

CITY OF UTICA
MACOMB COUNTY, MICHIGAN
ORDINANCE NO. 170

PROHIBITION OF MARIHUANA ESTABLISHMENTS.

THE CITY OF UTICA ORDAINS:

Whereas, the Michigan Regulation and Taxation of Marihuana Act (“Act”) was approved by the voters of the State of Michigan pursuant to Proposal 1, the Marijuana Legalization Initiative, on November 6, 2018 and the Act authorizes cities, villages, and townships to prohibit marihuana establishments within their boundaries;

Marihuana establishments, as defined in the Act, are hereby prohibited within the City of Utica.

This ordinance shall become effective immediately upon publication of a notice of adoption.

This ordinance was duly adopted at a meeting of the City Council of the City of Utica on the 8th day of DECEMBER, 2019.



Thomas Dionne, Mayor



Beth Ricketts, City Clerk

INTRODUCED:	<u>12-11-18</u>
ADOPTED:	<u>1-8-19</u>
PUBLISHED:	<u>1-16-19</u>
EFFECTIVE:	<u>1-26-19</u>

MARIHUANA BUSINESS ORDINANCE

THE CITY OF UTICA ORDAINS:

CHAPTER 14 – BUSINESSES

ARTICLE XI. – MARIHUANA BUSINESSES

DIVISION 1. – GENERALLY

Sec. 14-1101. – Short title.

This article shall be known and cited as the “Marihuana Business Ordinance” of the City of Utica and will be referred to herein as this article.

Sec. 14-1102. – Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicant means a person who applies for a license to operate a medical marihuana-provisioning center; marihuana retailer; medical marihuana grower; marihuana grower; marihuana processor; marihuana transporter; marihuana safety compliance facility or marihuana microbusiness under this article.

Department means the State of Michigan Department of Licensing and Regulatory Affairs or its successor agency.

Designated Consumption Establishment means a location where a state-licensed Provisioning Facility is authorized to permit adults 21 years of age and older to consume marihuana and marihuana products on premises as permitted by the rules and regulations adopted by the Bureau of Marihuana Regulation (BMR).

Marihuana means that term as defined in the MRTMA.

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 under the MRTMA.

Marihuana grower means a person licensed under the MRTMA to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.

Marihuana microbusiness means a person licensed under the MRTMA to cultivate not more than one hundred and fifty (150) marihuana plants; process and package marihuana; and sell or otherwise transfer marihuana to individuals who are twenty-one (21) years of age or older or to a marihuana safety compliance facility, but not to other marihuana establishments.

Marihuana processor means a person license under the MRTMA 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 under the MRTMA to obtain marihuana from marihuana establishments and to sell or otherwise transfer marihuana to marihuana establishments and to individuals who are twenty-one (21) years of age or older.

Marihuana secure transporter means a person licensed under the MRTMA 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.

Medical marihuana facility means any facility, entity, establishment or center that is required to be licensed under the MMFLA and this article, including a medical marihuana grower,

medical marihuana processor, medical marihuana provisioning center, medical marihuana safety compliance facility, and/or a medical marihuana secure transporter.

Medical marihuana grower means a person licensed under the MMFLA to cultivate, dry, trim, or cure and package marihuana for sale to a medical marihuana processor, medical marihuana provisioning center, or another medical marihuana grower.

Medical marihuana processor means a person licensed under the MMFLA to purchase marihuana from a grower and extract resin from the marihuana or create a marihuana-infused product for sale and transfer in packaged form to a medical marihuana provisioning center or another medical marihuana processor.

Medical marihuana provisioning center means a person licensed under the MMFLA to purchase marihuana from a medical marihuana grower or medical marihuana processor and sell, supply, or provide marihuana to registered qualifying patients, directly or through the patients' registered primary caregiver.

