

**Chapter 867
Recreational Marihuana**

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CROSS REFERENCES
Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951 et seq.
Medical Marihuana Facilities - Chapter 866
Penalty, Municipal Civil Infractions – Chapter 203

867.01 DEFINITIONS

- A. Words and phrases used herein shall have the definitions as provided for in Initiated Law 1 of 2018, MCL 333.27953 (hereafter, the “Act”) as the same may be amended from time to time, which words and phrases are incorporated herein by reference.
- B. “City Council” shall mean the City of Manistee Council.
- C. “City Clerk” shall mean the City of Manistee Clerk.
- D. “LARA” shall mean the Michigan Department of Licensing and Regulatory Affairs.

- E. "Person" shall mean an individual, corporation, limited liability company, partnership of any type, trust or other legal entity.
- F. "Stakeholder" shall mean and shareholder of a corporation, partner in a partnership, member of a limited liability company or individual of a sole proprietorship.
- G. "Zoning Ordinance" shall mean the City of Manistee Zoning Ordinance.

(Ord. 19-02 adopted 2-5-19.) (Ord. 19-14 adopted 5-21-19)

867.02. AUTHORIZATION OF MARIHUANA ESTABLISHMENTS AND FEE

- A. The City hereby authorizes, subject to the issuance of a municipal license by the City Clerk, the following marihuana establishments within the boundaries of the City, as are authorized pursuant to section 6.1. of the Act. The establishments authorized pursuant to this Chapter are relating to the Act and are not Marihuana Facilities that may be authorized pursuant to the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq. and Chapter 866 of the City of Manistee Codified Ordinances.
- B. The marihuana establishments and the number authorized pursuant to this Ordinance are:

<u>Type of Establishment</u>	<u>Number Authorized</u>
Marihuana Grower	Unlimited
Marihuana Processor	12
Marihuana Microbusiness	5
Marihuana Retailer	5
Marihuana Safety Compliance Establishment	2
Marihuana Secure Transporter	2
Marihuana Designated Consumption Establishment	0

Only those establishments listed are authorized in the City of Manistee, any others are prohibited.

(Ord. 19-02 adopted 2-5-19.) (Ord.19-23 adopted 10-1-19)(Ord. 20-01 adopted 1-21-2020)

- C. A nonrefundable municipal license application fee shall be paid by each marihuana establishment applying to be licensed under this ordinance in the amount of \$5,000.00. The municipal license fee is in addition to any other fees required, including, but not limited to, zoning fees.
- D. Should the City grant a marihuana establishment a municipal license, the municipal license application fee shall be considered as the fee imposed for the first year the license is granted. Prior to the expiration of the first year of the license, and as provided in this Ordinance in Section 866.12, the licensee may apply for an extension/renewal of the municipal license for an additional one year period at a nonrefundable fee of not more than \$5,000 as set by resolution of the City Council to defray the administrative and enforcement costs of the City associated with the operation of the licensed marihuana establishment.

(Ord. 19-02 adopted 2-5-19.) (Ord. 19-14 adopted 5-21-19)

