

**Recreational Marihuana Licensing Ordinance
Second Reading**

July 23, 2020

The Honorable Mayor Fournier and
Members of the City Commission:

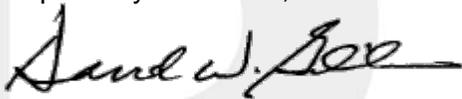
At a special meeting on July 16, 2020, the city commission approved a proposed recreational marihuana licensing ordinance on first reading. Pursuant to the express authority contained in the Michigan Regulation and Taxation of Marihuana Act (MRTMA), the city commission limited the number of marihuana retailers and marihuana microbusinesses to be licensed to two (2) of each type, with no more than one (1) of each in the general business zoning district. The city commission also set a limit of one (1) license on the other types of establishments provided for in the MRTMA (marihuana growers – Class A, B, and C; processors; safety compliance facilities; and secure transporters).

Based upon these limits and the additional discussion that took place during the special meeting, outside counsel at Dickinson Wright (Tom Forshee, Jessica Wood and Laura Bassett) has updated the proposed ordinance for the city commission's consideration on second reading (Attachment 1). Retailers and microbusinesses would continue be prohibited from operating within 1,000 feet of any existing school, or within 1,000 feet of any other retailer or microbusiness.¹ For purposes of reference, a strikeout version of the ordinance showing the changes from the initial draft of the ordinance is also attached (Attachment 2).

The following resolution is recommended for approval:

Be it resolved, the city commission approves the recreational marihuana licensing ordinance on second reading.

Respectfully submitted,



David W. Gillam
City Attorney

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¹ The city commission will also be considering separate, but related, amendments to the city's zoning ordinance to permit marihuana retailers and microbusinesses as a special land use in the general business zoning district and to permit those and other marihuana establishments as a special land use in the general industrial zoning districts.

**CITY OF ROYAL OAK, MICHIGAN
ORDINANCE NO. 2020-___**

AN ORDINANCE TO AMEND THE CITY OF ROYAL OAK CODE OF ORDINANCES TO IMPLEMENT THE PROVISIONS OF THE MICHIGAN REGULATION AND TAXATION OF MARIHUANA ACT, PROP 1 OF 2018, SO AS TO PROTECT THE PUBLIC HEALTH, SAFETY, AND WELFARE OF THE RESIDENTS OF THE CITY BY SETTING FORTH THE MANNER IN WHICH RECREATIONAL MARIHUANA ESTABLISHMENTS CAN BE OPERATED IN THE CITY.

THE CITY OF ROYAL OAK ORDAINS:

SECTION 1. SHORT TITLE. This Ordinance shall be known as may be referred to as the Recreational Marihuana Licensing Ordinance.

SECTION 2. STATEMENT OF PURPOSE. This is an ordinance to amend the City of Royal Oak Code of Ordinances to implement the provisions of the Michigan Regulation and Taxation of Marihuana Act, Prop 1 of 2018, so as to protect the public health, safety, and welfare of the residents of the City by setting forth the manner in which recreational marihuana establishments can be operated in the City. Further, the purpose of this ordinance is to:

1. Provide a means to regulate and control the commercial production and distribution of marihuana, the lawful production of related products as set forth in, and for purposes of implementing, the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951 et. seq., as may be amended (hereafter referred to as the “MRTMA” or the “Act”);
2. Protect public health and safety through reasonable limitations on marihuana commercial entity operations, and limitations upon other marihuana-related activities provided for by the MRTMA, as they relate to noise, air and water quality, neighborhood safety, security for the establishment and its personnel, and other health and safety concerns;
3. Impose fees to defray and recover the costs to the City of the administrative and enforcement costs associated with Marihuana Establishments, and Municipally-Licensed marihuana activities as provided for in the MRTMA;
4. Coordinate with laws and regulations that may be enacted by the State addressing marihuana, including but not limited to the Department of Licensing and Regulatory Affairs Marihuana Regulatory Agency Adult – Use Marihuana Establishments Emergency Rules (LARA Rules), as amended from time to time;
5. Restrict the issuance of Marihuana Establishment Municipal Licenses only to individuals and entities that have demonstrated an intent and ability to comply with this Section, and with State law and regulation, without monitoring by City officials;