Medical marihuana safety compliance facility means a person licensed under the MMFLA to take marihuana from a marihuana facility or receive marihuana from a registered primary caregiver, test the marihuana for contaminants and for tetrahydrocannabinol and other cannabinoids, return the test results, and return the marihuana to the marihuana facility.

Medical marihuana secure transporter means a person licensed under the MMFLA to store marihuana and transport marihuana between marihuana facilities for a fee.

MMFLA means the Medical Marihuana Facilities Licensing Act.

MRTMA means the Michigan Regulation and Taxation of Marihuana Act.

Stakeholder means the officers, directors, and managerial employees of an applicant and any persons who hold any direct or indirect ownership interest in the applicant.

DIVISION 2. – LICENSING AND APPEALS

Sec. 14-1103. – Required License.

It shall be unlawful for any person to operate a medical marihuana facility or a marihuana establishment in the city without a valid license therefor issued by the city clerk in accordance with the provisions of this ordinance.

Sec. 14-1104. – Marihuana business licenses.

(a) Pursuant to section 205 of the MMFLA, MCL 333.27205, the city shall authorize no more than two (2) medical marihuana provisioning center licenses in the city. A medical marihuana provisioning center shall be located on the West side of Van Dyke Avenue, and South of Hall Road (M-59). There shall a buffer of at least 700 feet between facilities as measured from the nearest point of property line to property line. The city shall authorize no more than one (1) medical marihuana grower license that shall be located in an area zoned for industrial use. The city shall not authorize any licenses to operate a medical marihuana processor, medical marihuana safety compliance facility, or medical marihuana secure transporter in the city.

(b) Pursuant to section 6 of the MRTMA, MCL 333.27956, the city shall authorize no more than two (2) marihuana retailer licenses in the city which shall co-locate with the location of a licensed medical marihuana provisioning center.

(c) The City shall authorize no more than one (1) marihuana grower license and one (1) medical marihuana grower license that shall be co-located at the same location and in an area zoned for industrial use.

(d) The city shall not authorize any licenses to operate a marihuana microbusiness or designated consumption establishment in the city.

(e) The 1,000 foot restriction in MCL 333.27959(3)(c) is hereby eliminated.

Sec. 14-1105. – License applications.

(a) Any person seeking to operate a medical marihuana provisioning center, a marihuana retailer, medical marihuana grower or marihuana grower shall file a license application with the city clerk upon a form provided by the city. The application shall include the following information:

- (1) The full name, date of birth, physical address, email address, and telephone number of the applicant in the case of an individual; or, in the case of an entity, all stakeholders thereof.
- (2) If the applicant is an entity, the entity's articles of incorporation or organizational documents.
- (3) If the applicant is an entity, the entity's employer identification number.
- (4) If the applicant is an entity, the entity's operating agreement or bylaws.
- (5) A proposed marketing, advertising, and business promotion plan for the proposed medical marihuana provisioning center, marihuana retailer, medical marihuana grower or marihuana grower.
- (6) A description of planned tangible capital investment in the city.
- (7) An explanation of the economic benefits to the city and job creation to be achieved, including the number and type of jobs the medical marihuana provisioning center, marihuana retailer, medical marihuana grower or marihuana grower is expected to create, the amount and type of compensation expected to be paid for such jobs, and the projected annual budget and revenue of the medical marihuana provisioning center, marihuana retailer, medical marihuana grower or marihuana grower.
- (8) A description of the financial structure and financing for the proposed medical marihuana provisioning center, marihuana retailer, medical marihuana grower or marihuana grower.
- (9) Short-term and long-term business goals and objectives for the proposed medical marihuana provisioning center, marihuana retailer, medical marihuana grower or marihuana grower.
- (10) A criminal background report on the applicant's criminal history. Such reports shall be obtained by the applicant and, if applicable, each stakeholder through the Internet Criminal History Access Tool (ICHAT) for applicants or stakeholders residing in Michigan and/or through another state sponsored or authorized criminal history access source for applicants or stakeholders who reside in other states or have resided in other states within five (5) years prior to the date of the application. The applicant or stakeholder is responsible for all charges incurred in requesting and receiving the criminal history report and the report must be dated within thirty (30) days of the date of the application.
- (11) A description of the security plan for the proposed medical marihuana provisioning center, marihuana retailer, medical marihuana grower or marihuana grower that is consistent with the requirements of the department.
- (12) A floor plan of the proposed medical marihuana provisioning center, marihuana retailer, medical marihuana grower or marihuana grower.
- (13) A scale diagram illustrating the property upon which the proposed medical marihuana provisioning center, marihuana retailer, medical marihuana grower or marihuana grower is to be operated, including all available parking spaces, and specifying which parking spaces are handicapped-accessible.
- (14) A depiction of any proposed text or graphic materials to be shown on the exterior of the proposed medical marihuana provisioning center, marihuana retailer, medical marihuana grower or marihuana grower.

