

City of Niles, Michigan  
Ordinance No.488

An Ordinance to authorize “Medical Marihuana Facilities” in the City of Niles, Michigan and to revoke the provisions of Ordinance No. 481 and Ordinance No. 483

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**THE CITY OF NILES ORDAINS:**

**Section 1: Purpose, Intent, Relationship to Other Laws and City Liability and Indemnification**

- A. Purpose. The purpose of this Ordinance is to implement the provisions of the Michigan Medical Marihuana Act, (MCL 333.26421 et seq.), the Medical Marihuana Facilities Licensing Act (MCL 333.27101 et seq.) and the Marihuana Tracking Act (MCL 333.27901 et seq.), referred to herein as the “Acts”, so as to protect the public health, safety, and welfare of the residents and patients of the City by setting forth the manner in which medical marihuana facilities can be operated in the City. Further, the purpose of this Ordinance is to:
1. Provide for a means of cultivation, processing, and distribution of medical marihuana to patients who qualify to obtain, possess, and use marihuana for medical purposes under the Acts;

2. Protect public health and safety through reasonable limitations on medical marihuana facility operations as they relate to noise, air and water quality, neighborhood and patient safety, security for the facility and its personnel, and other health and safety concerns;
  3. Protect residential neighborhoods by limiting the location and the concentration of types of medical marihuana facilities to specific areas of the City;
  4. Impose fees to defray and recover the cost to the City of the administrative and enforcement costs associated with medical marihuana facilities;
  5. Coordinate with laws and regulations that may be enacted by the State addressing medical marihuana; and
  6. To restrict the issuance of medical marihuana facility licenses only to individuals and entities that have demonstrated an intent and ability to comply with this Ordinance.
- B. Legislative Intent. This Ordinance authorizes the establishment of medical marihuana facilities within the City of Niles consistent with the Acts:
1. Medical marihuana cultivation and processing can have an impact on health, safety, and community resources, and this Ordinance is intended to permit medical marihuana cultivation and processing where it will have a minimal impact.
  2. The regulations for medical marihuana facilities are not adequate at the State level to address the impacts on the City of the commercialization of medical marihuana, making it appropriate for local regulation of the impact of medical marihuana facilities on communities.
  3. Nothing in this Ordinance is intended to promote or condone the distribution, or possession of marihuana in violation of any applicable State law.
  4. This Ordinance is to be construed to protect the public over medical marihuana facility interests. Operation of a medical marihuana facility is a revocable privilege and not a right in the City. There is no property right for an individual or facility to engage or obtain a license to engage in medical marihuana as a commercial business in the City.
  5. Because medical marihuana is a heavily regulated industry in the City, all licensees are assumed to be fully aware of the law; the City shall not therefore be required to issue warnings before issuing citations for violations of this Ordinance.
- C. Relationship to Federal Law. As of the effective date of this ordinance, marihuana is classified as a Schedule 1 controlled substance under Federal law which makes it unlawful to manufacture, distribute, cultivate, produce, possess dispense or transport marihuana. Nothing in this ordinance is intended to grant immunity from any criminal prosecution under Federal law.

- D. Relationship to State Law. As of the effective date of this Ordinance, as amended, and except as otherwise provided by the Acts; and this Ordinance, a City of Niles licensee and its employees and agents who are operating within the scope of a valid State-issued operating license are not subject to criminal or civil prosecution under City ordinances regulating medical marihuana.

Nothing in this ordinance is intended to grant immunity from criminal or civil prosecution, penalty or sanction for the cultivation, manufacture, possession, use, sale, distribution or transport of marihuana in any form, that is not in strict compliance with the Acts, all applicable rules promulgated by the State of Michigan regarding medical marihuana and all local laws, ordinances, rules and policies. Strict compliance with any applicable State law or regulation shall be deemed a requirement for the issuance or renewal of any license issued under this Ordinance, and noncompliance with any applicable State or local law or regulation shall be grounds for revocation or nonrenewal of any license issued under the terms of this Ordinance.