867.03 REQUIREMENTS AND PROCEDURE FOR ISSUING MUNICIPAL LICENSE

- A. No person shall operate a marihuana establishment in the City without a valid municipal license issued by the City pursuant to the provisions of this ordinance.
- B. No person shall be issued a municipal license by the City without first having obtained from the City of Manistee Planning Commission a Special Use Permit authorizing the operation of the establishment pursuant to the City of Manistee Zoning Ordinance.
- C. No person who is employed by the City, acts as a consultant for the City or acts as an advisor to the City, and is involved in the implementation, administration or enforcement of this Ordinance shall have an interest, directly or indirectly, in a Marihuana Establishment.
- D. Every applicant for a municipal license to operate a marihuana establishment shall file an application in the City Clerk's office upon a form provided by the City. The application shall include:
 - 1. The appropriate nonrefundable municipal license application fee in the amount determined by the City;
 - 2. If the applicant is an individual, the applicant's name; date of birth; Social Security number; physical address, including residential and any business address; copy of government-issued photo identification; email address; one or more phone numbers, including emergency contact information;
 - 3. If the applicant is not an individual, the names; dates of birth; physical addresses, including residential and any business address; copy of government-issued photo identifications; email address; and one or more phone numbers of each Stakeholder of the applicant, including designation of the highest ranking representative as an emergency contact person; contact information for the emergency contact person; articles of incorporation or organization; assumed name registration; Internal Revenue Service EIN confirmation letter; copy of the operating agreement of the applicant, if a limited liability company; copy of the partnership agreement, if a partnership; names and addresses of the beneficiaries, if a trust, or a copy of the bylaws or shareholder agreement, if a corporation;
 - 4. The name and address of the proposed marihuana establishment;
 - 5. A copy of the Special Use Permit issued by the City of Manistee Planning Commission;
 - 6. A location area map of the marihuana establishment and surrounding area that identifies the relative locations and the distances (closest property line to the subject marihuana establishment's building) to the closest real property comprising a public or private elementary, vocational or secondary school;
 - 7. A signed acknowledgment that the applicant is aware and understands that all matters related to marihuana growing, cultivation, possession, testing, safety compliance and transporting, are currently subject to state and federal laws, rules and regulations, and that the approval or granting of a license hereunder does not exonerate or exculpate the

applicant from abiding by the provisions and requirements and penalties associated with those laws, rules, and regulations, or exposure to any penalties associated therewith; and further, the applicant waives and forever releases any claim, demand, action, legal redress, or recourse against the City, its elected and appointed officials, and its employees and agents for any claims, damages, liabilities, causes of action, damages, or attorney fees that the applicant may incur as a result of the violation by the applicant, its Stakeholders and agents of those laws, rules, and regulations; and

8. Any other information which may be required by the City Clerk.
- E. Upon an applicant's completion of the above-described form and furnishing of all required information and documentation, the City Clerk shall file the same and assign it a sequential application number by establishment type based on the date and time of acceptance. The City Clerk shall act to approve or deny an application not later than twenty-one (21) days from the date the completed application is filed. If approved, the City Clerk shall issue the applicant a provisional License and subsequently a final license after issuance by the state of Michigan of an operating license. If the application is denied, the City Clerk shall issue a written notice of denial to the Applicant and mail the same by first class mail to the address for the Applicant provided in the application. A final license shall be valid for one (1) year from the date of the issuance of the provisional license. A provisional license may not be renewed and shall be valid for one (1) year. (Ord. 19-02. Passed 2-5-19.)(Ord.19-23. Adopted 10-1-19)
 - F. Should the City Clerk deny an application, the Applicant shall have fourteen (14) days from the mailing of the denial to appeal the denial to the City Manager by filing a notice of appeal with the City Manager's Office. The City Manager may require additional information or Act upon the appeal based upon the information supplied to the City Clerk. Should the City Manager reverse the decision of the City Clerk, the City Clerk shall issue a provisional license. Should the City Manager affirm the decision of the City Clerk, the City Manager shall mail a written notice affirming the decision by first class mail to the address for the Applicant provided in the application.
 - G. The Applicant shall have fourteen (14) days from the mailing of a decision by the City Manager affirming the decision of the City Clerk to appeal to the City Council. To appeal the decision of the City Manager the Applicant must file a notice of appeal with the City Clerk. City Council shall hear the appeal at its next regular meeting, but not sooner than 7 days from the receipt of the appeal.
 - H. Maintaining a valid license issued by the state is a condition for the maintenance of a license under this ordinance and continued operation of a marihuana establishment. A provisional license does not authorize operations until a final license is issued, which will only occur upon issuance of the appropriate license by the state of Michigan and the issuance of a Certificate of Occupancy.
 - I. A License issued under this ordinance is not transferable without the prior approval of the City under the same terms and conditions required for the initial issuance of a license under this Ordinance.
 - J. The Act in Section 9. 4. (MCL 333.27959 4.) requires that the City establish a competitive process to select applicants who are best suited to operate in compliance with the Act and

this Ordinance, when more than one applicant has applied for a single available license. Pursuant to this requirement the City requires that applicants:

1. An estimate of the number and type of jobs that the marihuana establishment is expected to create and the amount and type of compensation expected to be paid for such jobs;
2. A business plan which contains, but is not limited to, the following:
 - i. The applicant's experience in operating other similarly permitted or licensed businesses and the applicant's general business management experience;
 - ii. The proposed ownership structure of the establishment, including percentage ownership of each person or entity;
 - iii. A current organizational chart that includes position descriptions and the names of each person holding each position;
 - iv. Planned tangible capital investment in the City, including if multiple permits are proposed, an explanation of the economic benefits to the City and job creation, if any, to be achieved through the award of such multiple permits, with supporting factual data;
 - v. Expected job creation from the proposed marihuana establishment(s);
 - v. If a Marihuana Grower Establishment is proposed, the number of plants anticipated
 - vi. Financial structure and financing of the proposed marihuana establishment(s); and;
 - viii. Community outreach/education plans and strategies.
3. A written description of the training and education that the Applicant will provide to all employees, including planned continuing education for existing employees. Further, a written description of the method(s) for record retention of all training provided to existing and former employees;
4. A location area map of the marihuana facility and surrounding area that identifies the relative locations and the distances (closest property line to the subject marihuana facility's building) to the closest real property comprising a public or private elementary, vocational or secondary school; and church or religious institution, if recognized as a tax-exempt entity by the City Assessor's Office; and
5. A facility sanitation plan to protect against any marihuana being ingested by any person or animal, indicating how the waste will be stored and disposed of, and how any marihuana will be rendered unusable upon disposal. Disposal by on-site burning or introduction into the sewerage system is prohibited.

(Ord. 19-14 adopted 5-21-19)

867.04 MINIMUM OPERATIONAL STANDARDS FOR ALL MARIHUANA ESTABLISHMENTS WITHIN THE CITY OF MANISTEE

The following minimum standards shall apply to all Marihuana Establishments within the City:

- A. Marihuana Establishments shall comply at all times and in all circumstances with the Act, and applicable Michigan law, and the general rules of the Department of Licensing and Regulatory Affairs, as they may be amended from time to time. It is the responsibility of the owner to be aware of changes in the Act. The City bears no responsibility for failure of the owner to be unaware of changes in the Act;
- B. Consumption and/or use of marihuana shall be prohibited at the establishment;
- C. The establishment shall be open, during regular business hours, to any representative of LARA, state police officer, or City of Manistee Police Officer, and said individual(s) may enter the premises, offices, Establishments, or other places of business of a Licensee, for the following purposes:
 - 1. To inspect and examine all premises of Marihuana Establishments;
 - 2. To inspect, examine, and audit relevant records of the Licensee and, if the Licensee or any employee fails to cooperate with an investigation, impound, seize, assume physical control of, or summarily remove from the premises all books, ledgers, documents, writings, photocopies, correspondence, records, and videotapes, including electronically stored records, money receptacles, or equipment in which the records are stored; and
 - 3. To investigate alleged violations of the Act, this ordinance and applicable Michigan law.
- D. The marihuana establishment shall be continuously monitored with a surveillance system that includes security cameras. The video recordings shall be maintained in a secure, off- site location for a period of fourteen (14) days and be available upon request of the City of Manistee Police Department. The storage establishment shall not be used for any other commercial purpose.
- E. The marihuana establishment shall secure every entrance to the establishment and only permit those individuals described in this Ordinance or the Act access to the premises.
- F. The marihuana establishment shall be maintained and operated so as to comply with all state and local rules, regulations and ordinances. All Marihuana Establishments

shall comply with applicable requirements of the Zoning Ordinance, including obtaining and maintaining a Special Use License.