(15) An affidavit that neither the applicant nor any stakeholder of the applicant is in default to the city.

(16) If the applicant is applying for a license to operate a medical marijuana provisioning center, proof that the applicant has received prequalification approval from the department to become licensed pursuant to the MMFLA.

(b) Except as provided by law, all materials submitted to the city as part of an application shall be exempt from disclosure under the Freedom of Information Act and exempt from disclosure pursuant to MCL 333.27401(5).

Sec. 14.1107. – Application fee.

An application for a license shall be accompanied by a non-refundable application fee to help defray administrative and enforcement costs associated with the operation of the medical marijuana provisioning center, marijuana retailer, medical marijuana grower or marijuana grower which shall be in the amount of five thousand dollars (\$5,000.00) per license requested.

Sec. 14.1108. – Application review.

(a) The city clerk shall review each application to ensure that it is complete, that the information required by this article has been submitted, and that the application fee has been paid. The city clerk may reject any application that is not complete and may deny an application for failure to pay the full application fee.

(b) Upon receipt of a completed application meeting the requirements of this article and the appropriate license application fee, the city clerk shall refer a copy of the application to each of the following for their approval: the fire chief, the building inspector, the city planner, and the city treasurer.

(c) No application shall be approved, and no license shall issue unless:

(1) The fire chief and the building inspector have inspected the proposed location for compliance with all applicable laws for which they are charged with enforcement and for compliance with the requirements of this article.

(2) The city planner has confirmed that the proposed location complies with the relevant provisions of the City of Utica Zoning Ordinance and this article.

(3) The city treasurer has confirmed that the applicant and each stakeholder of the applicant are not in default to the City.

(d) After the effective date of this article, the city clerk shall begin accepting applications for medical marijuana provisioning centers, marijuana retailers, medical marijuana growers and marijuana growers for a period of twenty-one (21) days.

(e) The city clerk, with the assistance of legal advice from the city attorney, shall assess, evaluate, score and rank all applications for licenses to operate a medical marijuana provisioning center, marijuana retailer, medical marijuana grower and marijuana grower per category within thirty (30) days after expiration of the submission period.

(f) In its application assessment, evaluation, scoring, ranking, and deliberations related to licenses to operate a medical marijuana provisioning center, marijuana retailer, medical marijuana grower and marijuana grower, the city clerk, with the assistance of legal advice from the city attorney, shall assess, evaluate, score, and rank each application based upon the following factors:

(1) Whether the applicant is prequalified by the department and intends to obtain a license under the MRTMA and/or MMFLA. The maximum number of scoring points in this category shall be five (5) points.

(2) Whether the proposed medical marijuana provisioning center, marijuana retailer, medical marijuana grower or marijuana grower will be consistent with land use for the surrounding neighborhood and not have a detrimental effect on

traffic patterns and resident safety. The maximum number of scoring points in this category shall be five (5) points.

