

City Council

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ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE CITY OF CADILLAC ZONING ORDINANCE TO REGULATE CERTAIN RECREATIONAL/ADULT-USE MARIHUANA ESTABLISHMENTS OPERATED IN ACCORDANCE WITH STATE LAW

Section 1. Amendment of Section 46-491 of the Zoning Ordinance

Section 46-491 of the Zoning Ordinance, entitled “Principal uses permitted subject to special conditions,” which is within Division 13 of Article III of the Zoning Ordinance (governing I-1 Light Industrial Districts), is amended to add new subparagraph (8), which reads as follows in its entirety:

(8) Marihuana establishments authorized under the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, MCL 333.27951 *et seq*, subject to Section 10-2 of the City Code and Section 46-752 of this Zoning Ordinance.

Section 2. Amendment of Section 46-526 of the Zoning Ordinance

Section 46-526 of the Zoning Ordinance, entitled “Principal uses permitted subject to special conditions,” which is within Division 14 of Article III of the Zoning Ordinance (governing I-2 General Industrial Districts), is amended to add new subparagraph (2), which reads as follows in its entirety:

(2) Marihuana establishments authorized under the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, MCL 333.27951 *et seq*, subject to Section 10-2 of the City Code and Section 46-752 of this Zoning Ordinance.

Section 3. Amendment of Section 46-397 of the Zoning Ordinance

Section 46-397 of the Zoning Ordinance, entitled “Special land uses permitted,” which is within Division 10 of Article III of the Zoning Ordinance (governing B-2 Central Business Districts), is amended to add new subparagraph (7), which reads as follows in its entirety:

(7) Retailers authorized under the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, subject to Section 10-2 of the City Code and Section 46-752 of this Zoning Ordinance, and subject to the following locational requirements:

- a. A retailer in the B-2 district must be located on a parcel that has frontage on Mitchell Street, except that no retailers may be located on the section of Mitchell Street between North Street and South Street unless the following two requirements are met: (1) the retailer must be located on an upper level or subgrade level of the building and not on the ground level (with “grade” and “ground level” measured at Mitchell Street); and (2) the entrance for the retailer must face the alley located behind the building and not Mitchell Street.
- b. The map in Table 1 identifies the areas within the B-2 district in which retailers may be located, subject to the other locational and distance requirements in this Zoning Ordinance, including Section 46-752.

Section 4. Amendment of Section 46-427 of the Zoning Ordinance

Section 46-427 of the Zoning Ordinance, entitled “Principal uses permitted subject to special conditions,” which is within Division 11 of Article III of the Zoning Ordinance (governing B-3 General Business Districts), is amended to add new subparagraph (9), which reads as follows in its entirety:

(9) Retailers authorized under the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, MCL 333.27951 *et seq*, subject to Section 10-2 of the City Code and Section 46-752 of this Zoning Ordinance, and subject to the following locational requirements:

- a. A retailer in the B-3 district must be located on a parcel that has frontage on Mitchell Street or Paluster Street, except that no retailers may be located on the section of Mitchell Street between North Street and South Street unless the following two requirements are met: (1) the retailer must be located on an upper level or

subgrade level of the building and not on the ground level (with “grade” and “ground level” measured at Mitchell Street); and (2) the entrance for the retailer must face the alley located behind the building and not Mitchell Street.

- b. For purposes of subsection (a), Parcel No. 10-082-00-141-00, 621 S. Mitchell, is not deemed to be between North Street and South Street because a portion of that parcel is located south of South Street.
- c. The map in Table 1 identifies the areas within the B-3 district in which retailers may be located, subject to the other locational and distance requirements in this Zoning Ordinance, including Section 46-752.

Section 5. Amendment of Section 46-459 of the Zoning Ordinance

Section 46-459 of the Zoning Ordinance, entitled “Special land uses permitted,” which is within Division 12 of Article III of the Zoning Ordinance (governing T-2 Tourist Service Districts), is amended to add new subparagraph (4), which reads as follows in its entirety:

(4) Retailers authorized under the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, MCL 333.27951 *et seq*, subject to Section 10-2 of the City Code and Section 46-752 of this Zoning Ordinance, and subject to the following locational requirements:

- a. A retailer in the TS-2 district must be located on a parcel that has frontage on M-115 or M-55, except that no retailers may be located on any parcel with frontage on Lake Cadillac.
- b. The map in Table 1 identifies the areas within the TS-2 district in which retailers may be located, subject to the other locational and distance requirements in this Zoning Ordinance, including Section 46-752.
- c. No retailers are permitted in the TS-1 district.

