

ORDINANCE #682
AN ORDINANCE TO AMEND MARQUETTE CITY CODE
CHAPTER 5 – MARIHUANA

The City of Marquette Ordains:

SECTION 1. Repeal and Adoption.
Chapter 5 – MARIHUANA is hereby repealed.

New Chapter 5 – MARIHUANA is adopted as follows:

Sec. 5-1. – Legislative Intent

The purpose of this ordinance is to regulate adult-use marihuana establishments. The city finds that these activities are significantly connected to the public health, safety, security, and welfare of its citizens and it is therefore necessary to regulate and enforce safety, security, fire, policing, health, and sanitation practices related to such activities and also to provide a method to defray administrative costs incurred by such regulation and enforcement. It is not the intent of this ordinance to diminish, abrogate, or restrict the protections for adult-use marihuana use found in the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951 et seq. (the “Act”).

This ordinance shall be known and may be cited as the City of Marquette Regulation of Adult-Use Marihuana ordinance.

Sec. 5-2. – Definitions

The words and phrases used in this ordinance shall have the following meanings, or the meanings ascribed in the Act or the state rules, unless the context clearly indicates otherwise:

“Child care center or day care center” means a facility, other than a private residence, receiving one (1) or more preschool or school age children for care for periods of less than 24 hours a day, and where the parents or guardians are not immediately available to the child. Child care center or day care center includes a facility that provides care for not less than two (2) consecutive weeks, regardless of the number of hours of care per day. The facility is generally described as a child care center, day care center, day nursery, nursery school, parent cooperative preschool, play group, or drop-in center. All child care centers and day care centers shall be registered with or licensed by the Michigan Department of Licensing and Regulatory Affairs or successor agency. Refer to Public Act 116 of 1973, as amended, for a list of facilities that are excluded from the definition of “Child Care Center” or “Day Care Center.”

“Child care group home or day care group home” means a private home in which more than six (6) but not more than 12 minor children are given care and supervision for periods of less than 24 hours a day, unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage, or adoption. Group day care home includes a home that gives care to an unrelated minor child for more than four (4)

weeks during a calendar year. All group day care homes shall be registered with or licensed by the Michigan Department of Licensing and Regulatory Affairs or successor agency.

“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.

“Designated consumption establishment” means a commercial space that is licensed and where it is authorized for adults 21 years of age and older to consume marihuana products.

“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 act, marihuana does not include:

1. the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from those stalks, fiber, oil, or cake, or any sterilized seed of the plant that is incapable of germination;
2. industrial hemp; or
3. any other ingredient combined with marihuana to prepare topical or oral administrations, food, drink, or other products.

“Marihuana concentrate” means the resin extracted from any part of the plant of the genus *cannabis*.

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

“Marihuana event organizer” means a person licensed to apply for a temporary marihuana event license under the state rules.

“Marihuana grower” means a person licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments. Marihuana grower license types are:

1. Class A – not more than 100 marihuana plants;
2. Class B – not more than 500 marihuana plants;

3. Class C – not more than 2000 marihuana plants;
4. Excess marihuana grower – issued to a person who holds 5 stacked Class C licenses

“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 pursuant to section 6 of the Act (MCL 333.27956) that allows a person to operate a marihuana establishment in the City of Marquette.

“Municipality” means the City of Marquette.

“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.

“Provisional License” means a certification provided by the City of Marquette to an applicant for a municipal license. This is issued prior to a municipal license, is accompanied by an attestation form, and allows the applicant to finalize the application for a state license.

“Religious Institution” means an institution that people regularly attend to participate in or hold religious services, meetings and other activities. The term “Religious Institution” shall not carry a secular connotation and shall include buildings in which the religious services of any denomination are held. Structures owned or operated by Religious Institutions located on parcels other than where the principal structure for religious services are held shall not,

for the purpose of this Ordinance, be considered a Religious Institution, and the principal use of this structure shall be its use and the use shall conform to the requirements of the district in which it is located.

“School” means a public or private licensed institution where children attend classes in preschool programs, kindergarten programs, or grades 1 through 12.

“State rules” means the Emergency Rules, or the Final Rules hereafter promulgated, by the Department.

“State license” means a license issued by the Department that allows a person to operate a marihuana establishment.

“Temporary marihuana event” means an event where the onsite sale or consumption of marihuana products, or both, are authorized at the location indicated on the municipal license during the dates indicated on the municipal license.

Sec. 5-3. – Authorization of Marihuana Establishments

The city hereby authorizes, subject to the issuance of a municipal license by the city clerk, the following types of marihuana establishments within the boundaries of the city, pursuant to section 6.1 of the Act. The establishments authorized pursuant to this ordinance are relating only to the Act:

1. Class A Marihuana Grower
2. Class B Marihuana Grower
3. Class C Marihuana Grower
4. Excess Marihuana Grower
5. Marihuana Processor
6. Marihuana Retailer
7. Marihuana Safety Compliance Facility
8. Marihuana Secure Transporter
9. Marihuana Microbusiness
10. Temporary Marihuana Event
11. Designated Marihuana Consumption Establishment

Sec. 5-4 – License Required for Recreational Marihuana Establishment

It shall be unlawful to operate a marihuana establishment or a temporary marihuana event in the City of Marquette, 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.