E. City Liability and Indemnification

1. By accepting a license issued pursuant to this Ordinance, the licensee waives and releases the City, its officers, elected officials, and employees from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of medical marihuana facility owners, operators, employees, clients or customers for a violation of local, State or federal laws, rules or regulations.
2. By accepting a license issued pursuant to this Ordinance, all licensees, agree to indemnify, defend and hold harmless the City, its officers, elected officials, employees, and insurers, against all liability, claims or demands arising on account of bodily injury, sickness, disease, death, property loss or damage or any other loss of any kind, including, but not limited to, any claim of diminution of property value by a property owner whose property is located in proximity to a licensed operating facility, arising out of, claimed to have arisen out of, or in any manner connected with the operation of a medical marihuana facility or use of a product cultivated, processed, distributed or sold that is subject to the license, or any claim based on an alleged injury to business or property by reason of a claimed violation of the federal Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §1964(c).
3. By accepting a license issued pursuant to the Ordinance, a licensee agrees to indemnify, defend and hold harmless, the City, its officers, elected officials, employees, and insurers, against all liability, claims, penalties, or demands arising on account any alleged violation of the federal Controlled Substances Act, 21.U.S.C. §801 et. Seq. or Article 7 of the Michigan Public Health Code, MCL 33.7101 et seq.

## Section 2 Definitions

Through this ordinance, the City of Niles adopts all definitions which can be found within the Acts.

### Section 3 Licensing of Medical Marihuana Facilities

Number of Permitted Facilities: The maximum number of each type of medical marihuana facility permitted in the City is as follows:

Type of Facility	Number
Grower	No limit
Processor	No limit
Provisioning Center	Four (4)
Safety Compliance Facility	No limit
Secure Transporter	No limit

- A. Provided that while there is no limit on the number of growers and or processors, no more than four (4) structures in the City of Niles Industrial Park may house grow, processing or provisioning facilities or any combination thereof, at any given time.
- B. No medical marihuana facility shall be eligible to be issued a license unless at the time of application for such license, the location of the proposed facility complies with the zoning and separation distances from other uses as set forth in the City Zoning Ordinance as required for the specific type of medical marihuana facility for which licensure is being sought.
- C. A licensee shall not operate a medical marihuana facility at any place in the City other than the address provided in the application on file with the City Clerk.

#### Section 3.A License and Annual Fees Required

- A. No person shall establish or operate a medical marihuana facility in the City without first having obtained from the City and the State a license for each such facility to be operated. License certificates shall be kept current and publically displayed within the facility. Failure to maintain or display a current license certificate shall be a violation of this Ordinance.
- B. An annual, nonrefundable licensing fee to defray the administrative and enforcement costs associated with medical marihuana facilities located in the City of not more than \$5,000 per license as set by resolution adopted by the City Council.
- C. The annual, nonrefundable application/reapplication fee, as determined by Niles City Council Resolution from time to time, per license required under this Section shall be due and payable with the application for a license and upon the application for renewal of any such license under this Ordinance.
- D. The annual, nonrefundable inspection fee, as determined by Niles City Council Resolution from time to time, per licensed facility required under this Section shall be due and payable with the application for annual inspection and upon the application for renewal of any such license under this Ordinance.
- E. The fees requirement set forth herein shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other federal, State, or City

ordinance, including, by way of example any applicable zoning or building permits.

- F. The issuance of any license pursuant to this Ordinance does not create an exception, defense or immunity to any person in regard to any potential criminal liability the person may have for the production, distribution, or possession of marihuana under federal law.
- G. A separate license shall be required for each facility type (formerly activity) or premise from which a medical marihuana facility is operated.

### **Section 3.B Application Requirements and Local Review**

- A. Upon enactment of this Ordinance, the City of Niles will only accept those applications for licenses from applicants with notification from the State of Approved for Prequalification with the State of Michigan, Licensing and Regulatory Affairs, Bureau of Medical Marihuana License for the type of medical marihuana facility specifically requested in the application for a City of Niles Medical Marihuana Facility license.

A person seeking a license pursuant to the Acts and the provisions of this Ordinance shall submit an application to the City on forms provided by the City. At the time of application, each applicant shall pay a nonrefundable application fee to defray the costs incurred by the City for background investigations and inspection of the proposed premises, as well as any other costs associated with the processing of the application. In addition, the applicant shall present a suitable form of identification.

