



301 WEST MAIN STREET • OWOSSO, MICHIGAN 48867-2958

MEMORANDUM

TO: Owosso City Council

FROM: Scott J. Gould, City Attorney

DATE: January 15, 2020

RE: Adult Use Marihuana Establishment Ordinance

At your request, I have drafted a proposed ordinance allowing adult use marihuana establishments to conduct business within the City. Please keep in mind that the Michigan Regulation and Taxation of Marihuana Act is new and with that may come questions and/or contention in regard to its interpretation. Most likely it will take litigation to settle various aspects of the law. Although I believe that my proposed draft complies with the Act, we may find for ourselves, or from court rulings, that future amendments may be needed. The City may also desire an amendment lifting some or all of the prohibitions of the "Special Licenses".

I am of the opinion that our cautious legislating will provide the City with access to the market while protecting the public health, safety, and general welfare of the community at large.

SJG/jmr

**CHAPTER 16.6 – ADULT USE MARIHUANA FACILITIES -- LICENSING—POLICE
POWER ORDINANCE**

Sec. 16.6-1. - Purpose.

- (a) It is the intent of this chapter to authorize the establishment of certain types of adult use marihuana facilities in the City of Owosso (“City”) and provide for the adoption of reasonable restrictions to protect the public health, safety, and general welfare of the community at large; retain the character of neighborhoods; and mitigate potential impacts on surrounding properties and persons. It is also the intent of this chapter to help defray administrative and enforcement costs associated with the operation of an adult use marihuana establishment in the City through imposition of an annual, nonrefundable fee as listed on the City’s Fee Schedule. Authority for the enactment of these provisions is set forth in the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951 et seq. Further, the City does not intend that permitting and regulation under this chapter be construed as a finding that such facilities comply with any law.
- (b) Nothing in this chapter is intended to grant immunity from criminal or civil prosecution, penalty, or sanction for the cultivation, manufacture, possession, use, sale, or distribution of marihuana, in any form, that is not in compliance with the Michigan Regulation and Taxation Act, Initiated Law 1 of 2018, MCL 333.27951 et seq.; and all other applicable rules promulgated by the state.
- (c) As of the effective date of this chapter, marihuana remains classified as a Schedule 1 controlled substance under the Federal Controlled Substances Act, 21 U.S.C. Sec. 801 et seq., which makes it unlawful to manufacture, distribute, or dispense marihuana, or possess

marihuana with intent to manufacture, distribute, or dispense marihuana. Nothing in this chapter is intended to grant immunity from any criminal prosecution under federal laws.

- (d) All Adult Use Marihuana Establishment License holders must comply with all state building codes, including but not limited to plumbing, mechanical, electrical, building energy and fire codes which includes the City zoning ordinance, as applicable under law.

Sec. 16.6-2. - Definitions.

For the purposes of this chapter:

- (a) Any term defined by the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951et seq., shall have the definition given in the Michigan Regulation and Taxation of Marihuana Act.
- (b) Any term defined by the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq., shall have the definition given in the Medical Marihuana Facilities Licensing Act.
- (c) Any term defined by the Marihuana Tracking Act, MCL 333.27901 et seq., shall have the definition given in the Marihuana Tracking Act.

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

Department means the Michigan Department of Licensing and Regulatory Affairs (LARA).

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.

Licensee means a person holding a state license.

Marihuana means all parts of the plant of the genus *cannabis*, growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including marihuana concentrate and marihuana-infused products. For purposes of this act, 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 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.

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

Marihuana microbusiness means a person licensed to cultivate not more than 150 marihuana plants; process and package marihuana; and sell or otherwise transfer marihuana to individuals who are 21 years of age or older or to a marihuana safety compliance facility, but not to other marihuana establishments.

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.

Municipal license means a license issued by a municipality pursuant to section 16 of the Michigan Regulation and Taxation Act that allows a person to operate a marihuana establishment in that municipality.

Municipality means a city, village, or township.

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

Process or Processing means to separate or otherwise prepare parts of the marihuana plant and to compound, blend, extract, infuse, or otherwise make or prepare marihuana concentrate or marihuana-infused products.

State license means a license issued by the department that allows a person to operate a marihuana establishment.

Unreasonably impracticable means that the measures necessary to comply with the rules or ordinances adopted pursuant to this act subject licensees to unreasonable risk or require such a high investment of money, time, or any other resource or asset that a reasonably prudent businessperson would not operate the marihuana establishment.

Sec. 16.6-3. - Authorization of facilities and fee.