Section 6. Addition of New Section 46-752

Section 46-752, entitled “Adult-Use Marihuana Establishments,” is hereby added to Article VI (Special Land Uses) of the City Zoning Ordinance and reads as follows in its entirety:

Sec. 46-752. Adult-Use Marihuana Establishments.

In addition to all requirements of Section 10-2 of the City Code, any other requirements of this Zoning Ordinance or the City Code, and any conditions imposed by the Planning Commission in granting special use approval, adult-use (recreational) marihuana establishments must comply with the following requirements. All terms defined in Section 10.2-01 of the City Code have the same meaning when used in this section.

1. Establishments must comply with the MRTMA and the MRTMA rules, as well as any other applicable state laws or regulations.
2. Co-located marihuana establishments and stacked grower licenses are prohibited.
3. Establishments shall be sufficiently screened or buffered with a fence, wall, or landscape screen to minimize light spillage, odor, and noise (including noise associated with truck traffic or other machinery), affecting adjacent properties.
4. Special use applicants must provide a plan for the storage and disposal of marihuana or chemicals associated with marihuana cultivation, so as to minimize the risk of theft or harm resulting from chemical exposure.
5. No marihuana may be stored overnight outside of an enclosed building. By way of example and without limitation, it is unlawful to store marihuana overnight in an outdoor waste bin or a secure transport vehicle parked outdoors.
6. Signage for marihuana establishments may be approved pursuant to the generally applicable procedures and standards provided in Section 46-664 (“Signs”), with the additional restriction that establishment signage may not depict marihuana, marihuana-infused products, or marihuana-related paraphernalia.
7. Marihuana establishments must control and eliminate odor as follows:
 - a. The building must be equipped with an activated air scrubbing and carbon filtration system for odor control to ensure that air leaving the building through an exhaust vent first passes through an activated carbon filter and air scrubbing system.
 - b. The filtration system must consist of one or more fans, activated carbon filters and be capable of scrubbing the air prior to leaving any building. At a minimum, the fan(s) must be sized for cubic feet per minute (CFM) equivalent to the volume of the building (length multiplied by width

multiplied by height) divided by three. The filter(s) shall be rated for the applicable CFM.

- c. The air scrubbing and filtration system must be maintained in working order and must be in use at all times. The filters must be changed per manufacturers' recommendation to ensure optimal performance.
- d. Negative air pressure must be maintained inside the building.
- e. Doors and windows must remain closed, except for the minimum time length needed to allow people to ingress or egress the building.
- f. An alternative odor control system is permitted if the special use applicant submits a report by a mechanical engineer licensed in the state of Michigan sufficiently demonstrating that the alternative system will eliminate odor as well or better than the air scrubbing and carbon filtration system otherwise required.

8. The following minimum-distancing regulations apply:

- a. An establishment other than a retailer may not be located within 1,000 feet of a public or private K-12 school or a college or university. A retailer may be located within 1,000 feet of a public or private K-12 school or a college or university, subject to subsection (8)(c).
- b. A grower, processor, safety compliance establishment, or microbusiness may not be located within 500 feet of any existing one-family dwelling.
- c. A retailer may not be located within 100 feet of any existing one-family dwelling.
- d. The distances described in this subsection shall be computed by measuring a straight line from the nearest property line of land used for the purposes stated in this subsection to the nearest property line of the parcel used as a marijuana establishment; provided, however, that for purposes of subsection (c) only, the distance shall be computed by measuring a straight line between the two closest points of the subject buildings.

9. The following requirements apply to retailers:

Operational Requirements

- a. Retailers may not be open to customers between the hours of 11:00 p.m. and 8:00 a.m.

- b. Retailers may not receive deliveries between the hours of 9:00 p.m. and 7:00 a.m.
- c. The interior of the establishment must be arranged in a way such that neither marihuana nor marihuana-infused products are visible from the exterior of the establishment.
- d. Consumption of marihuana shall be prohibited in the retail establishment, and a sign shall be posted on the premises of each retail center indicating that consumption is prohibited on the premises.
- e. Retailers shall continuously monitor the entire premises on which they are operated with surveillance systems that include security cameras. The video recordings shall be maintained in a secure, off-site location for a period of 14 days.
- f. The public or common areas of the retail establishment must be separated from restricted or non-public areas of the marihuana establishment.
- g. No drive-through window on the portion of the premises occupied by a retail establishment shall be permitted.
- h. Retailers shall not allow the sale, consumption, or use of alcohol or tobacco products on the premises.

