the decision of the City Clerk to appeal to the City Commission. To appeal the decision of the City Manager the Applicant must file a notice of appeal with the City Clerk. The City Commission shall hear the appeal at its next regular meeting, but not sooner than 7 days from the receipt of the appeal. So long as an appeal of the City Manager's decision affirming the City Clerk's decision is pending (i.e. not acted upon by the City Commission), Applicant's application is also deemed pending.

H. Maintaining a valid license issued by the state is a condition for the maintenance of a license under this ordinance and continued operation of a marijuana establishment. A provisional license does not authorize operations until a final license is issued, which will only occur upon issuance of the appropriate license by the state of Michigan.

I. A License issued under this ordinance is not transferable without the prior approval of the City under the same terms and conditions required for the initial issuance of a license under this Ordinance.

Section 4. MINIMUM OPERATIONAL STANDARDS FOR ALL MARIHUANA ESTABLISHMENTS WITHIN THE CITY OF MUNISING

The following minimum standards shall apply to all Marijuana Establishments within the City:

A. Marijuana Establishments shall comply at all times and in all circumstances with the Act and applicable Michigan law, the Emergency Rules issued by the Michigan Regulatory Agency and any rules issued to revise or replace the Emergency Rules, and the general rules of the Department of Licensing and Regulatory Affairs, as they may be amended from time to time. It is the responsibility of the owner to be aware of changes in the Act. The City is not responsible for any failure of the owner to be aware of changes in the Act;

B. All Marihuana Establishments shall comply with applicable requirements of the Zoning Ordinance, including obtaining and maintaining a Conditional Use Permit.

C. Odor and noise from operations shall be controlled as provided in the Zoning Ordinance or in the Noise Ordinance and as may be required under the Conditional Use Permit issued to the Licensee, and, in any event, shall not be a public nuisance.

Section 5. DENIAL AND REVOCATION

A. A License issued under this Ordinance may be revoked after an administrative hearing at which the City Clerk determines that grounds for revocation under this Ordinance exist. Notice of the time and place of the hearing and the grounds for revocation must be given to the holder of a License at least five days prior to the date of the hearing, by first class mail to the address given on the license application; a licensee whose license is the subject of such hearing may present evidence and/or call witnesses at the hearing;

B. A License applied for or issued under this Ordinance may be denied or revoked for:

1. Any violation of this Ordinance;
2. Any conviction of delivery of a controlled substance to a minor;
3. City Clerk finding of fraud, misrepresentation or the making of a false statement by the Applicant or any stakeholder of the Applicant while engaging in any Activity for which this Ordinance requires a License or in connection with the Application for a License or request to renew a License;
4. Sufficient evidence that the Licensee lacks, or has failed to demonstrate, the requisite professionalism and/or business experience required to assure strict adherence to this ordinance, and the rules and regulations governing the Act;
5. The License holder or any of its Stakeholders is in default to the City personally or in connection with any business in which they hold an ownership interest, for failure to pay property taxes, special assessments, fines, fees or other financial obligation;
6. The marihuana establishment is determined by the City to have become a public nuisance; or
7. The Michigan Marijuana Regulatory Agency or LARA has denied, revoked or suspended the applicant's state operating license.
8. The marihuana establishment is not operating, which means open for business on a regular, day to day basis, within eighteen (18) months of the date the Applicant's provisional license is issued by the City Clerk.

C. Should the City Clerk revoke a License, the Licensee shall have fourteen (14) days from the mailing of the written notice of revocation to appeal the decision to the City Manager. The City Manager may require additional information or Act upon the appeal based upon the information supplied to the City Clerk. Should the City Manager reverse the decision of the City Clerk, the City Clerk shall reinstate the license. Should the City Manager affirm the decision of the City Clerk, he/she shall mail by first class mail a written notice affirming the decision to the address for the Licensee contained in the City Clerk's records.

D. Should the City Manager affirm the denial, revocation or suspension of a License by the City Clerk, the Licensee shall have fourteen (14) days from the mailing of the decision of the City Manager to appeal the decision to City Commission, by filing with the City Clerk a written notice of appeal. City Commission shall hear the appeal at its next regularly scheduled meeting, but no sooner than 7 days from the receipt of the appeal.

Section 6. LICENSE RENEWAL

A. A License shall be valid for one year from the date of issuance, unless revoked as provided by law, including this Ordinance.

B. A valid License may be renewed on an annual basis by submitting a renewal application upon a form provided by the City and payment of the annual license fee. Applications to renew a License shall be filed with the City Clerk at least thirty (30) days prior to the date of its expiration. As long as no changes to the Licensee have occurred and there is no pending request to revoke or suspend a License, and the Licensee has paid the License Renewal Fee, the City Clerk shall renew the License.

Section 7. UNLAWFUL ACTIVITIES

Any act, which is a violation of MCL 333.27954, or any amendment thereto, shall be considered a violation of this Ordinance.

It is unlawful to consume marihuana in a public place in the city of Munising, except in a location designated by the act of the City Commission for consumption and only when not accessible to persons under 21 years of age.

It is unlawful for a marijuana establishment engaged in retail sales or transfers to the public to operate between the hours of 11:00 pm and 9:00am, EDT. Note: MCL 333.27956(2)(b) allows the City to regulate the "time, place, and manner of operation of marihuana establishments" and I find nothing in the Emergency Rules that specifically address hours of operation so I am of the opinion the City can impose this hours of operation requirement.

Section 8. APPLICABILITY

The provisions of this Ordinance shall be applicable to all persons and Establishments described herein, including if the operations or Activities associated with a marihuana establishment were established without authorization before the effective date of this ordinance.

Section 9. PENALTIES AND ENFORCEMENT

A. Any person who violates any of the provisions of this Ordinance shall be responsible for a municipal civil infraction and subject to the payment of a civil fine of \$500, plus costs, except that a violation of Section 14 by consuming marihuana in a public place is a civil infraction and subject to the payment of a civil fine of up to \$100. Each day a violation of this Ordinance continues to exist constitutes a separate violation. A violator of this Ordinance shall also be subject to such additional sanctions, remedies and judicial orders as are authorized under Michigan law.

C. A violation of this Ordinance is deemed to be a nuisance per se. In addition to any other remedy available at law, the City may bring an Action for an injunction or other process against a Licensee to restrain, prevent, or abate any violation of this Ordinance.

D. This Ordinance may be enforced and administered by the City Clerk, any City of Munising Police Officer, City Manager or such other city official as may be designated from time to time by resolution of the City Commission.

Section 10. SEVERABILITY

In the event that any one or more sections, provisions, phrases or words of this Ordinance shall be found to be invalid by a court of competent jurisdiction, such holding shall not affect the validity or the enforceability of the remaining sections, provisions, phrases or words of this Ordinance.

Date introduced: _____, 2020

Date adopted: _____, 2020

Date published: _____, 2020

Date Effective: _____, 2020

Sue Roberts
Munising City Clerk