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.

Sec. 5-5 – Permitted Locations

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 Marquette Land Development Code.

A license for a temporary marihuana event will only be granted if the event is proposed in a venue expressly approved by resolution of the Marquette City Commission for the purpose of holding a temporary marihuana event.

Sec. 5-6 – Buffering Requirements

A municipal license for a marihuana establishment **or a temporary marihuana event** shall only be issued if the proposed establishment meets with the following buffering requirements.

Marihuana establishments **or temporary marihuana events** shall not be located within:

1. An area zoned exclusively for residential use;
2. 500 feet of a school, as measured from the parcel lines of the individual properties;
3. 500 feet of a child care center, day care center, child care group home or day care group home, as measured from the parcel lines of the individual properties;
4. 500 feet of a religious institution, as measured from the parcel lines of the individual properties;
5. 500 feet of a publicly owned park or playground;
6. 500 feet of a Substance Abuse Disorder Program licensed by the State of Michigan;
7. 500 feet of another marihuana establishment.

Sec. 5-7 – Provisional License; Municipal License to Operate Marihuana Establishment

The city clerk 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. 5-8 – is filed. If approved, the clerk shall issue the applicant a provisional license, which does not convey the ability to operate a marihuana establishment.

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.

At the time the clerk receives verification that the applicant has received a valid state license, the clerk will provide the applicant with a municipal license, which conveys the ability to operate a marihuana establishment.

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.

A municipal license for a temporary marihuana event will only be valid during the days indicated on the state license.

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.

Sec. 5-8 – Municipal License Application

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 clerk. The application shall include:

1. The appropriate nonrefundable municipal license application fee, as established by City Commission resolution;
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;
6. A copy of the Special Land Use Permit issued by the City of Marquette Planning Commission;
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 clerk.

No person shall be issued a municipal license without first having obtained from the City of Marquette Planning Commission a Special Land Use Permit authorizing the operation of the establishment pursuant to the City of Marquette Land Development Code.

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.

If the application is denied, the clerk 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.

Upon receipt of a completed marijuana establishment application meeting the requirements of this ordinance and confirmation that the issuance of the proposed municipal license would not exceed the maximum number permitted in section 5-3 of this ordinance, the clerk shall refer a copy of the application to each of the following for their review and approval: the police chief or designee, the fire chief or designee, the city treasurer or designee and the zoning administrator or designee.

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.

A municipal license will not be granted until the applicant, and each person holding an ownership interest in the applicant, have passed a criminal background check conducted by the Marquette City Police Department.

A municipal license will not be granted until the city treasurer verifies, in compliance with chapter 12 of the Marquette City Code, that the applicant does not owe to the city any taxes or other default.

Municipal license holders shall report any other change in the information required by this ordinance to the city clerk within 10 business days of the change. Failure to do so may result in suspension or revocation of the license.

Sec. 5-9 – License Denial; Appeal

Should the city clerk deny an application, the applicant shall have 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 clerk, the clerk shall issue a provisional license. Should the city manager affirm the decision of the clerk, the city manager shall issue a written notice affirming the decision. All communications will be sent by first class mail to the address for the applicant provided in the application.

The applicant shall have 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 seven (7) days from the receipt of the appeal.

Sec. 5-10 – Minimal Operation Standards for Marihuana Retailer

The following minimum standards shall apply for marihuana retailers:

1. No retail establishment shall be open to the public between the hours of 9:00 p.m. and 6:00 a.m.
2. Consumption of marihuana shall be prohibited in the establishment, and a sign shall be posted on the premises of each retail establishment indicating that consumption is prohibited on the premises.
3. The public or common areas of the retail center must be separated from restricted or non-public areas of the establishment.
4. A drive-through window on the premises of a retail establishment shall not be permitted.
5. A retail establishment shall not allow the sale, consumption, or use of alcohol or tobacco products on the premises.
6. 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.
7. The license required by this ordinance shall be prominently displayed on the premises of a marihuana establishment.
8. No marihuana retailer may refuse representatives of the City Police Department the right during the hours of operation to inspect the licensed premises or to audit the books and records of the marihuana establishment.

Sec. 5-11 – Minimal Operation Standards for Marihuana Grower

The following minimum standards shall apply for marihuana grower facility:

1. 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.
2. 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.
3. The dispensing of marihuana at the grower facility shall be prohibited.
4. All persons working in direct contact with marihuana shall conform to hygienic practices while on duty, including but not limited to:
 - a. Maintaining adequate personal cleanliness;
 - b. 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
 - c. 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.
5. 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.

6. Marihuana that can support the rapid growth of undesirable microorganisms shall be held in a manner that prevents the growth of these microorganisms.

Sec. 5-12 – Minimal Operation Standards for Marihuana Safety Compliance Facility

The following minimum standards for safety compliance facility shall apply:

1. Consumption and/or use of marihuana shall be prohibited at the facility;
2. All persons working in direct contact with marihuana shall conform to hygienic practices while on duty.