- G. All marihuana shall be contained within an enclosed, secure area;
- H. All necessary building, electrical, plumbing and mechanical permits shall be obtained for any portion of the structure in which electrical wiring, lighting and/or watering devices that support the Grower, growing or harvesting of marihuana are located;
- I. All persons working in direct contact with marihuana shall conform to acceptable hygienic practices while on duty, including, but not limited to:
 - 1. Maintaining adequate personal cleanliness;
 - 2. Washing hands thoroughly in adequate hand-washing areas before starting work and at any other time when their hands may have become soiled or contaminated; and
 - 3. Refraining from having direct contact with marihuana if the person has or may have an illness, open lesion, including boils, sores or infected wounds, or any other abnormal source of microbial contamination, until the condition is corrected.
- J. Litter and waste shall be properly removed and the operating systems for waste disposal shall be maintained in an adequate manner so that they do not constitute a source of contamination.
- K. Floors, walls and ceilings shall be constructed in such a manner that they may be adequately cleaned and kept clean and in good repair;
- L. There shall be adequate screening or other protection against the entry of pests. Rubbish shall be disposed of so as to minimize the development of odor and minimize the potential for the waste development of odor and minimize the potential for waste becoming an attractant, harborage or breeding place for pests;
- M. All building fixtures and other Establishments shall be maintained in a sanitary condition;
- N. Odor from operations shall be controlled as provided in the Zoning Ordinance and as may be required under the Special Use License issued to the Licensee.

(Ord. 19-14 adopted 5-21-19)

867.05 MINIMUM OPERATIONAL STANDARDS FOR MARIHUANA GROWER ESTABLISHMENTS

The following minimum standards for Grower Establishments shall apply:

- A. Grower Establishments shall maintain a log book and/or database indicating the number of Marihuana Plants therein;
- B. A Stakeholder in a Grower Establishment shall not holder an ownership interest, directly or indirectly, in more than five (5) Marihuana Grower Establishments.
- C. The establishment shall be subject to inspection by the City of Manistee Fire Department to insure compliance with all applicable statutes, codes and ordinances; and
- D. Multiple Grower Establishment Licenses in a single location shall be permitted, subject to approval of the same by the City Clerk.

(Ord. 19-14 adopted 5-21-19)

867.06 MINIMUM OPERATIONAL STANDARDS FOR SAFETY COMPLIANCE ESTABLISHMENTS

The following minimum standards for Safety Compliance Establishments shall apply:

- A. Safety Compliance Establishments shall maintain a log book and/or database which complies with the Act or applicable Michigan law; and
- B. There shall be no other accessory uses permitted within the same establishment other than those associated with testing marihuana.
- C. A Stakeholder in a Safety Compliance Establishment shall not hold an ownership interest, directly or indirectly, in a Grower, Processor, Retailer or Microbusiness Establishment.

(Ord. 19-14 adopted 5-21-19)

867.07 MINIMUM OPERATIONAL STANDARDS OF MARIHUANA PROCESSOR ESTABLISHMENTS

The following minimum standards for Processor Establishments shall apply:

- A. All Activity related to the Processor Establishment shall occur indoors;
- B. Processor Establishments shall maintain a log book and/or database which complies with the Act or other applicable state laws;

- C. All marihuana shall be tagged as required by the Act or applicable state laws;
- D. That structure shall be subject to inspection at any time by the City of Manistee Fire Department to insure compliance with all applicable statutes, codes and ordinances; and
- E. Processor Establishments shall produce no products other than useable marihuana intended for human consumption.