(3) Whether the applicant proposes tangible capital investment and significant physical improvements to real property by eliminating existing blight, deteriorated or vacant buildings which currently exist on the proposed location and/or by adding new construction as defined in MCL 211.34d. The maximum number of scoring points in this category shall be twenty (20) points.

(4) Whether the applicant or any of its stakeholders have a record of acts detrimental to the public health, security, safety, morals, good order, or general welfare prior to the date of the application. The maximum number of scoring points in this category shall be five (5) points.

(5) Whether the applicant possesses sufficient resources to fund the applicants proposed marijuana facility plan and business plan pursuant to the application. The maximum number of scoring points in this category shall be fifteen (15) points.

(6) Whether the applicant presents a proposed staffing plan, complete with description of duties, proposed wages and employee qualifications. The maximum number of scoring points in this category shall be ten (10) points.

(7) Whether the stakeholders demonstrate experience with owning, operating and/or managing business in highly regulated industry (minimum one year). The maximum number of scoring points in this category shall be ten (10) points.

(8) Whether the applicant demonstrates significant improvement to real property by removing the presence of hazardous substances or environmental hazards, including but not limited to soil and groundwater contaminates, which may exist on the proposed location. The maximum number of scoring points in this category shall be twenty (20) points.

(9) Whether the applicant provides a security plan that includes secure storage of marijuana, 24/7 video surveillance (both inside and outside the facility), to deter and prevent theft and diversion, and a detailed plan for recordkeeping and inventory management. The maximum amount of points shall be ten (10) points.

(g) Overall scoring and ranking shall be conducted and applied by the city clerk with the assistance of legal advice from the city attorney on the basis of assigned points from zero (0) points to one hundred (100) points with the lowest overall total score as zero (0) points and the highest possible total score being one hundred (100) points.

(h) The city clerk shall forward all information including scoring and ranking information to the city council who, at the next council meeting unless postponed for good cause or otherwise provided herein, shall award licenses as follows:

(1) One (1) license to operate a medical marijuana provisioning center to each of the two (2) highest scoring medical marijuana provisioning center applicants, and to the two (2) highest scoring marijuana retailer applicants if each medical marijuana provisioning center is co-located with a marijuana retailer.

(2) If the two highest scoring medical marijuana provisioning centers and marijuana retailers are not co-located as provided in this ordinance, then the licenses shall be awarded to the two (2) highest scoring, medical marijuana provisioning center and/or marijuana retailer applicants so as to provide for two separate provisioning and/or retail facilities.

(3) One (1) license each to the highest scoring medical marijuana grower and marijuana grower if both applicants are co-located. If the highest scoring medical marijuana grower and marijuana grower are not co-located, only one license shall be awarded to the highest scoring medical marijuana grower or marijuana grower.

(4) In the event of an evaluation scoring tie, which causes there to be more than one (1) applicant who achieve scores sufficient to qualify for a license of any type, the scoring-tied applicants will be entered into a random draw. Those applicants

randomly selected shall be eligible to receive a license to operate a medical marijuana provisioning center, marijuana retailer, medical marijuana grower or marijuana grower.

(5) In the event that the number of medical marijuana provisioning center, marijuana retailer, medical marijuana grower or marijuana grower licenses initially awarded is less than the maximum number authorized under this article or subsequently falls below the maximum number authorized under this article, the city clerk shall not be required to score applicants. Instead, the city clerk shall evaluate applications in the order that they are submitted and shall award licenses for medical marijuana provisioning centers, marijuana retailers, medical marijuana growers or marijuana growers to an applicant who submits a complete application, receives the approvals required in this article, and meets the requirements of this article.

(6) In no event shall the number of medical marijuana provisioning center, marijuana retailer, medical marijuana grower or marijuana grower licenses exceed the maximum number authorized under this article.

Sec. 14-1109. – Transfer of licenses.

(a) Licensees may not transfer a license issued under this article to a different location.

(b) Licensees may transfer ownership of a license issued under this article to a different individual or entity only upon receiving written approval from the State of Michigan.