(a) The maximum number of each type of adult use marihuana establishment allowed in the city shall be as follows:

Establishment	Number
Grower	unlimited
Processor	unlimited
Retailer	4 (see Sec 16.6-3 (e))
Safety compliance facility	unlimited
Secure transporter	unlimited

(b) Special Licenses Prohibited. Pursuant to the MRTMA, Section 6(1), the City elects to prohibit the licensing and operation of special licenses within its boundaries to the extent it is permitted to prohibit them under the Act, which shall specifically prohibit as follows:

Designated consumption establishment license	Prohibited
Excess marihuana grower license	Prohibited
Marihuana event organizer license	Prohibited
Temporary marihuana event license.	Prohibited

- (c) Planning commission shall review the number of allowed adult use marihuana establishments at the one (1) year mark of implementation to re-evaluate and determine if the number allowed needs to be adjusted. From that point on, every three (3) years, City council shall review the maximum number of each type of marihuana establishment allowed and determine whether this maximum number should be changed. The review and its findings shall be recorded in the minutes of the relevant meeting of the City Council.
- (d) A nonrefundable fee shall be paid by each marihuana establishment licensed under this chapter in an annual amount as set by resolution of the City Council.
- (e) Not more than a total of 4 (four) marihuana retailers may be authorized in the City, so long as the total combined number of single locations of marihuana retailers authorized under this ordinance and marihuana provisioning centers authorized under the City's Medical Marihuana Facilities Ordinance does not exceed 4 (four) such authorized locations. By way of example, if 3 (three) marihuana provisioning centers under the Medical Marihuana Facilities Ordinance have been authorized at 3 (three) separate locations within the City, then only 1 (one) marihuana retailer may be authorized at a fourth (4th) separate location under this ordinance. However, up to 3 (three) additional marihuana retailers could be authorized under this ordinance, so long as they were co-located with the existing marihuana provisioning centers already authorized. Similarly, if 4 (four) marihuana provisioning centers have already been authorized under the Medical Marihuana Facilities Ordinance at four (4) separate locations, then no marihuana retailers may be authorized under this ordinance unless they are co-located with the existing marihuana provisioning centers.

- (f) All Adult Use Marihuana Establishments as permitted by this Chapter, shall be subject to the same zoning restrictions as the Medical Marihuana Facilities as set forth in Chapter 38 “Zoning” of the City’s Code of Ordinances. Specifically:
- 1) Adult Use Marihuana Growers shall be subject to the same zoning restrictions and requirements applicable to Medical Marihuana Growers;
 - 2) Adult Use Marihuana Processors shall be subject to the same zoning restrictions and requirements applicable to Medical Marihuana Processors;
 - 3) Adult Use Marihuana Retailers shall be subject to the same zoning restrictions and requirements applicable to Medical Marihuana Provisioning Centers;
 - 4) Adult Use Marihuana Safety Compliance Facility shall be subject to the same zoning restrictions and requirements applicable to Medical Marihuana Safety Compliance Facility;
 - 5) Adult Use Marihuana Secure Transporter shall be subject to the same zoning restrictions and requirements applicable to Medical Marihuana Secure Transporter.

Sec. 16.6-4. - Requirements and procedure for issuing license.

- (a) No person shall operate an adult use marihuana establishment in City of Owosso without a valid adult use marihuana establishment license issued by the City pursuant to the provisions of this chapter, and state law.
- (b) The license requirement in this chapter applies to all facilities whether operated for profit or not for profit.
- (c) Every applicant for a license to operate an adult use marihuana establishment shall file an application in the building department office upon a form provided by the City.
- (d) Applications to operate any adult use marihuana establishment shall include proof of a duly issued Adult Use Marihuana Establishment License by the State of Michigan. Any

application delivered to the City without the aforementioned Adult Use Marihuana Establishment License will be deemed incomplete and shall be rejected. Any delay due to the filing of an incomplete application shall be deemed the fault of the applicant and not the City.

- (e) Upon an applicant's completion of said form and furnishing of all required information and documentation, City staff shall accept the application and assign it a sequential application number by establishment type, based on the date and time of acceptance. The City staff shall act to approve or deny an application not later than twenty (20) days from the date the application was accepted. If approved, the building department shall issue the applicant a conditional license.
- (f) A conditional license means only that the applicant has submitted a valid application for an adult use marihuana establishment license that has been considered and approved by the City, and the applicant shall not locate or operate a marihuana establishment without obtaining all other permits and approvals required by all other applicable ordinances and regulations of the City.
- (g) Applicant's receipt of a conditional license from the City shall provide for reasonable time, but not more than eight (8) months, to secure any and all subsequent and/or collateral permits as required by the state and/or City. Any applicant with a conditional license that has not completed every task as required by the state and/or the City, within eight (8) months after receipt of the conditional license from the City will result in revocation of applicant's City issued conditional license and denial of license.
 - (1) An extension of time may be granted upon applicant's written request and showing of good cause for delay. A request for an extension of time shall also include the estimated

time to remedy the delay. Any extension of time shall be at the sole discretion of the City.