Sec. 5-13 – Minimal Operation Standards for Marihuana Processor

The following minimum standards for processor facility shall apply:

1. Consumption and/or use of marihuana shall be prohibited at the processor facility.
2. All activity related to the processor facility shall be done indoors.
3. The dispensing of medical marihuana at the processor facility shall be prohibited.

All persons working in direct contact with marihuana shall conform to hygienic practice 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;
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.

A processor facility shall produce no products other than useable marihuana intended for human consumption.

Sec. 5-14 – Minimal Operation Standards for Marihuana Secure Transporter

The following minimum standards for secure transporters shall apply:

1. Consumption and/or use of marihuana shall be prohibited at a storage facility of a Secure Transporter.
2. Storage of marihuana by a secure transporter shall comply with the following:
 - a. The storage facility shall not be open or accessible to the general public; and
 - b. The storage facility shall be maintained and operated so as to comply with all state and local rules, regulations and ordinance.

Sec. 5-15 – Minimal Operation Standards for Marihuana Microbusiness

The following minimum standards shall apply for marihuana microbusinesses:

1. No microbusiness establishment shall be open to the public between the hours of 9:00 p.m. and 6:00 a.m.
2. Consumption of marihuana shall be prohibited in the establishment, and a sign shall be posted on the premises of each microbusiness establishment indicating that consumption is prohibited on the premises.

3. The public or common areas of the microbusiness must be separated from restricted or non-public areas of the establishment.
4. A drive-through window on the premises of a microbusiness shall not be permitted.
5. A microbusiness shall not allow the sale, consumption, or use of alcohol or tobacco products on the premises.
6. No microbusiness 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.
7. No marihuana microbusiness may refuse representatives of the City Police Department the right during the hours of operation to inspect the licensed premises or to audit the books and records of the marihuana establishment.

The license required by this ordinance shall be prominently displayed on the premises of a marihuana establishment.

Sec. 5-16 – Minimal Operation Standards for Marihuana Consumption Establishment

The following minimum standards shall apply for marihuana consumption establishments:

1. No consumption establishment shall be open to the public between the hours of 9:00 p.m. and 6:00 a.m.
2. The public or common areas of the consumption establishment must be separated from restricted or non-public areas of the establishment, including from areas where consumption of marihuana will take place.
3. A consumption establishment shall not allow the sale, consumption, or use of alcohol or tobacco products on the premises.
4. No consumption 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.
5. No marihuana consumption establishment may refuse representatives of the City Police Department the right during the hours of operation to inspect the licensed premises or to audit the books and records of the marihuana establishment.

The license required by this ordinance shall be prominently displayed on the premises of a marihuana establishment.

Sec. 5-17 – Minimal Operation Standards for Temporary Marihuana Event

The following minimum standards shall apply for temporary marihuana events:

1. Temporary marihuana events may only be held at venues identified by resolution of the Marquette City Commission.
2. No temporary marihuana event may refuse representatives of the City Police Department the right during the hours of operation to inspect the licensed premises or to audit the books and records of the marihuana establishment.

The license required by this ordinance shall be prominently displayed on the premises of a temporary marihuana event.

Sec. 5-18 – License Revocation

A municipal license or provisional license issued under this ordinance may be revoked upon the city clerk's determination that grounds for revocation under this ordinance exist.

A license issued under this ordinance may be revoked on any of the following basis:

1. Any violation of this ordinance;
2. Revocation of the Special Land Use Permit issued by the Marquette City Planning Commission;
3. Any conviction of delivery of a controlled substance to a minor;
4. 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 municipal license or in connection with the application for a license or request to renew a municipal license;
5. The municipal 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 marijuana establishment is determined by the city to have become a public nuisance; or
7. The department has denied, revoked or suspended the applicant's state operating license.

Should the city clerk revoke a license, the municipal license holder shall have 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 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 municipal license holder contained in the city clerk's records.

Should the city manager affirm the revocation of a municipal license by the city clerk, the municipal license holder shall have 14 days from the mailing of the decision of the city manager to appeal the decision to the City Commission, by filing with the city clerk a written notice of appeal. The City Commission shall hear the appeal at its next regularly scheduled meeting, but no sooner than seven (7) days from the receipt of the appeal.

Sec. 5-19 – Penalties and Discipline

The City of Marquette may require an applicant or municipal license holder to produce documents, records, or any other material pertinent to the investigation of an application or alleged violation of this ordinance. Failure to provide the required material may be grounds for application denial, license revocation, or discipline.

Any person who violates any of the provisions of this ordinance shall be responsible for a municipal civil infraction and subject to a fine of \$500, plus costs. 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.

Any violation of this ordinance may result in revocation, as defined in section 5-18 of this ordinance.

Sec. 5-20 – Right to Amend

The Marquette City Commission 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.

Sec. 5-21 – 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.

SECTION 2. Publication.

This ordinance shall take effect June 1, 2020, but not before publication.

Frederick J. Stonehouse, Mayor

Kris M. Hazeres, City Clerk

Date Adopted: _____

Date Published: _____