Design Requirements

- i. *Appearance.* The exterior appearance of a retailer must be compatible with surrounding businesses with respect to façade type, ground floor opacity, size and placement of signage, site layout, etc.
- j. *Minimum Wall Articulation.* Building bays shall be a maximum of thirty feet in width. Bays shall be visually established by architectural features such as columns, ribs or pilasters, piers and fenestration pattern. In order to add architectural interest and variety and avoid the effect of a single, long or massive wall with no relation to human size, the following additional standards shall apply:
 - i. No wall that faces a street or connecting walkway shall have a blank, uninterrupted length exceeding thirty feet without including at least two of the following: change in plane, change in texture or masonry pattern, windows, or an equivalent element that subdivides the wall into human scale proportions.
 - ii. Side or rear walls that face walkways may include false windows and door openings defined by frames, sills and lintels, or similarly

proportioned modulations of the wall, only when actual doors and windows are not feasible because of the nature of the use of the building.

- iii. All sides of the building shall include materials and design characteristics consistent with those on the front. Use of inferior or lesser quality materials for side or rear façades shall be prohibited.
- k. *Façades.* Façades that face streets or connecting pedestrian frontage shall be subdivided and proportioned using features such as windows, entrances, arcades, arbors, awnings, along no less than fifty percent of the façade.
- l. *Entrances.* Primary building entrances shall use clear glass and be clearly defined and recessed or framed by a sheltering element such as an awning, arcade or portico in order to provide shelter from the inclement weather.
- m. *Windows.* Windows shall have clear glass.
- n. *Awnings.* Awnings shall be no longer than a single storefront.
- o. *Base and Top Treatments.* All façades shall have:
 - i. A recognizable “base” consisting of, but not limited to: (a) thicker walls, ledges or sills; (b) integrally textured materials such as stone or other masonry; (c) integrally colored and patterned materials such as smooth-finished stone or tile; (d) lighter or darker colored materials, mullions or panels; or (e) planters.
 - ii. A recognizable “top” consisting of, but not limited to: (a) cornice treatments, other than just colored “stripes” or “bands,” with integrally textured materials such as stone or other masonry or differently colored materials; (b) sloping roof with overhangs and brackets; (c) stepped parapets.
- p. *Encroachments.* Encroachments for special architectural features, such as bay windows, decorative roofs and entry features may be considered; however, in no case may such features be below a height of 8 feet.

10. The following requirements apply to growers:

- a. Cultivation must occur within an enclosed building with exterior facades consisting of opaque materials typical of an industrial or commercial building. The roof of the building may be constructed of a rigid transparent or translucent material designed to let in light, such as glass or rigid polycarbonate or fiberglass panels. Films or other non-rigid materials

cannot be used to construct any component of the building's exterior structure.

- b. Cultivation must be conducted in a manner to minimize adverse impacts on the city's sanitary sewer. The city's public works department shall review all pertinent information relating to sewer discharges and shall provide any pertinent comments on to the planning commission.

11. The following requirements apply to processors:

- a. Cultivation must be conducted in a manner to minimize adverse impacts on the city's sanitary sewer. The city's public works department shall review all pertinent information relating to sewer discharges and shall provide any pertinent comments on to the planning commission.

12. The following requirements apply to safety compliance facilities:

- a. Cultivation must be conducted in a manner to minimize adverse impacts on the city's sanitary sewer. The city's public works department shall review all pertinent information relating to sewer discharges and shall provide any pertinent comments on to the planning commission.

