

**CITY OF DAVISON
ORDINANCE NO. 2022-03**

**AN ORDINANCE TO AMEND CHAPTER 809 – RECREATIONAL MARIHUANA
ESTABLISHMENTS**

The City of Davison ordains:

CHAPTER 809 – RECREATIONAL MARIHUANA ESTABLISHMENTS is hereby repealed in its entirety and replaced by the following:

DIVISION I: GENERAL PROVISIONS

809.01: Purpose and Intent.

SECTION 1: TITLE

The purpose of this Ordinance is to regulate recreational Marihuana Establishments, which include Marihuana Growers, Marihuana Safety Compliance facilities, Marihuana Processers, Marihuana Microbusinesses, Marihuana Retailers, Marihuana Secure Transporters, or any other type of adult-use or recreational Marihuana-related business licensed by the State of Michigan. 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 to the extent permitted by law and also to provide a method to defray administrative costs incurred by such regulation and enforcement.

Nothing in this ordinance is intended to grant immunity from any criminal prosecution under Federal law. Nothing in this Ordinance is intended to promote or condone the production, distribution, or possession of Marihuana in violation of any applicable law and 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 all applicable laws and rules promulgated by the State of Michigan and the City of Davison regarding medical Marihuana. Nothing in this Ordinance is intended to provide any approvals, permits or licenses for any other type of Establishments other than those specifically designated as permitted by Ordinance.

By accepting a permit issued pursuant to this Chapter, the holder waives and releases the City, its officers and employees from any liability for injuries, damages or liabilities of any kind that result from the arrest or prosecution of Marihuana Establishment owners, operators, employees, clients or customers for a violation of state or federal laws, rules or regulations. Further, the holder agrees to indemnify, defend and hold harmless the City, its officers, elected officials, employees and insurers against all liability, claims or demands, including, but not limited to, arising as a result of any claim of diminution of property value by a property owner whose property is located in proximity to a permitted Marihuana Establishment, arising out of, claimed to have arisen out of or in any manner connected with the operation of a Marihuana Establishment.

To the extent the State adopts in the future any additional or stricter law or regulation governing the sale or distribution of Marihuana, the additional or stricter regulation shall control the establishment or operation of any Marihuana Establishment in the City. Compliance with any applicable state law or regulation shall be deemed an additional requirement for issuance or denial of any Permit under this Article, and noncompliance with any applicable state law or regulation shall be grounds for revocation or suspension of any Permit issued hereunder.

809.02: Definitions.

Unless otherwise specifically defined in this ordinance, any terms in this ordinance that are defined or described in any of the Acts shall have the definitions or descriptions as set forth in those Acts. "Acts" means any combination thereof of the following Michigan State laws:

- (1) "Michigan Medical Marihuana Act" or "MMMA" means 2008 IL1, MCL § 333.26421 et seq. as, may be amended.
- (2) "Michigan Medical Marihuana Facilities Licensing Act" or "MMFLA" means Public Act 281 of 2016, MCL § 333.27101 et seq., as may be amended
- (3) "Michigan Marihuana Tracking Act" means Public Act 282 of 2016, MC § 333.27901 et seq., as may be amended.
- (4) "Michigan Regulation and Taxation of Marihuana Act" or "MRTMA" means 2018 IL1, MCL § 333.27951 et seq., as may be amended

In the event of a conflict between the definition of any term under the Michigan Regulation and Taxation of Marihuana Act and any other Act referenced in this Chapter, for purposes of this ordinance the definition of the term under the Michigan Regulation and Taxation of Marihuana Act, and any amendments thereto, shall be applied.

809.03: Authorized Establishments.

(a) Authorized Establishments

The following types of Marihuana Establishments may be established and operated by a licensee in the City, subject to compliance with the MRTMA, the Rules promulgated thereunder and this ordinance:

Marihuana Retailer – Not more than one (1) Retailer shall be established, operated or permitted in the City.

(b) Unauthorized Establishments

No other Marihuana Establishment, to include Marihuana Growers, Marihuana Safety Compliance Facilities, Marihuana Processors, Marihuana Microbusinesses, Marihuana Retailers, Marihuana Secure Transporters, or any other type of adult-use or recreational Marihuana-related business shall be permitted. In addition, no Marihuana event organizer license or temporary Marihuana event license shall be issued in the City.