- B. The City Administrator or their designee shall, consistent with the requirements of this Ordinance, evaluate and nominate for approval by the City Council, those applicants which the City Administrator or their designee determines should be awarded a provisional license. In determining the provisional licensees, the City Administrator or their designee shall consider the following criteria:

1. Compliance with application requirements;
2. Compliance with the requirements of this Ordinance;
3. Capitalization and means to operate the proposed Facility;
4. Business history and experience;
5. Regulatory compliance/legal history;
6. Strength of business plan;
7. Integrity, moral character, and cooperation level with the City;
8. Financial benefit to the City; and
9. Any other consideration relevant to the public health, safety, or welfare.
10. Approved for Prequalification with the State of Michigan to operate a Medical

Marihuana Facility as defined in the Acts.

- C. The applicant shall also provide a complete copy of their application for State approval. Including, but not limited to:
  - 1. Proof of ownership or authorization to use the property for a medical marihuana
    - a. A notarized Statement from the owner of such property authorizing the use of the property for a medical marihuana facility, if the applicant is not the owner of the proposed licensed premises;
    - b. A copy of any deed reflecting the applicant's ownership of, or lease reflecting the right of the applicant to possess, or an option reflecting the applicant's right to purchase or lease, the proposed licensed premises;
- D. Permits/local licenses are non-transferable and non-assignable and shall be specific to the State approved applicant and licensee and the location authorized.
- E. Consistent with the Acts, the information provided to the City Administrator or their designee pursuant to this Section, relative to licensure, is exempt from disclosure.
- F. If a deficiency is noted in an application, the applicant shall have five (5) business days to correct the deficiency after notification by the City Clerk.
- G. Upon an applicant's completion of the City's application and furnishing of all required information and documentation and fees, the City Clerk shall accept the application.
- H. Upon receipt of a completed application, the application will be distributed to all affected service areas and departments of the City to determine whether the application is in full compliance with all applicable laws, rules and regulations.
- I. Upon receipt of the City Administrator's Nominees, the City Council shall conduct a vote on each Nominee, and any Nominee approved by a simple majority of the City Council shall be issued a Permit.

### **Section 3.C Denial of Application & Due Process**

- A. The City shall reject any application that does not meet the requirements of the Acts or this Ordinance, or any pertinent provision of any State of Michigan or City of Niles laws, rules or regulations.
- B. In accordance with the Acts, an applicant may be ineligible to receive a license under this Ordinance if any of the following circumstances:
  - 1. The applicant has knowingly submitted an application for a license that contains false, misleading or fraudulent information, or who has intentionally omitted pertinent information for the application for a license.
  - 2. The applicant fails to meet other criteria established by the Acts or other pertinent law and/or obtain a State license.

3. The applicant does not submit proof of Approved for Prequalification with the State of Michigan.

C. Denial of Application; Due Process

1. Those applicants denied a license based on qualifications, may appeal the decision. The City Council shall hear and decide questions or requests for due process that arise after City staff have reviewed and provided a decision that the applicant wishes to further appeal.
2. The applicant must submit a narrative Request for Due Process that includes detailed information and all supporting documentation for any/all points they wish to have City Council consider.
  - a. A due process review shall be conducted at a public meeting of the Council and a concurring vote of a majority of the members of the full City Council is necessary to reverse an order, requirement, decision or determination of an administrative official in the interpretation of this Ordinance.
  - b. The applicant must be present at the designated Council meeting or forfeits their right to due process.
  - c. The decision of the City Council is final.

**Section 3.D Previous Issuance of Provisional Approval Certificate**

- A. A provisional medical marihuana facility approval certificate means only that the applicant has submitted a valid application on or before November 1, 2018 for a medical marihuana facility license, and has been preliminarily approved by the City Council to receive the City of Niles provisional license approval while seeking the appropriate medical marihuana facility license from the State Board; noting however, that the applicant shall not locate or operate a medical marihuana facility in the City of Niles without obtaining a license approved by the State.
  1. A provisional certificate issued by the City on or before December 31, 2018 will expire and be void after one (1) year, if such State approval is not diligently pursued to completion by the applicant or on the date that State approval is denied to the applicant, whichever first occurs.
  2. The conditions of an approval of a medical marihuana facility license shall include, at a minimum, operation of the business in compliance with all of the plans and information made part of their original application to the City of Niles and the Board.
- B. An applicant holding an unexpired provisional certificate issued pursuant to this Ordinance and for which the Board has granted the appropriate medical marihuana facility State operating license shall provide proof of same to the City Clerk.