Sec. 14-1110. – Term of licenses.

Approval of a license shall be for a period of one calendar year subject to review by the city clerk upon continued compliance with the regulations of this article.

Sec. 14-1111. – Renewal of licensees.

(a) Application for a license renewal shall be made in writing to the city clerk at least thirty (30) days prior to the expiration of an existing license.

(b) An application for a license renewal required by this article shall be made under oath on forms provided by the city clerk, and shall contain substantially all of the information required in an initial application.

(c) An application for a license renewal shall be accompanied by a renewal fee to help defray administrative and enforcement costs associated with the operation of the medical marijuana provisioning center, marijuana retailer, medical marijuana grower or marijuana grower which shall be set by resolution of the council, but shall not exceed five thousand dollars (\$5,000.00) per license.

(d) Upon receipt of a completed application for a license renewal meeting the requirements of this article and the license renewal fee, the city clerk shall refer a copy of the renewal application to the fire chief and the building inspector.

(e) No application for a license renewal shall be approved unless:

(1) The fire chief and the building inspector or another relevant department have, within the past calendar year, inspected the location for compliance with all state and local building, electrical, fire, mechanical and plumbing requirements.

(2) The city planner or another relevant department has confirmed that the location complied with the relevant provisions of the City of Utica Zoning Ordinance at the time the license was granted.

(3) The licensee possesses the necessary state licenses or approvals, including those issued pursuant to the MMFLA or MRTMA.

(4) The licensee has operated the medical marihuana provisioning center, marihuana retailer, medical marihuana grower or marihuana grower in accordance with the conditions and requirements of this article.

(5) The licensee is operating the medical marihuana provisioning center, marihuana retailer, medical marihuana grower or marihuana grower in accordance with the MMFLA or MRTMA.

(f) If written approval is given by each department or entity identified in this section, the city clerk shall issue a license renewal to the licensee. The renewal shall be deemed approved if the city has not issued formal notice of denial within sixty (60) days of the filing date of the application.

Sec. 14-612. – Revocation or suspension of a license.

Each medical marihuana provisioning center, marihuana retailer, medical marihuana grower or marihuana grower within the city for which a license is granted shall be operated and maintained in accordance with all applicable laws, rules, and regulations. Upon any violation of this section or any section of this article, the city clerk may, after a notice and hearing, revoke or suspend such license as hereinafter provided.

Sec. 14-613. – Procedure for nonrenewal, suspension, or revocation of license.

The city clerk shall notify an applicant or licensee of the reasons for denial of an application for a license or license renewal or for revocation of a license or any adverse decision under this article and provide the Applicant or licensee with the opportunity to be heard. Any applicant or licensee aggrieved by the denial or revocation of a license or adverse decision under this article may appeal to the city clerk, who shall appoint a hearing officer to hear and evaluate the appeal and make a recommendation to the city clerk. Such appeal shall be taken by filing with the city clerk, within fourteen (14) days after notice of the action complained of has been mailed to the applicant or licensee's last known address on the records of the city clerk, a written statement setting forth fully the grounds for the appeal. The city clerk shall review the report and recommendation of the hearing officer and make a decision on the matter. The city clerk's decision may be further appealed to the council if applied for in writing to the council no later than thirty (30) days after the city clerk's decision. The review on appeal of a denial or revocation or adverse action shall be by the council pursuant to this article. Any decision by the council on an appeal shall be final for purposes of judicial review. The city clerk may engage professional experts to assist with the proceedings under this section.

Sec. 14-614. – Criteria for nonrenewal, suspension, or revocation of license.

In addition to any other reasons set forth in this article, the city may refuse to issue a license or grant renewal of the license or suspend or revoke the license for any of the following reasons:

- (a) A material violation of any provision of this article.
- (b) Any conviction of a disqualifying felony by the licensee or any stakeholder of the licensee.
- (c) Failure of the licensee to obtain or maintain an applicable license from the state.
- (d) Sufficient evidence that the Applicant(s) lack, or have 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 MRTMA and the State of Michigan.