No Marihuana Establishment shall be eligible to be issued a Permit unless the location of the proposed Establishment complies with all zoning requirements for the Marihuana Establishment as set forth in the City Zoning Ordinance and all other applicable building, construction, and other similar codes at the time of issuance. No Applicant or Permit holder may operate more than one Marihuana Establishment or more than one Medical Marihuana Facility in the City; however, a Permit holder may operate a Marihuana Establishment and a Medical Marihuana Facility.

DIVISION II: LICENSING.

809.04: Permit and Annual Fee Required.

- (a) No person shall establish or operate a Marihuana Establishment in the City without first having obtained a City Permit and State operating license for the Marihuana Establishment. License and Permit certificates shall be kept current and publically and prominently displayed within the Establishment. The Establishment shall be operated only so long as both the City Permit and state operating license remain in effect. Failure to maintain or display a current license and Permit shall be a violation of this ordinance.
- (b) An annual non-refundable fee to defray the administrative and enforcement costs associated with Marihuana facilities will be set by resolution and adopted by the City Council. The fee will not exceed the state maximum. The Permit fee requirement set forth in this ordinance 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 or approvals.
- (c) A separate Permit shall be required for each premises from which a Marihuana Establishment is operated. A Marihuana Establishment's Permit is valid only for the owner named thereon, the type of business disclosed on the application for the Permit, and the location for which the Permit is issued. No transfer, sale, or other conveyance of an interest in a Permit is allowed, unless the transfer, sale or other conveyance has been approved by the State and prior written approval is obtained from the City. The transferee must be in strict compliance with State laws and regulations governing such transfers, per MCL § 333.27406 and the provisions of this Ordinance.
- (d) The permit fee requirement set forth in this Chapter shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any state regulatory agency or City ordinance, including, but not limited to, any applicable fees for site plan review, zoning review, inspections or building permits.

809.05: Permit Application and Approval.

- (a) A person seeking a City Permit to operate a medical Marihuana Establishment pursuant to the provisions of this Ordinance shall submit an application to the City Clerk on forms provided by the City. At the time of Permit application submission,

each applicant shall pay the nonrefundable application fee as established by Cityresolution. The City shall accept only one Application, per Applicant, per location. The deadline for submissions for applications is _____, 2022.

- (b) Applications will only be accepted from those applicants that have been prequalified by the State of Michigan for a Marihuana Establishment license. Proof of prequalification shall be submitted with the license application.
- (c) Upon an applicant's submission of the above-provided form, the City Clerk shall accept the application for review and consideration and assign it an application number. The information to be submitted shall be the same information as that required for a Medical Marihuana Facility License in Chapter 810.05

Only one Permit application, per Applicant, will be accepted for consideration for a single location. NO APPLICATION WILL BE SCORED UNLESS IT IS COMPLETE.

- (d) If the City Clerk identifies a deficiency in the completeness of an application, the applicant shall have ten (10) business days to correct the deficiency after notification by the City Clerk. The application will be considered withdrawn on the 11th business day if correction was not made.
- (e) Upon receipt of a completed application, the City Clerk may circulate the application to all affected department heads of the City or their designees for input as to whether the application and premises is in compliance with applicable laws, rules and regulations.
- (f) The City shall assess, evaluate, score, and rank all complete applications. Once all applications have been received by the deadline established by the City, the City shall assess, evaluate, score, and rank each application based upon a scoring and ranking procedure developed by the City consistent with the requirements, conditions, and provisions of this Section. The applicant(s) with the highest ranking will be provided the available licenses. In the event of equal scoring among applicants for any available license, a drawing shall be conducted to determine which applicant will receive the license.
- (g) Initial scoring and ranking shall be conducted and applied by the City on the basis of assigned points from zero (0) points to 110 points with the lowest overall total score as zero points and the highest possible total score being 110 points. Scoring categories include, and are limited to the following scoring points and criteria:
 - (1) The content and sufficiency of the information provided by applicant in the application. The maximum number of scoring points in this category shall be five points.
 - (2) Whether the majority stakeholder of the applicant is a resident in the 48423 Zip Code. The maximum number of scoring points in this category shall be twenty points.