(Ord. 19-14 adopted 5-21-19)

867.08 MINIMUM OPERATIONAL STANDARDS FOR SECURE TRANSPORTER ESTABLISHMENTS

The following minimum standards for Secure Transporter Establishments shall apply:

- A. Secure Transporters and each Secure Transporter Stakeholder shall not hold an ownership interest, directly or indirectly, in a Grower, Processor, Retailer or Microbusiness Establishment.
- B. A Secure Transporter shall enter all transactions, current inventory, and other information as required by the state into the statewide monitoring system.
- C. A Secure Transporter shall comply with all of the following:
 - 1. Each driver transporting marihuana shall have a chauffeur's license issued by the state.
 - 2. Each employee who has custody of marihuana or money that is related to a marihuana transaction shall not have been convicted of delivery of a controlled substance.
 - 3. Each vehicle shall be operated with a two-person crew with at least one individual remaining with the vehicle at all times during the transportation of marihuana.
 - 4. The marihuana shall be transported by one or more sealed containers and shall not be accessible while in transit.
 - 5. A secure transporting vehicle shall not bear markings or other indication that it is carrying marihuana or a marihuana infused product.
- D. A vehicle used by a Secure Transporter is subject to administrative inspection by a law enforcement officer at any point during the transportation of marihuana to determine compliance with all state and local laws, rules, regulations and ordinances.

(Ord. 19-14 adopted 5-21-19)

867.09 MINIMUM OPERATIONAL STANDARDS FOR MARIHUANA MICROBUSINESS ESTABLISHMENTS

The following minimum standards for Marihuana Microbusiness Establishments shall apply:

- A. A Stakeholder in a Microbusiness Establishment shall not hold an ownership interest, directly or indirectly, in a Grower, Processor, Retailer, Safety Compliance, or Secure Transporter Establishment.
- B. A Stakeholder in a Microbusiness Establishment shall not hold an ownership interest, directly or indirectly, in another Microbusiness Establishment.

(Ord. 19-14 adopted 5-21-19)

867.10 MINIMUM OPERATIONAL STANDARDS FOR MARIHUANA RETAILERS

The following minimum standards for Marihuana Retailers shall apply:

- A. Marihuana Retailers shall not sell edible marihuana-infused candy in shapes or packages that are attractive to children or that are easily confused with commercially sold candy that does not contain marihuana.
- B. Marihuana Retailers shall not sell or otherwise transfer marihuana that is not contained in an opaque, resealable, child-resistant package designed to be significantly difficult for children under 5 years of age to open and not difficult for normal adults to use properly as defined by 16 C.F.R. 1700.20 (1995), unless the marihuana is transferred for consumption on the premises where sold.
- C. Marihuana Retailers and their agents shall ensure that all purchasers of marihuana are over 21 years of age.

(Ord. 19-14 adopted 5-21-19)

867.11 LOCATION OF GROWER ESTABLISHMENT, SAFETY COMPLIANCE ESTABLISHMENT, PROCESSOR ESTABLISHMENT, AND SECURE TRANSPORTER ESTABLISHMENT

- A. All Grower Establishments, Safety Compliance Establishments, Processor Establishments, Microbusiness Establishments and Secure Transporter Establishments shall only operate and be located within the permitted areas as provided for in the Zoning Ordinance.

- B. Multiple Establishment Licenses at a single location shall be permitted subject to the review and approval by the City Clerk and subject to the requirements of the state of Michigan.

(Ord. 19-14 adopted 5-21-19)

867.12 DENIAL AND REVOCATION

- A. A License issued under this Ordinance may be revoked after an administrative hearing at which the City Clerk determines that grounds for revocation under this Ordinance exist. Notice of the time and place of the hearing and the grounds for revocation must be given to the holder of a License at least five days prior to the date of the hearing, by first class mail to the address given on the license application; a licensee whose license is the subject of such hearing may present evidence and/or call witnesses at the hearing;
- B. A License applied for or issued under this Ordinance may be denied or revoked on any of the following basis:
 - 1. Any violation of this Ordinance;
 - 2. Any conviction of delivery of a controlled substance to a minor;
 - 3. City Clerk finding of fraud, misrepresentation or the making of a false statement by the Applicant or any stakeholder of the Applicant while engaging in any Activity for which this Ordinance requires a License or in connection with the Application for a License or request to renew a License;
 - 4. Sufficient evidence that the Licensee lacks, or has 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 Act;
 - 5. The License holder or any of its Stakeholders is in default to the City personally or in connection with any business in which they hold an ownership interest, for failure to pay property taxes, special assessments, fines, fees or other financial obligation;
 - 6. The marihuana establishment is determined by the City to have become a public nuisance; or
 - 7. LARA has denied, revoked or suspended the applicant's state operating license.
- C. Should the City Clerk revoke a License, the Licensee shall have fourteen (14) days from the mailing of the written notice of revocation to appeal the decision to the City Manager. The City Manager may require additional information or Act upon the appeal based upon the information supplied to the City Clerk. Should the City

