

**CITY OF GAYLORD
MARIHUANA ORDINANCE**

ORDINANCE NO. 2022-2

An ordinance to repeal and replace the prior City of Gaylord Marihuana Ordinance; to protect the public health, safety and general welfare by establishing regulations relating to the operation, control and management of marihuana establishments and marihuana facilities in the City of Gaylord, Michigan, as authorized by provisions of the Medical Marihuana Facilities Licensing Act and the Michigan Regulation and Taxation of Marihuana Act and the rules promulgated by the State of Michigan; to provide for the issuance of licenses and the collection of fees; and to provide penalties for the violation of said ordinance.

THE CITY OF GAYLORD ORDAINS:

SECTION 1: TITLE

This ordinance shall be known and cited as the City of Gaylord Marihuana Ordinance.

SECTION 2: PURPOSE, INTENT, AND CITY LIABILITY

1. The purpose of this ordinance is to allow for the operation of recreational marihuana establishments within the City of Gaylord consistent with State law, including the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951 *et seq.*, and the operation of medical marihuana facilities consistent with State law, including the Medical Marihuana Facilities Licensing Act, MCL 333.27201 *et seq.*, and to protect the public health, safety and general welfare of the City’s residents by establishing reasonable regulations relating to the operation, control and management of marihuana establishments and facilities.
2. Nothing in this ordinance is intended to promote or condone the distribution or possession of marihuana in violation of any law. Nothing in this ordinance is intended to grant immunity from any criminal prosecution under Federal Law. Strict compliance with all State laws and regulations shall be deemed a requirement for issuance and renewal of a license issued under this ordinance.
3. The interests of the pubic being paramount, this ordinance is to be construed to protect the interests of the public over the interests of marihuana establishments and facilities and related activities.

SECTION 3: DEFINITIONS

Act: The Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951 *et seq.* as to a recreational marihuana establishment application or license; or the Medical Marihuana Facilities

Licensing Act, MCL 333.27201 *et seq.*, as to a medical marihuana facility application or license.

Department: The Michigan Department of Licensing and Regulatory Affairs or its successor agency.

Marihuana: That term as defined in the Act.

Marihuana Establishment: That term as defined in the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951 *et seq.*

Marihuana Facility: That term as defined under the Medical Marihuana Facilities Licensing Act, MCL 333.27201 *et seq.*,

Ordinance: This corpus and its amendments.

Person: That term as defined in the Act.

SECTION 4: OPERATION WITHOUT LICENSE PROHIBITED

No person shall operate, attempt to operate, or act as a marihuana establishment or marihuana facility in the City of Gaylord without first obtaining a license authorizing the operation from the City Clerk.

SECTION 5: LICENSE APPLICATION SUBMISSION

1. An application for a license shall be made in writing to the City Clerk, under oath, on forms provided by the City. Attachments, supporting documentation and supplemental submissions shall be considered part of the application.
2. The application shall contain all the following information:
 - a. A designation that the operation will be either a recreational marihuana establishment or a medical marihuana facility.
 - b. A nonrefundable license fee in an amount set periodically by the City Council not exceeding any limit under the Act, to help defray the administrative costs of reviewing the application, including but not limited to application review, communication with the applicant, background investigation, inspections, and verification of data.
 - c. Documentation that the applicant has received approval for pre-qualification with the State of Michigan.

- d. If the applicant is an individual, the applicant's name, date of birth, mailing address, email address, and one or more phone numbers.
 - e. If the applicant is an entity, the name of the entity, a copy of any articles or DBA for the entity, and the entity's address, phone number, email address, principal office location and names of its officers; additionally, the name and address of each stakeholder in the entity, including designation of one stakeholder or officer as the primary contact person.
 - f. The name and physical address of the proposed marihuana establishment or facility.
 - g. One of the following: (a) proof of ownership of the entire premises wherein the marihuana establishment or facility is to be operated; or (b) written consent from the property owner for the use of the premises in a manner requiring licensure under this ordinance along with a copy of the lease for the premises.
 - h. A copy of the applicant's submissions to the State of Michigan for pre-qualification approval, including waste, air quality, safety, and security plans.
 - i. A waiver, release and hold harmless agreement as to the City, its officers, elected officials, employees, and its other agents from any liability for injuries, damages, and losses of any kind resulting from the operation of any marihuana establishment or facility, including any arrest, prosecution, or damages arising from an alleged violation of local, State or Federal laws or regulations.
 - j. A covenant not to sue to the City, its officers, elected officials, employees or its other agents for any loss, damage, wrong or claim related to the application, issuance, denial or revocation of a license under this ordinance.
3. If the application contains any deficiency, the City Clerk shall notify the applicant by first class mail, and the applicant shall have ten business days from the date of mailing to correct all deficiencies.
 4. Upon receipt of a complete application meeting the requirements of this Ordinance, the City Clerk shall transmit a copy of the application to the Chief of Police, City Attorney, and the City Zoning Administrator for their review.