- (3) Whether the majority stakeholder of the applicant can provide proof of ownership of another Davison-area business(es) within the last eight months. For the purposes of this criterion, "Davison-area" means with a three-mile radius of the City limits. The maximum number of scoring points in this category shall be twenty points.
- (4) Whether the applicant intends to operate its marihuana facility or establishment on presently undeveloped property in the City. The maximum number of scoring points in this category shall be ten points.
- (5) The business probity, moral reputation, and relevant criminal history of applicant or any of its stakeholders; 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; whether the applicant or any of its stakeholders have any other professional licenses, including by way of example, but not limited to, such licenses as a medical doctor, lawyer or accountant; and whether the applicant (including all owners or stakeholders) can attest and demonstrate that it is not in default to the City or the State of Michigan. The maximum number of scoring points in this category shall be five points.
- (6) Whether the applicant has provided a robust patient education plan that provides guidance and information to medical marihuana patients regarding the risks and benefits of medicinal marihuana products, including hemp-based products. The maximum number of scoring points in this category shall be five points.
- (7) Whether the applicant has provided a comprehensive and financially-supported community improvement plan focusing on community improvement and outreach that demonstrates commitment to the City and the surrounding community through a signed agreement with the City. Community improvement and outreach on behalf of the applicant or its stakeholders may include, but are not limited to significant physical improvements to the area around the property or other areas contiguous to the property that would include, but not be limited to, plans to eliminate or minimize traffic, noise, and odor effects on the surrounding neighborhood and improve the surrounding neighborhood and area. Community improvement and outreach may also include plans to make significant physical improvements to other local private or public roads, rights-of-way, alleys, parks or any other private or public property that would benefit the surrounding area. The maximum number of scoring points in this category shall be ten points.
- (8) Whether the applicant's proposed use is consistent with the land use for the surrounding neighborhood and will not have a detrimental effect on traffic patterns, health, welfare or safety of residents or abutting properties. The maximum number of scoring points in this category shall be ten points.

- (9) The number of full-time and part-time positions anticipated by applicant, and whether applicant has articulated plans or strategies to attract, hire and retain employees that are residents of the City. Whether applicant has articulated plans or strategies in providing competitive compensation, benefits or educational programs to its employees. The maximum number of scoring points in this category shall be ten points.
- (10) Whether applicant has planned and financially-supported community outreach to the City and its residents. This includes, but is not limited to, planned outreach or educational services, charitable or philanthropic activity, community improvement or educational programs, or other factors that will improve the health, safety, and welfare of the City, its residents, and the surrounding area. The maximum number of scoring points in this category shall be fifteen points.
- (h) The City may engage professional expert assistance in performing the City's duties and responsibilities under this Section. (e) After the City has processed and scored all eligible applications, the City shall prepare a summary and report listing the overall score and basis for this determination for all eligible applications. The City shall then notify the Applicants of the granting or denial of a Permit.
- (i) Application for operation of a Marihuana Establishment, or leasing property to a Marihuana Establishment, constitutes consent by the Applicant, and all owners, managers, and employees of the business, and the owner of the property to permit the City Manager or his/her designee to conduct inspections of the Marihuana Establishment to ensure compliance with this Ordinance or any other applicable law, rule, or regulation.
- (j) If, after preliminary review of the Permit application to confirm compliance with applicable laws, rules and regulations and scoring of the applications, in the event of equal scoring applications that exceed the number of available licenses, then there shall be a selection of the application pursuant to a drawing. All names of Applicants whose applications have an equal highest score will be entered into a drawing open to the public to be scheduled on the first business day after forty-five (45) days after the deadline for submission of applications.
- (k) If selected, the prevailing Applicant shall be conditionally approved for a Permit and the City shall prepare a conditional approval notice for the purposes of State application requirements. The Applicant must then obtain Special Condition Use and Site Plan approval from the Planning Commission within six (6) months of receiving conditional approval or the approval will expire and the application will be considered withdrawn, although the Planning Commission may grant an extension at its sole discretion for up to an additional six (6) months, so long as the Applicant is diligently pursuing Special Condition Use and Site Plan approval. All Permits issued are contingent upon the State of Michigan issuing a license for the operation under State law. A provisional permit does not authorize the applicant to operate a medical Marihuana Establishment without first obtaining a state operating license for the Establishment, and obtaining all other permits, inspections, and approvals required by this chapter and all other applicable provisions of this code. However, the Marihuana Establishment operation shall commence within one year of the issuance of the Special Condition Use and Site

Plan approval.

- (l) An inspection of the proposed Marihuana Establishment by the City is required prior to the issuance of the City operating Permit. Such inspection shall occur after the Marihuana Establishment is ready for operation, but prior to the stocking of the business with any medical Marihuana and prior to the opening of the Marihuana Establishment or commencement of operations. The City shall verify that the Marihuana Establishment is constructed and can be operated in accordance with the application submitted and the applicable requirements of this Chapter and any other applicable law, rule or regulation.
- (m) After verification that the Marihuana Establishment is constructed and can be operated in accordance with the application submitted and the applicable requirements of this Chapter and any other applicable law, rule or regulation, and the issuance of a permanent certificate of occupancy for the Marihuana Establishment, the City Clerk shall issue a Permit for a term of one (1) year. The City-issued Permit shall be prominently displayed within the Marihuana Establishment.
- (n) Throughout the application process, and while any granted Permit is in force, the applicant or the Permit holder shall report any other change in the information provided on the application to the City within ten business days of the change. Failure to do so may result in a withdrawal of City approval.