**Section 3.E Issuance of City Medical Marihuana Facility Operating License**

- A. Inspection. An occupancy inspection of the proposed medical marihuana facility by the City shall be required prior to issuance of the City operating license in accordance with the

International Building Code. Such inspection shall occur after the premises are ready for operation, but prior to the stocking of the business with any medical marihuana, and prior to the opening of the business to any patients or the public. The inspection is to verify that the business facilities are constructed and can be operated in accordance with the application submitted and the applicable requirements of the code and any other applicable law, rule, or regulation.

- B. After verification that the business facilities are constructed and can be operated in accordance with the application submitted and the applicable requirements of the code and any other applicable law, rule, or regulation, the City Clerk shall issue a City medical marihuana facility license whose term shall run concurrent with the State license for the facility.
- C. Maintaining a valid medical marihuana facility license issued by the State is a condition for the issuance and maintenance of the City medical marihuana facility operating license issued under this Ordinance and the continued operation of any medical marihuana facility.
- D. The City of Niles will authorize approved medical marihuana facility license(s) to entities in the following order and on the condition that a license and facility location are available in the City per the City's Zoning Ordinance:
  - 1. On or after December 15, 2017 the proposed medical marihuana facility has completed and received approvals as outlined in this Ordinance as verified by the City Clerk or their designee; **and**
  - 2. Paid all licensing fees due to the City of Niles; **and**
  - 3. The entity(ies) holds an approved and fully authorized State of Michigan; Department of Licensing and Regulatory Affairs approved Medical Marihuana Facility License to the City Clerk; **and**
  - 4. An approved certificate of occupancy from the City of Niles Fire Chief and/or Building Official.
  - 5. All medical marihuana facilities shall obtain a State license and all other required permits of licenses related to the operation of the medical marihuana facility, including, without limitation, any development approvals or building permits required by any applicable code or ordinance prior to opening to the public; including but not limited to an approved Special Land Use (SLU) Permit from the City of Niles Planning Commission as well any approved Building Permits (as required for any construction/deconstruction) by the City of Niles Building Official as appropriate.
  - 6. Proof of Insurance. A licensee shall at all time maintain full force and effect for duration of the license, workers compensation as required by State law, and general liability insurance with minimum limits of \$1,000,000 per occurrence and a \$2,000,000 aggregate limit issued from a company licensed to do business in



Michigan having an AM Best rating of at least A-.

7. The policy shall name the City of Niles and its officials and employees as additional insureds to the limits required by this Section. A licensee or its insurance broker shall notify the City of any cancellation or reduction in coverage within seven (7) days of receipt of insurer's notification to that effect. The licensee, permittee, or lessee shall forthwith obtain and submit proof of substitute insurance to the City Clerk within five (5) business days in the event of expiration or cancellation of coverage.
  - i. An acknowledgement and consent that the City, including the Niles Police Department, may conduct a background investigation, including a criminal history check, and that the City may be entitled to full and complete disclosure of all financial records of the medical marihuana entity, which may include any/all records of deposit, withdrawals, balances and loans upon request; and
8. Any additional information that the City Clerk, Police Chief, Fire Chief, Public Works Director, Zoning Administrator, Building Official, Utilities Director, City Administrator and/or City Attorney or their designees reasonably determines to be necessary in connection with the investigation and review of the application.

### **Section 3.F License Forfeiture**

In the event that a medical marihuana facility does not commence operations within one (1) year of issuance of a City operating license, the license shall be deemed forfeited; the business may not commence operations, unless extended by a majority vote of the full City Council.

### **Section 3.G License Renewal**

- A. A valid medical marihuana facility license may be renewed on an annual basis by a renewal application upon a form provided by the City and payment of an annual fees.
  1. An application to renew a marihuana facility license shall be filed at least ninety (90) days prior to the date of its expiration.
  2. In the event that the renewal application is not submitted in accordance with this Section, the City will assess a late fee as fixed by City Council for each day that the renewal application is submitted late.
  3. In the event that an application is not received by the date of expiration, an additional late fee shall be assigned by the City Council not exceed \$2,000, in addition to the daily late fees outlined herein and annual renewal fee.
  4. In the event that an application is not received by the date of expiration, the license will be considered null and void and all operations must immediately cease by Order of the Police Chief.
  5. A notice of local revocation will be issued to the State of Michigan and the licensee will have to resubmit all documentation, fees and receive all approvals as a new entity should they wish to reopen their business.