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6. Recognize that regulations for marihuana may not be adequate at the state level to address the impacts on the City of the commercialization of marihuana, making it appropriate for local regulation of the impact of marihuana establishments;
7. Recognize that nothing in this Ordinance is intended to promote or condone the production, distribution, sale or possession of marihuana in violation of any applicable law;
8. Recognize that this Ordinance is to be construed to protect the public over Marihuana Establishment interests. Operation of a Marihuana Establishment is a revocable privilege and not a right in the City. There is no property right for an individual or establishment to engage or obtain a municipal license to engage in marihuana as a commercial enterprise in the City;
9. Make it known that because marihuana is a heavily regulated industry in the City, all Municipal License Holders are assumed to be fully aware of the law and the City shall not therefore be required to issue warning before issuing citations for violation of this Ordinance; and
10. Recognize that 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.

SECTION 3. AMENDMENT. The City of Royal Oak Code of Ordinances is hereby amended by the addition of Chapter 435, Marihuana, which shall read as follows:

“CHAPTER 435. MARIHUANA

ARTICLE I

Recreational Marihuana Establishments

Sec. 435-1. Definitions

The following words, terms and phrases when used in this Article shall have the meanings ascribed as follows:

“*Applicant*”, unless specifically stated to mean a state License, means an individual, organization, partnership, company, corporation enterprise, or other entity that applies for a Municipal License as well as the person or persons associated with the Applicant. For purposes of this definition, an Applicant includes a managerial employee of the Applicant, a person holding a direct or indirect ownership interest of more than 10% in the Applicant, and the following for each type of Applicant:

- For an individual or sole proprietorship: the proprietor and spouse.

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- For a partnership and limited liability partnership: all partners and their spouses.
- For a limited partnership and limited liability limited partnership: all general and limited partners, not including a limited partner holding a direct or indirect ownership interest of 10% or less and who does not exercise control over or participate in the management of the partnership, and their spouses.
- For a limited liability company: all members and managers, not including a member holding a direct or indirect ownership interest of 10% or less and who does not exercise control over or participate in the management of the company, and their spouses.
- For a privately held corporation: all corporate officers or persons with equivalent titles and their spouses, all directors and their spouses, and all stockholders, not including those holding a direct or indirect ownership interest of 10% or less, and their spouses.
- For a publicly held corporation: all corporate officers or persons with equivalent titles and their spouses, all directors and their spouses, and all stockholders, not including those holding a direct or indirect ownership interest of 10% or less, and their spouses.
- For a multilevel ownership enterprise: any entity or person that receives or has the right to receive more than 10% of the gross or net profit from the enterprise during any full or partial calendar or fiscal year.
- For a nonprofit corporation: all individuals and entities with membership or shareholder rights in accordance with the articles of incorporation or the bylaws and their spouses.

For purposes of this definition, an Applicant does not include:

- A person who provides financing to an applicant or licensee under a bona fide financing agreement at a reasonable interest rate.
- A franchisor who grants a franchise to an applicant, provided that the franchisor does not have the right to receive royalties based upon the sale of marihuana or marihuana- infused products by the applicant who is a franchisee. Nothing herein shall be construed to preclude a franchisor from charging an applicant who is a franchisee a fixed fee. As used in this definition, the terms “franchise,” “franchisor,” and “franchisee” shall have the meanings set forth in section 2 of the Franchise Investment Law, 1974 PA 269, MCL 445.1502, as may be amended.
- A person receiving reasonable payment for rent on a fixed basis under a bona fide lease or rental obligation.
- A person receiving reasonable payment under a licensing agreement or contract concerning the licensing of intellectual property including, but not limited to, brands and recipes.

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“*Application*” means an Application for a Municipal License under this Ordinance and includes all supplemental documentation attached or required to be attached thereto; the Person filing the Application shall be known as the “Applicant.”

“*Application Documents*” means the items required as part of an Application submitted to the City prior to them being accepted as complete as provided in Section 435-4.

“*Board*” means the marihuana licensing board, as anticipated by the MRTMA to be created at LARA in order to regulate and administer state licenses.

“*Clerk*” means the City of Royal Oak Clerk or his/her designee.

“*Co-located Facility or Co-location*” means marihuana businesses holding 2 or more types of state operating licenses under the MRTMA and MMFLA operating within a single location.

“*Cultivate or Cultivation*” means to propagate, breed, grow, harvest, dry, cure, or separate parts of the marihuana plant by manual or mechanical means.