809.06: Reports of Crime.

Reports of all criminal activities or attempts of violation of any law at the Marihuana Establishment or related thereto shall be reported to Davison Police Department within twelve hours of occurrence, or its discovery.

809.07: Inspection of Premises.

(a) During all business hours and other times when the premises are occupied by the Permit holder or an employee or agent of the p Permit holder, all Permitted premises shall be subject to examination and inspection by the Davison 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.

(b) Consent to Inspection. Application for or operation of a Marihuana Establishment, or leasing property to a Marihuana Establishment, constitutes consent by the applicant, and all owners, managers, and employees of the business, and the owner of the property to Permit the City Manager or his/her designee to conduct inspections of the Marihuana Establishment to ensure compliance with this Ordinance or any other applicable law, rule, or regulation.

(c) A Permit holder, or an employee or agent of the Permit holder, 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 MRTMA, or applicable state administrative rules.

809.08: Permit Renewal.

A City Marihuana Establishment operating Permit shall run concurrently with the State operating Marihuana license issued for the Establishment, unless revoked as provided by law.

Subject to the provisions of 809.09 below, a Permit may be renewed annually by completing a renewal application and payment of the annual Permit fee thirty (30) days prior to its expiration. A Permit will be renewed by the City for one (1) year if (1) there are no administrative and/or legal violations in the prior year, including no taxes owed on the subject property; (2) the applicant has paid the annual City Permit fee for the renewal period; (3) any Stakeholder changes have been fully disclosed to the City; and (4) the applicant has paid and received the renewal of its State license.

Prior to the issuance of a renewed Permit by the City, the premises shall be inspected to assure that it and its systems are in compliance with the requirements of this Chapter.

809.09: Permit Forfeiture, Suspension, Non-Renewal.

In the event that a Marihuana Establishment does not commence operations within one year of issuance of a Special Condition Use and Site Plan approval, the Permit shall be deemed forfeited; the business may not commence operations and the Permit is not eligible for renewal. The City will consider new applications in place of the forfeited Permit in a manner consistent with 876.04(e) of this Ordinance.

The City may immediately revoke or suspend an existing Permit or refuse to renew a Permit for any of the following reasons:

- (a) The applicant or Permit holder is denied a state operating license;
- (b) The applicant or Permit holder, 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;
- (c) The Marihuana Establishment is substantially different from the comprehensive operating plan, Marihuana Establishment plan, conceptual plan or other representations contained in the application;
- (d) The license/Permit application contains any misrepresentation or omission of any material fact, or false or misleading information, or the applicant has provided the City with any other false or misleading information related to the establishment.
- (e) Officers of the City are unable to access the proposed Establishment for Permit inspections or are denied access by the applicant or Permit holder;
- (f) The applicant or Permit holder, or his or her agent, manager or employee, has failed to comply with any special terms or conditions of its Permit 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 Permit and those imposed as a result of any disciplinary proceedings held subsequent to the date of issuance of the Permit or failure to comply to laws changing subsequent to acquiring a Permit;

- (g) The State of Michigan has revoked the Marihuana Establishment's state-issued license or permit; or
- (h) The Marihuana Establishment has been operated in a manner that, in the opinion of the City Manager, adversely affects the public health, safety or welfare. Evidence to support a finding under this Section may include, without limitation, a pattern of criminal conduct within the premises of the Marihuana Establishment or in the immediate area surrounding such business, a pattern of criminal conduct directly related to or arising from the operation of the Marihuana Establishment, or a nuisance condition emanating from or caused by the Marihuana Establishment. Any criminal conduct shall be limited to the violation of a state law or regulation or city ordinance.

If a Permit is terminated, revoked, suspended or restricted, the City Clerk or his or her designee will notify in writing by mail or electronic mail both the permit holder, at the last known address on file with the City for notification of the applicant, and the Michigan Department of Licensing and Regulatory Affairs of the termination, revocation, suspension, or restriction of the permit and the reasons therefore in writing.

Nothing in this Chapter shall be deemed to prohibit the City from imposing other penalties or seeking other remedies authorized by the City Code or other ordinance of the City, including filing a public nuisance action or any other legal action in a court of competent jurisdiction.