6. Prior to the issuance of a renewed medical marihuana facility license by the City, the premises shall be inspected to assure that it and its systems are in compliance with the requirements of this Ordinance. The annual, nonrefundable inspection fee, as assigned by City Council, per licensed facility required under this Section shall be due and payable with the application for annual inspection and upon the application for renewal of any such license under this Ordinance.

### **Section 3.H Transfer, Sale or Purchase of License**

- A. A medical marihuana facility license is valid only for the owner named thereon, the type of business disclosed on the application for the license, and the location for which the license is issued. The licensees of a medical marihuana facility license are only those persons disclosed in the application or subsequently disclosed to the City in accordance with this Ordinance.
- B. Each operating license is exclusive to the licensee and a licensee or any other person must submit an application for licensure with the City Clerk before a license is transferred, sold, or purchased.
- C. After January 1, 2018 and in compliance with any/all rules issued by the Board regarding the sale, transfer or purchase of existing licenses; any entity that holds a Department issued license may transfer or sell their license to a qualifying applicant.
  1. Any entity purchasing or receiving a transferred license must submit an application and all associated documentation and all fees.
  2. The applicant who is receiving the transfer or purchasing the license must have submitted all new application, license and inspection fees and received all local and State approvals, including Approved for Prequalification with the State of Michigan on all applications and associated documentation as well as all inspections as outlined in this Ordinance and the Acts prior to beginning or taking over operations.
- D. The attempted transfer, sale, or other conveyance of an interest in a license without prior Board or City approval is grounds for suspension or revocation of the license or for other sanction considered appropriate by the City.

### **Section 3.I License as Revocable Privilege**

- A. An operating license granted by this Ordinance is a revocable privilege granted by the City and is not a property right. Granting a license does not create or vest any right, title, franchise, or other property interest.
- B. Each license is exclusive to the licensee, and a licensee or any other person must apply for and receive the City's approval before a license is transferred, sold, or purchased.
- C. A licensee or any other person shall not lease, pledge, or borrow or loan money against a license.

- D. Any effort to circumvent the protocol listed in this Ordinance and/or the City of Niles Zoning Ordinance will result in the immediate denial of application or complete revocation of the City of Niles issued Medical Marijuana Facilities License.

### **Section 3.J Nonrenewal, Suspension or Revocation of License.**

- A. The City may, after notice, suspend, revoke or refuse to renew a license for any of the following reasons:
  - 1. The applicant or licensee, or his or her agent, manager or employee, has violated, does not meet, or has failed to comply with, any of the terms, requirements, conditions or provisions of this Ordinance or with any applicable State or local law or regulation;
  - 2. The applicant or licensee, or his or her agent, manager or employee, has failed to comply with any special terms or conditions of its license pursuant to an order of the State or local licensing authority, including those terms and conditions that were established at the time of issuance of the license and those imposed as a result of any disciplinary proceedings held subsequent to the date of issuance of the license; or
  - 3. The medical marijuana facility has been operated in a manner that adversely affects the public health, safety or welfare.
  - 4. The licensee has not submitted all necessary documentation and/or fees to renew their license.
- B. Evidence to support a finding under this Section may include, without limitation, a continuing pattern of conduct, a continuing pattern of drug-related criminal conduct within the premises or property occupied by the medical marijuana facility a continuing pattern of criminal conduct directly related to or arising from the operation of the medical marijuana facility, or an ongoing nuisance condition emanating from or caused by the medical marijuana facility or any other concerns raised by City staff and/or other local, State or Federal officials. Criminal conduct shall be limited to the violation of a State law or regulation or City ordinance.
- C. Any decision of nonrenewal, suspension or revocation has the right to due process and may be eligible for appeal to the Niles City Council.

### **Section 4 General Requirements & Restrictions**

All Facilities operating within the City shall be subject to the following general requirements and restrictions. To the extent there is a conflict between these requirements and restrictions and the Act, the Act shall prevail.

- A. Exterior signage. Facilities may not use exterior signage or displays with neon, flashing lights, or similarly noxious or obtrusive lighting or effects. Facilities may not use exterior signage or displays that contain an image of a marijuana leaf or other commonly recognized symbol for marijuana or which utilize any of the following words: marijuana, marihuana, weed, cannabis, blunt, doobie, joint, hooch, hash, or other similar slang term

for marijuana or marijuana-related products.