SECTION 6: LICENSE APPLICATION EVALUATION

1. An application shall not be approved unless:
 - a. The City Zoning Administrator has verified that the proposed marihuana establishment or facility type and location will not exceed the maximum number of applicable licenses as established by the City Council, and that the location

complies with the City of Gaylord Zoning Ordinance; and, upon completion of the review, has endorsed approval upon the application.

- b. The Chief of Police has investigated the business and moral character of the applicant as the Chief of Police deems necessary for the protection of the public interest; and the Chief of Police has investigated the suitability of the proposed location, including the parking, traffic, and congestion, to best protect the safety and general welfare of the public and patrons of the proposed marihuana establishment or facility; and, upon completion of the investigation, the Chief of Police has endorsed approval upon the application.
 - c. The City Attorney has reviewed the application for compliance with this ordinance, and all other applicable State laws and regulations; and, upon completion of the review, has endorsed approval upon the application.
2. If the application is not approved, the basis for disapproval shall be stated on the application. The City Clerk shall then notify the applicant by first class mail of the denial, all reasons for the denial, and that no license shall be issued unless all reasons for disapproval are cured within ten business days from the date of the notice.
 3. An applicant may amend an application within ten business days after the City Clerk mails a notice of disapproval. An amended application may include additional supplemental material. Upon timely receipt of an amended application, the City Clerk shall resubmit the application for any additional evaluation by the City Zoning Administrator, Chief of Police or City Attorney, as appropriate. If the amended application is again disapproved on the same basis, no further amendments will be considered.
 4. Upon obtaining the written approvals required in this Section, the City Clerk shall submit the application to the City Manager, or the City Manager's designee, who shall evaluate each applicant based on the applicant's ability to operate in compliance with the Act at the proposed location within the City, which may or may not include the following considerations:
 - a. Compliance with the application requirements;
 - b. Capitalization and means to operate the proposed establishment or facility;
 - c. Business history and experience;
 - d. Regulatory compliance history;
 - e. Thoroughness of the proposed business plan;
 - f. Integrity and moral character of the applicant;
 - g. History of cooperation with the City during the application process and in previous dealings;

- h. Adequacy of the proposed location and local economy to support the proposed operations;
 - i. History of investment and involvement in the local community;
 - j. Level of proposed investment in the local community;
 - k. The number of licenses available for that type of marihuana establishment or facility at that location.
5. Upon completion of the report, the City Manager, or the City Manager's designee, shall place the applicant's name on a roll of nominees with a report detailing the evaluation, and deliver the same to the City Council for consideration. The City Council shall then select those nominees who are best suited to operate in compliance with the Act in the City. Any nominee approved by the City Council shall be issued a license by the City Clerk consistent with this ordinance.

SECTION 7: LICENSE RENEWAL APPLICATION

1. A renewal application shall be made in writing to the City Clerk at least thirty (30) days prior to the expiration of an existing license but not more than ninety (90) days prior to the expiration. While under consideration, the term of an existing license is the later of its original expiration date, and ten business days after notice of a denial is sent by first class mail.
2. A renewal application shall be made under oath on a form provided by the City and shall contain the information required in an initial application under this ordinance.
3. A renewal application must be accompanied by a renewal fee in an amount established by the City Council, not to exceed any limit under the Act, to help defray the administrative and enforcement costs associated with the operation and activities of marihuana establishments and facilities in the City.
4. Upon receipt of a timely and complete renewal application, the City Clerk shall refer a copy of the renewal application to the City Zoning Administrator, Chief of Police and City Attorney for review and approval consistent with the review required for an initial application under this ordinance.
5. A renewal application shall not be approved unless:
 - a. The City Zoning Administrator has verified that the proposed location complies with the City of Gaylord Zoning Ordinance, including any ordinance amendments since initial issuance of the license, and that the applicant holds a valid special use permit if required; and, upon completion of the review, has endorsed approval upon the renewal application.

- b. The Chief of Police has reviewed the history of the marihuana establishment or facility's operations to date, and investigated any circumstances, including the business and moral character of the applicant, such as to best protect the safety and general welfare of the public and the marihuana establishment or facility's patrons; and, upon completion of the review and investigation, the Chief of Police has endorsed approval upon the renewal application.
 - c. The City Attorney has reviewed the renewal application for compliance with this ordinance, and continued compliance with all other State laws and regulations, as may have been amended since the initial issuance of the license.
6. A marihuana establishment or facility is not in compliance with this ordinance if a new use within the applicable spacing requirements is established after the marihuana establishment or facility is licensed that would have prohibited the marihuana establishment or facility's operation under the City of Gaylord Zoning Ordinance had the use existed prior to the licensing of the marihuana establishment or facility.
7. The process for disapproving a renewal application, including notice of the disapproval, opportunity to amend the application, reconsideration, and final disapproval, shall be the same as the disapproval of an initial application, as set forth in this ordinance.
8. Upon obtaining the written approvals required in this Section, the City Clerk shall issue a renewed license to the applicant.