- (h) Within twenty (20) days from the applicant submitting proof of obtaining all other required permits and approvals and payment of the license fee, City staff shall approve or deny the marihuana establishment license. The building department shall issue marihuana establishment licenses in order of the sequential application number previously assigned.
- (i) Maintaining a valid adult use marihuana establishment license issued by the state is a condition for the issuance and maintenance of an adult use marihuana establishment license under this chapter and continued operation of any adult use marihuana establishment.
- (j) An adult use marihuana establishment license issued under this chapter is not transferable.
- (k) If the application is for a grower's license, the maximum number of plants that the applicant intends to grow will be included with the application.
- (l) The placement of restrictions by the state on a state operating license applies equally to an adult use marihuana establishment license issued by the City.

Sec. 16.6-5. - License renewal.

- (a) An adult use marihuana establishment license shall be valid for one (1) year from the date of issuance, unless revoked as provided by law.
- (b) A valid adult use marihuana establishment license may be renewed, on an annual basis, by submitting an application and payment of the annual license fee. Application to renew an adult use marihuana establishment license shall be filed at least thirty (30) days prior to the date of its expiration.
- (c) Applications for renewal or amendment of existing permits shall be reviewed and granted or denied before applications for new permits are considered.

- (d) The revocation, suspension, and placement of restrictions by the state on a state operating license apply equally to an adult use marihuana establishment license issued by the City.

Sec. 16.6-6. - Applicability.

The provisions of this chapter shall be applicable to all persons and establishments described herein, whether the operations or activities associated with an adult use marihuana establishment were established without authorization before the effective date of this chapter.

Sec. 16.6-7. - Penalties and enforcement.

- (a) Any person who disobeys, neglects, or refuses to comply with any provision of this ordinance or who causes, allows, or consents to any of the same shall be deemed to be responsible for the violation of this ordinance. A violation of this ordinance is deemed to be a nuisance per se.
- (b) Any person who violates any of the provisions of this chapter shall be responsible for a civil infraction, for which the punishment for a first violation shall be a fine of not less than \$100.00 and not more than \$500.00, in the discretion of the court. The punishment for a second or subsequent violation shall be a fine of not less than \$250.00 and not more than \$500.00, in the discretion of the court. For purposes of this section, “second or subsequent violation” means a violation of the provisions of this ordinance committed by the same person within 12 (twelve) months of a previous violation of the same provision of this ordinance for which said person pled or was adjudicated guilty. The foregoing penalties shall be in addition to the rights of the City to proceed at law or in equity with other appropriate and proper remedies.
- (c) This chapter shall be enforced and administered by the City official as may be designated from time to time by resolution of the City council.

(d) A license issued under this chapter may be suspended or revoked for any of the following violations:

- (1) Any person required to be named on the permit application is convicted of or found responsible for violating any provision of this chapter;
- (2) A permit application contains any misrepresentation or omission of any material fact, or false or misleading information, or the applicant has provided the City with any other false or misleading information related to the establishment;
- (3) Any person required to be named on the permit application is convicted of a crime which, if it had occurred prior to submittal of the application, could have been cause for denial of the permit application;
- (4) Marihuana is dispensed on the business premises in violation of this chapter or any other applicable state or local law, rule or regulation;
- (5) The establishment is operated or is operating in violation of the specifications of the permit application, any conditions of approval by the City or any other applicable state or local law, rule or regulation.
- (6) The City, the county, or any other governmental entity with jurisdiction, has closed the establishment temporarily or permanently or has issued any sanction for failure to comply with health and safety provisions of this chapter or other applicable state or local laws related to public health and safety.
- (7) The establishment is determined by the City to have become a public nuisance.
- (8) The establishment's state operating license has been suspended or revoked.
- (9) Possession, sale or consumption of any form of alcohol upon the premises of any licensed adult use marihuana establishment.

(10) A licensed adult use marihuana establishment emitting marihuana odor from any source to result in detectable odors that leave the premises upon which they originated and interfere with the reasonable and comfortable use and enjoyment of another's property. 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. A licensed adult use marihuana establishment shall install and maintain in operable condition a system which precludes the emission of marihuana odor from the premises.

Sec. 16.6-8. - Severability.

In the event that any one (1) or more sections, provisions, phrases or words of this chapter 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 chapter.