- B. Hours of Operation. Provisioning Centers may only operate between the hours of seven o'clock a.m. (0700 hours) and ten o'clock p.m. (2200 hours)
- C. Indoor Operations/No Drive-Thru Service. All business operations of a Facility must occur indoors. Facilities may not provide drive-thru service.
- D. Odors. Facilities may not emit noxious odors or fumes, in accordance with the City's Zoning Ordinance. Visibility of activities; control of emissions
- E. Artificial Lighting. Any artificial lighting must not be visible from neighboring properties, streets, or rights of way.
- F. Security. Facilities must have:
  - 1. A monitored alarm system (24 hours per day and 7 days a week);
  - 2. A safe for all cash, cash equivalents, and marihuana stored in the Facility overnight;
  - 3. Monitored security cameras covering, at a minimum, all parking areas, entrances and exits, points of sale, and all areas where marihuana is stored or handled. All security recordings must be maintained for a minimum of forty-five (45) days and provided to law enforcement upon request.
  - 4. All Facilities must provide to the City an IP address which provides the City with real-time access to all security camera feeds at the Facility.
- G. Display of Permit. The Permit issued by the City and the License issued by the State of Michigan shall be prominently displayed within the facility in a location where it can be easily viewed by the public.
- H. Systems. All Facilities must have electrical, fire safety, plumbing, filtration and waste disposal systems, which are appropriate and consistent with best industry practices for the business being conducted.

#### **Section 4.A Prohibited Acts**

- A. No person under the age of 18 shall be permitted to enter a Facility.
- B. No marihuana may be smoked, used, or consumed at any Facility.
- C. It shall be unlawful for any licensee to permit the consumption of alcohol beverages on the licensed premises.
- D. No Facility may operate under a temporary certificate of occupancy. Facilities must be in full compliance with all applicable legal requirements in order to operate.
- E. It shall be unlawful for any licensee holding a provisioning center license, or for any agent, manager, or employee thereof to:

1. Sell, give, dispense or otherwise distribute medical marihuana or medical marihuana paraphernalia from any outdoor location;
2. Sell, give, dispense or otherwise distribute to any patient or primary caregiver who is not a licensee more usable form of medical marihuana (including the useable medical marihuana equivalent of medical marihuana-infused products) within any seven (7) day period of time than they are allowed by the MMMA to possess.
3. It shall be unlawful for retail medical marihuana establishments to distribute medical marihuana or medical marihuana-infused products to a consumer free of charge.

#### **Section 4.B Reports of Crime**

Reports of all criminal activities or attempts of violation of any law at the medical marihuana facility or related thereto must be reported to City of Niles Police Department within twelve hours of occurrence, or its discovery, whichever is sooner.

#### **Section 4.C Inspection of Licensed Premises**

- A. Application for a medical marihuana facility license or operation of a medical marihuana facility, or leasing property to a medical marihuana facility, constitutes consent by the applicant, and all owners, managers, and employees of the business, and the owner of the property to permit the Police Chief, or their designee, to conduct routine examinations and inspections of the medical marihuana facility to ensure compliance with this Ordinance or any other applicable law, rule or regulation.
- B. During all business hours and other times when the premises are occupied by the licensee or an employee or agent of the licensee, all licensed premises shall be subject to examination and inspection by City of Niles Police Department and all other City departments for the purpose of investigating and determining compliance with the provisions of this Ordinance and any other applicable State and local laws or regulations.
- C. For the purposes of this Ordinance, examinations and inspections of medical marihuana facilities and recordings from security cameras in such businesses are part of the routine policy of enforcement of this Ordinance for the purpose of protecting the public safety, individuals operating and using the services of the medical marihuana facilities, and the adjoin properties and neighborhoods.
- D. A licensee, or an employee or agent of the licensee, shall not threaten, hinder or obstruct a law enforcement officer or a City inspector or investigator in the course of making an examination or inspection of the licensed premises and shall not refuse, fail, or neglect to cooperate with a law enforcement officer, inspector, or investigator in the performance of his or her duties to enforce this Ordinance, the Acts, or applicable State administrative rules.

#### **Section 4.D Other Laws Remain Applicable**

To the extent the State adopts in the future any additional or stricter law or regulation governing the sale or distribution of medical marihuana, the additional or stricter regulation shall control the establishment or operation of any medical marihuana facility in the City. Compliance with any applicable State law or regulation shall be deemed an additional requirement for issuance or denial

of any license, and noncompliance with any applicable State law or regulation shall be grounds for the revocation or suspension of any license.