SECTION 8: LICENSES GENERALLY

1. The City Council will, by resolution, establish the fee for the issuance of an initial license and for the renewal of an existing license.
2. The term of a license issued under this ordinance is one year from the date of issuance unless the City Council, by resolution, establishes a longer term.
3. The City Council may, by resolution, limit the number of licenses available for any type of marihuana establishment or facility within each zoning district under the City of Gaylord Zoning Ordinance.
4. Upon receipt of notification from the State of Michigan that a person has applied for a state operating license under the Act to operate a marihuana establishment or facility in the City, the City Clerk will forward a copy of any license issued under this ordinance together with a copy of this ordinance and the applicable zoning regulations to the Marihuana Licensing Board within 90 days.
5. Each license issued under this ordinance shall be only for a single marihuana establishment or facility type at a single location.

6. A person may hold multiple licenses under this ordinance; however, a person must apply for a separate license for each marihuana establishment or facility at each distinct location that the person intends to operate in the City.
7. Issuance of a license under this ordinance does not guarantee issuance of a license under the Act.
8. No marihuana establishment or facility shall permit an individual under 18 years of age on its premises unless the individual is: (1) a qualifying patient who is registered with the Department; or (2) accompanied by a parent or legal guardian.
9. No consumption of marihuana shall be permitted on the premises of a marihuana establishment or facility.
10. The license issued under this ordinance shall be prominently displayed on the premises of the marihuana establishment or facility.
11. A marihuana establishment or facility licensed under this ordinance shall be subject to inspection by the Gaylord City Police Department at any time.
12. A licensee agrees to indemnify, defend and hold City harmless, together with its officers, elected officials, insurers, employees, and other agents from all liability, claims and demands for any and all injury, damage or other loss arising from operation of and activities related to any marihuana establishment or facility.
13. A licensee agrees to not sue the City, or its officers, elected official, insurers, employees, and other agents, for any loss, damage, wrong or claim related to the application, issuance, denial or revocation of the license under this ordinance.

SECTION 9: LICENSE TRANSFERS

1. Licenses issued under this ordinance may not be transferred to another person, another location, or both, without the approval of the City Council.
2. To receive approval for a transfer, the person must request the transfer in writing to the City Clerk. The City Clerk shall refer a copy of the transfer application to the City Zoning Administrator, Chief of Police, and City Attorney. No transfer application shall be approved unless the City Zoning Administrator, Chief of Police, and City Attorney all endorse their approval to the transfer application following a review and investigation of the changed circumstances as though the request is an initial license application.
3. The process for disapproving a transfer request, including notice of the disapproval, opportunity to amend the request, reconsideration, and final disapproval, shall be the same as the disapproval of an initial application, as set forth in this ordinance.

4. If written approvals are given as required in this Section, the City Clerk shall submit the request to the City Council for consideration.

SECTION 10: DENIAL, REVOCATION, AND APPEAL

1. A license application shall be denied if it does not meet the requirements of this ordinance.
2. A license issued under this ordinance may be revoked by the City Clerk, City Manager or City Attorney for any of the following:
 - a. Violation of any provision of this ordinance.
 - b. A fraud, misrepresentation, or false statement contained in the application, or its accompanying documents, statements, certificates or permits, filed to obtain the license, regardless of when it is discovered.
 - c. Fraud, misrepresentation, or false statement while operating the establishment or facility, or failure to operate the establishment or facility under the terms of the license.
 - d. The person's conviction of any crime or misdemeanor involving moral turpitude.
 - e. Operating the establishment or facility in an unlawful manner or in such a manner as to constitute a nuisance, a breach of the peace, or to constitute a menace to the health, safety, or general welfare of the public.
 - f. Not conducting operations authorized by the license for a period of greater than thirty (30) days in any one calendar year, excepting from that period those days where the applicant has a pending application for a marihuana license with the State of Michigan or a special use permit with the City of Gaylord, or unless otherwise approved by the City Council.
3. Any person subject to a denial or revocation under this ordinance may appeal the denial or revocation to the City Council. The appeal must be requested in writing, stating the grounds for the appeal, within thirty (30) days of the date of the denial or revocation. The City Council, upon hearing the appeal, may uphold the denial or revocation, order the license to be issued or reissued, or modify the license with specific conditions. The City Council's determination is final and not subject to judicial review.

SECTION 11: PUBLIC CONSUMPTION PROHIBITED

It is a violation of this ordinance for a person to consume marihuana in a public place within the boundaries of the City of Gaylord.

SECTION 12: PENALTIES

In addition to those penalties described elsewhere in this ordinance, any person in violation of any provision of this ordinance, or any provision of a license issued under this ordinance, is guilty of a misdemeanor, punishable by a fine of up to five hundred dollars (\$500.00) plus costs of prosecution, ninety (90) days' imprisonment, or both, for each violation.

SECTION 13: SEVERABILITY

Nothing in this ordinance is intended to limit a person's rights under the Michigan Marihuana Act, MCL 333.26421 *et seq.*, or the Michigan Taxation and Regulation of Marihuana Act, MCL 333.27951 *et seq.* Those acts, or the rules promulgated thereunder, supersede this ordinance as to any conflict between them. This ordinance and various parts, sections and clauses, are severable. If any sections or clauses are adjudged invalid, the remainder of this ordinance shall not be affected.

SECTION 14: EFFECTIVE DATE

This ordinance will take effect on June 1, 2021.

Am. eff. June 23, 2022.