13. The following requirements apply to microbusinesses:

- a. Microbusinesses may not be open to customers between the hours of 11:00 p.m. and 8:00 a.m.
- b. Microbusinesses may not receive deliveries between the hours of 9:00 p.m. and 7:00 a.m.
- c. The exterior appearance of a microbusiness must be compatible with surrounding businesses with respect to façade type, ground floor opacity, size and placement of signage, site layout, etc.
- d. The interior of the establishment must be arranged in a way such that neither marihuana nor marihuana-infused products are visible from the exterior of the establishment.
- e. Consumption of marihuana shall be prohibited in the establishment, and a sign shall be posted on the premises of each microbusiness indicating that consumption is prohibited on the premises.
- f. Microbusinesses shall continuously monitor the entire premises on which they are operated with surveillance systems that include security cameras. The video recordings shall be maintained in a secure, off-site location for a period of 14 days.

- g. The public or common areas of the microbusiness establishment must be separated from restricted or non-public areas of the marihuana establishment.
- h. No drive-through window on the portion of the premises occupied by a microbusiness establishment shall be permitted.
- i. Microbusinesses shall not allow the sale, consumption, or use of alcohol or tobacco products on the premises.
- j. Cultivation must occur within an enclosed building with exterior facades consisting of opaque materials typical of an industrial or commercial building. The roof of the building may be constructed of a rigid transparent or translucent material designed to let in light, such as glass or rigid polycarbonate or fiberglass panels. Films or other non-rigid materials cannot be used to construct any component of the building's exterior structure.
- k. Cultivation must be conducted in a manner to minimize adverse impacts on the city's sanitary sewer. The city's public works department shall review all pertinent information relating to sewer discharges and shall provide any pertinent comments on to the planning commission.

14. Special Use Permit Specific to Applicant.

- a. Any special use permit granted for a marihuana establishment is unique and specific to the applicant and does not run with the land. The special use permit may be transferred to another marihuana establishment only with City approval and subject to Section 10.2-04 of the City Code.

15. Violations; Remedies; Revocation.

Notwithstanding any other provision in this Zoning Ordinance to the contrary, penalties for violations of this subsection shall be as follows:

- a. If at any time an establishment violates the Zoning Ordinance, any condition imposed through a special use permit, or any other applicable city ordinance or state law or regulation, the City may take any or all of the following actions:
 - a. The City may request that LARA revoke or refrain from renewing the establishment's state operating license.
 - b. Following notice and a public hearing, the City may revoke the establishment's special use permit.

- c. The City may treat the violation as a municipal civil infraction, for which each day the violation continues will be a separate offense, and impose the following fines:

First violation = \$500

Second offense = \$2,500

Each subsequent offense = \$5,000

- d. The City may seek other appropriate and proper remedies, including actions in law or equity.

16. Application to Certain Transferred Area.

Notwithstanding any contrary provisions in this Zoning Ordinance, the following provisions shall apply to the real property (“Transferred Area”) that is the subject of the Agreement for the Conditional Transfer of Property dated August 19, 2019 (“Act 425 Agreement”), and recorded with the Wexford County Register of Deeds, and that is also the subject of a Consent Judgment entered by the Wexford County Circuit Court on _____, 2019, in Case Nos. 13-24803-CH and 17-27610-CZ:

Marihuana establishments shall be permitted on the Transferred Area only in accordance with the Act 425 Agreement, Consent Judgment, and related documents and exhibits. The terms of the Act 425 Agreement and Consent Judgment supersede any conflicting provisions of this Ordinance with respect to the Transferred Area. However, to the extent that the Act 425 Agreement and Consent Judgment do not conflict with this Zoning Ordinance, this Zoning Ordinance shall control and govern any marihuana establishments in the Transferred Area.

Section 7. Publication and Effective Date. The City Clerk will cause to be published a notice of adoption of this ordinance within 10 days of the date of its adoption. This ordinance will take effect 30 days after its adoption.

Section 8. Severability; Repeal of Prior Ordinances. Should any portion of this Ordinance be found invalid for any reason, such holding shall not be construed as affecting the validity of the remaining portions of this Ordinance. Any ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

YEAS: Council Member(s) _____

NAYS: Council Member(s) _____

ABSTAIN: Council Member(s) _____

ABSENT: Council Member(s) _____

CERTIFICATION

As the City Clerk of the City of Cadillac, Wexford County, Michigan, I certify this is a true and complete copy of an ordinance adopted by the Cadillac City Council at a regular meeting held on _____, 2019.

Date: _____, 2019

Carla Filkins, Mayor

Date: _____, 2019

Sandra Wasson, City Clerk

Introduced: _____, 2019

Adopted: _____, 2019

Published: _____, 2019

Effective: _____, 2019