Manager reverse the decision of the City Clerk, the City Clerk shall reinstate the license. Should the City Manager affirm the decision of the City Clerk, he/she shall mail by first class mail a written notice affirming the decision to the address for the Licensee contained in the City Clerk's records.

- D. Should the City Manager affirm the denial, revocation or suspension of a License by the City Clerk, the Licensee shall have fourteen (14) days from the mailing of the decision of the City Manager to appeal the decision to City Council, by filing with the City Clerk a written notice of appeal. City Council shall hear the appeal at its next regularly scheduled meeting, but no sooner than 7 days from the receipt of the appeal.

(Ord. 19-14 adopted 5-21-19)

867.13 LICENSE RENEWAL

- A. A License shall be valid for one year from the date of issuance, unless revoked as provided by law, including this Ordinance.
- B. A valid License may be renewed on an annual basis by submitting a renewal application upon a form provided by the City and payment of the annual license fee. Applications to renew a License shall be filed with the City Clerk at least thirty (30) days prior to the date of its expiration. As long as no changes to the Licensee have occurred and there is no pending request to revoke or suspend a License, and the Licensee has paid the License Renewal Fee, the City Clerk shall renew the License.

(Ord. 19-14 adopted 5-21-19)

867.14 UNLAWFUL ACTIVITIES

Any act which is a violation of MCL 333.27954, or any amendment thereto, shall also be considered a violation of this Ordinance. It shall be unlawful to consume marihuana in a public place in the city of Manistee, except in a location designated by the act of the City Council for consumption and only when not accessible to persons under 21 years of age.

(Ord. 19-14 adopted 5-21-19)

867.15 APPLICABILITY

The provisions of this Ordinance shall be applicable to all persons and Establishments described herein, including if the operations or Activities associated with a marihuana establishment were established without authorization before the effective date of this ordinance. (Ord. 19-14 adopted 5-21-19)

867.16 PENALTIES AND ENFORCEMENT

- A. Any person who violates any of the provisions of this Ordinance shall be responsible for a municipal civil infraction and subject to the payment of a civil fine of \$500, plus costs, except that a violation of Section 867.14 by consuming marihuana in a public place is a civil infraction and subject to the payment of a civil fine of up to \$100. Each day a violation of this Ordinance continues to exist constitutes a separate violation. A violator of this Ordinance shall also be subject to such additional sanctions, remedies and judicial orders as are authorized under Michigan law.

- B. A violation of this Ordinance is deemed to be a nuisance per se. In addition to any other remedy available at law, the City may bring an Action for an injunction or other process against a Licensee to restrain, prevent, or abate any violation of this Ordinance.

- C. This Ordinance may be enforced and administered by the City Clerk, any City of Manistee Police Officer, City Manager or such other city official as may be designated from time to time by resolution of the City Council.

(Ord. 19-02 adopted 2-5-19.) (Ord. 19-14 adopted 5-21-19)

867.17 SEVERABILITY

In the event that any one or more sections, provisions, phrases or words of this Ordinance shall be found to be invalid by a court of competent jurisdiction, such holding shall not affect the validity or the enforceability of the remaining sections, provisions, phrases or words of this Ordinance. (Ord. 19-14 adopted 5-21-19)