#### **Section 4.E Grant of Administrative Authority**

The City Clerk is granted the power and duty through its official designation to fully and effectively implement and administer the license application process and issuance of Provisional Approval Certificates and Operating Licenses issued by the City under this Ordinance. The City Clerk, after consultation with other City departments, may promulgate such rules as necessary to implement and administer this Ordinance.

#### **Section 4.F Violations and Penalties**

- A.** In addition to the possible denial, suspension, revocation or nonrenewal of a license under the provisions of this Ordinance, any person, including, but not limited to, any licensee, manager or employee of a medical marijuana commercial entity, or any customer of such business, who violates any of the provisions of this Ordinance, shall be guilty of a misdemeanor punishable in accordance with this Ordinance unless a different penalty is provided herein.
- B.** If a Facility is operated in violation of the Act or any applicable ordinance, or if the Licensee is found to have submitted false or misleading information in its Permit application, the City may revoke the Permit for such Facility to operate within City. The City retains the right to alter the number and type of Facilities authorized hereunder at any time. Any Permit granted hereunder is a revocable privilege granted by the City and is not a property or other legal right.
- C.** With respect to any Facility that is in violation of any requirement or restriction set forth in this Ordinance, the Licensee of a Facility, all persons identified pursuant to the Acts, and any on-site manager shall be subject to the following penalties:
  - 1. Any violation shall be a misdemeanor and may be punished by a fine of not more than \$1,500 and/or imprisonment not exceeding 90 days and the violator(s) shall pay all court costs and expenses.
  - 2. The penalties set forth herein are non-exclusive and cumulative, and nothing herein shall be deemed to prevent City from enforcing any other applicable ordinance.
  - 3. In addition to the remedies provided herein, the City may file for injunctive relief to abate any violation hereof.

#### **Section 5: Repealer**

All former ordinances or parts of ordinances conflicting or inconsistent with the provisions of this ordinance, including Ordinance No. 481 and Ordinance No. 482 are repealed as of the effective date of this ordinance, provided the rights, benefits, duties and obligations imposed by earlier ordinances on individuals and entities proceeding under those earlier ordinances shall be continued in force and effect.

## Section 6: Severability

If any Section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, said portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity and enforceability of the remaining portions of this ordinance.

## Section 7: Effective Date

This ordinance shall take effect twenty (20) days after the final passage thereof.

**Publication:** This Ordinance or a summary thereof shall be published in the *Niles Daily Star*, a newspaper of general circulation in the City of Niles, within 15 days of the date of enactment.

**Repeal:** All ordinances and resolutions and parts thereof, insofar as the same conflict with the provisions of this Ordinance, are hereby repealed.

1 <sup>st</sup> Reading/Introduction:	January 14, 2019
2 <sup>nd</sup> Reading/Enactment:	January 21, 2019
Published:	January 28, 2019
Effective Date:	February 10, 2019

ORDINANCE ADOPTED AND SIGNED January 21, 2019.

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Nick J. Shelton  
Mayor

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Linda Casperson  
City Clerk

### ATTEST

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Council of the City of Niles of Berrien County of the State of Michigan, said meeting was conducted January 21, 2019 and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

I hereby certify that the following Council Members were present at said meeting: Gretchen Bertschy, Georgia Boggs, John DiCostanzo, Charlie McAfee, Jessica Nelson, Travis Timm, Daniel VandenHeede, William Weimer and Mayor Nick Shelton and the following Council Members were absent: None

I hereby certify that Council Member Jessica Nelson moved for adoption of this Ordinance, and that said motion was supported by Council Member Charlie McAfee.

I further certify that the vote for adoption of said Ordinance was as follows:

YEAS: Gretchen Bertschy, Georgia Boggs, John DiCostanzo, Charlie McAfee, Jessica Nelson, Travis Timm, Daniel VandenHeede, and William Weimer

NAYS: None

I further certify that this Ordinance has been recorded in the Ordinance book and that such recording has been authenticated by the Mayor and City Clerk.

I further certify that a synopsis of this Ordinance was published in *The Niles Daily Star*, a newspaper of general circulation in the City of Niles, on January 28, 2019.

Dated: February 4, 2019

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Linda Casperson  
City Clerk