A Permit granted by this Chapter is a revocable privilege granted by the City and is not a property right. Granting a Permit does not create or vest any right, title, franchise or other property interest.

DIVISION III: ESTABLISHMENT REQUIREMENTS.

809.10: Requirements.

- (a) A Marihuana Establishment shall comply with all of the requirements of State law and all applicable State regulations.
- (b) Unless permitted by MTRMA or applicable state law:
 - i. No Marihuana is permitted to be stored, displayed, or transferred in an area accessible to the general public;
 - ii. Any usable Marihuana remaining on the premises while the Establishment is not in operation shall be secured in a safe that is permanently affixed to the premises;
 - iii. Disposal of Marihuana shall be accomplished in a manner that prevents its acquisition by any person who may not lawfully possess it and otherwise in conformance with local and state laws and regulations;

- iv. All Marihuana shall be packaged and labeled as provided by state laws;
- v. All Marihuana Establishments shall comply with all applicable requirements of the City of Davison's Zoning Ordinance;
- vi. A Marihuana Establishment and all articles of property in the Establishment are subject to inspection, search and examination at any time by a member of the Davison Public Safety Department, the County Sheriff's Department, or the Department of State Police;
- vii. All signage and advertising for a Marihuana Establishment shall comply with all municipal ordinances, state law, and these rules regulating signs and advertising. Refer to Sign Ordinance for additional information; and
- viii. All activities of Marihuana commercial entities, including, without limitation, the displaying, selling, and storage of Marihuana and Marihuana-infused products and Paraphernalia sold for the use of Marihuana and Marihuana-infused products by registered patients shall be conducted indoors and out of public view and shall not be visible from outside the Establishment. Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting a Marihuana Establishment must be provided at all times. In the event that any odors, debris, dust, fluids or other substances exit a Marihuana Establishment, the owner of the subject premises and the Permit holder shall be jointly and severally liable for such conditions and shall be responsible for immediate, full cleanup and correction of such condition. The Permit holder shall properly dispose of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable state and local laws and regulations.

809.11: Prohibited Acts.

It shall be unlawful for any Permit holder for a Marihuana Establishment, or for any agent, manager, or employee thereof to:

- (a) Distribute Marihuana or Marihuana-infused products to a consumer free of charge.
- (b) Allow the consumption of Marihuana or Marihuana products on the licensed premises. A sign shall be posted on the premises of each Establishment indicating that consumption is prohibited on the premises.
- (c) Sell Marihuana or Marihuana products at any time other than between the hours of **9:00 A.M. and 9:00 P.M.** daily.
- (d) Receive shipments of Marihuana or Marihuana products between the hours of **9:00 P.M. and 9:00 A.M.**

809.12: Grant of Administrative Authority.

The City Clerk is granted the power and duty to fully and effectively implement and administer the Permit Application process and issuance of a provisional Permit and operating Permits issued by the City as provided in this chapter.

809.13: RESERVED.

All other provisions of the Code of Ordinances not specifically amended shall remain in full force and effect. All ordinances, resolutions, or orders, or parts thereof, in conflict with the provisions of this ordinance are, to the extent of such conflict, repealed.

Nothing in this ordinance shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby revised as cited in this ordinance; nor shall any just or legal right or remedy of any character be lost, impaired, or affected by this ordinance. If any of the standards set forth in this amendment conflict with any other standards of previous or further ordinances or amendments, the stricter standards shall apply.

The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section, or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

This ordinance shall take effect _____ (__) days following its enactment and shall be published once within _____ (__) days after its enactment as provided by Charter.

THIS ORDINANCE SHALL BE PUBLISHED IN THE SAME MANNER AS OTHER ORDINANCES OF THE CITY OF DAVISON, PURSUANT TO ARTICLE X OF THE CITY CHARTER. NO OTHER PUBLICATION OF THE CODIFIED ORDINANCES, HEREBY APPROVED, ADOPTED, AND ENACTED, IS NECESSARY.

THIS ORDINANCE SHALL TAKE EFFECT TEN (10) DAYS AFTER PUBLICATION IN ACCORDANCE WITH THE CITY OF DAVISON CHARTER.

ADOPTED THIS 11th DAY OF April, 2022 BY THE CITY COUNCIL OF DAVISON.

Tim Bishop, Mayor

Andrea Schroeder, Acting Clerk

I certify that the above Ordinance was published in the Davison Index on the 14th day of April, 2022, A.D.

Andrea Schroeder, Acting Clerk

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