DIVISION 3. – REGULATIONS

Sec. 14-615. - License requirements.

A medical marihuana provisioning center, marihuana retailer, medical marihuana grower or marihuana grower license issued under this article shall be subject to the following conditions:

- (a) Compliance with the requirements of this article, other applicable city ordinances and codes, and applicable state laws;

(b) Signs displayed on the exterior and interior of any medical marihuana provisioning center, marihuana retailer, medical marihuana grower or marihuana grower shall conform to city ordinance requirements. No signs shall contain the words “marihuana,” “marijuana,” “cannabis,” “weed,” “ganja,” “dank,” “smoke,” “mary jane,” or “blunt” or similar marihuana related euphemisms nor shall any sign contain marihuana leaves.

(c) Operation of a medical marihuana provisioning center, marihuana retailer, medical marihuana grower or marihuana grower shall not, either directly or indirectly, cause or create any noise, dust, vibration, glare, fumes, or odors constituting a nuisance and also detectable to human senses beyond the boundaries of the property on which the facility is operated.

(d) A license that is issued under this article shall be posted at all times inside the medical marihuana provisioning center, marihuana retailer, medical marihuana grower or marihuana grower in a conspicuous location near the entrance.

(e) The licensees shall be 700 feet apart as measured property line to property line between the marihuana facilities.

(f) Consumption of marihuana shall be prohibited at the facility, and a sign shall be posted on the premises indicating that consumption is prohibited on the premises.

(g) The facility shall not allow the sale, consumption, or use of alcohol or tobacco products on the premises.

(h) The facility shall be free from infestation by insects, rodents, birds, or vermin of any kind.

Sec. 14-616. - Sales prohibited during certain hours.

No licensee, employee, or agent of a licensee shall sell or purchase by sale, barter, exchange, or otherwise, any item under a license issued pursuant to this chapter from or to any person or entity between the hours of 10:00 p.m. and 7:00 a.m. of the following day.

Sec. 14-617. - Compliance with state laws

Each licensee and employee must comply with the terms of state laws, including but not limited to, the MMFLA and the MRTMA, any amendments thereto, as well as any rules promulgated pursuant to the MMFLA or the MRTMA. Nothing in this Ordinance 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 Medical Marihuana Act, Initiated Law 1 of 2008, MCL 333.26421 et seq.; the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq.; the Marihuana Tracking Act, MCL 333.27901 et seq.; and all other applicable rules promulgated by the State of Michigan. This ordinance permits authorizations for activity based on the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq. Nothing in this Ordinance shall be construed as allowing persons to engage in conduct that endangers others or causes a public nuisance, or to allow marihuana uses and activities not in strict accordance with the express authorizations of the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq.

Sec. 14-618. - Compliance with zoning ordinances

Every licensee and employee shall comply with all requirements for business location at which work, pursuant to any license issued under this article, occurs as provided in any applicable zoning ordinances of the city.

Sec. 14-619. - Minors prohibited

No person shall permit any person under the age of 21 years to come upon, or remain on the premises of any business licensed herein, except as provided by the MMFLA.

Sec. 14-620. – Penalty

Any person who violates this article shall be responsible for a municipal civil infraction and punished by a fine of not more than five hundred dollars (\$500.00).

Sec. 14-621. – Repeal

Any and all ordinances and resolutions heretofore adopted inconsistent herewith are hereby repealed to the extent that the provisions thereof are inconsistent with the provisions hereof.

Sec. 14-622. – Severability

The provisions of this article are hereby declared to be severable and if any part is declared invalid for any reason by a court of competent jurisdiction it shall not affect the remainder of the article which shall continue in full force and effect.

Sec. 14-623 – Effective Date.

This Ordinance shall take effect on February 24, 2020.