“*Department*” means the Michigan State Department of Licensing and Regulatory Affairs or any authorized designated Michigan agency authorized to regulate, issue or administer a Michigan License for a Marihuana Establishment.

“*Designated Consumption Establishment*” means a commercial space that is licensed by the agency and authorized to permit adults 21 years of age and older to consume marihuana products at the location indicated on the state License.

“*Excess Marihuana Grower*” means a license issued to a person holding 5 class C marihuana grower licenses and licensed to cultivate marihuana and sell or otherwise transfer marihuana to Marihuana Establishments.

“*Grower*” means a person licensed to cultivate marihuana and sell or otherwise transfer marihuana to Marihuana Establishments.

“*License*” means a current and valid License for Marihuana Establishment issued by the State of Michigan.

“*Licensee*” means a Person holding a current and valid Michigan License for a Marihuana Establishment.

“*Marihuana*” means that term as defined in Section 3 of the MRTMA, MCL 333.27953, as may be amended.

“*Marihuana Accessories*” means any equipment, product, material, or combination of equipment, products, or materials, which is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting,

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producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marihuana into the human body.

“*Marihuana Concentrate*” means the resin extracted from any part of the plant of the genus cannabis.

“*Marihuana Establishment*” means a marihuana grower, marihuana safety compliance facility, marihuana processor, marihuana microbusiness, marihuana retailer, marihuana secure transporter, marihuana designated consumption establishment, or any other type of marihuana-related business licensed by the department pursuant to MCL 333.27951, as may be amended.

“*Marihuana Event Organizer*” means a person licensed to apply for a temporary marihuana event license under these rules.

“*Marihuana-Infused Product*” means a topical formulation, tincture, beverage, edible substance, or similar product containing marihuana and other ingredients and that is intended for human consumption.

“*Marihuana Microbusiness*” means a person licensed to cultivate not more than 150 marihuana plants; process and package marihuana; and sell or otherwise transfer marihuana to individuals who are 21 years of age or older or to a marihuana safety compliance facility, but not to other marihuana establishments.

“*Marihuana Processor*” means a person licensed to obtain marihuana from marihuana establishments; process and package marihuana; and sell or otherwise transfer marihuana to marihuana establishments.

“*Marihuana Retailer*” means a person licensed to obtain marihuana from marihuana establishments and to sell or otherwise transfer marihuana to marihuana establishments and to individuals who are 21 years of age or older.

“*Michigan Medical Marihuana Act*” or MMMA means 2008 IL 1, MCL 333.26421 et seq., as may be amended.

“*Michigan Marihuana Facilities Licensing Act*” or MMFLA means Public Act 281 of 2016, MCL 333.27101 et seq. as may be amended.

“*Michigan Marihuana Tracking Act*” means Public Act 282 of 2016, MCL 333.27901 et seq. as may be amended.

“*Municipal License*” means a current and valid license for a Marihuana Establishment issued under this Ordinance, which shall be granted to a Municipal License Holder only for and limited to a specific Municipally-Licensed Premises and a specific Municipally-licensed Property. Said Municipal License shall be in addition to the Special Use Permit and Site Plan approval required to be obtained pursuant to the City Zoning Ordinance.

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“*Municipal License Holder*” means the an individual, organization, partnership, company, corporation enterprise, or other entity that holds a current and valid Municipal License issued under this Ordinance as well as the person or persons associated with the Municipal License Holder as Applicant(s) for that Municipal License.

“*Municipal License Slot*” means an unissued permit available to be issued to an Applicant.

“*Municipally-Licensed Premises*” means the particular building, buildings, or tenant space within which the Municipal License Holder will be authorized to conduct the Facility’s activities pursuant to the Municipal License.

“*Municipally-Licensed Property*” means the real property comprised of a lot, parcel or other designated unit of real property upon which the Municipally-Licensed Premises is situated.

“*Person*” means a natural person, company, partnership, profit or non-profit corporation, limited liability company, or any joint venture for a common purpose.

“*Premises*” means the particular building, buildings, section of land, or tenant space within which a particular use is conducted.

“*Public Place*” means any area in which the public is invited or generally permitted in the usual course of business.

“*Rules*” means rules promulgated by the Department in consultation with the Board to implement this Act, including the LARA Rules as may be amended.

“*Safety Compliance Establishment*” means a person licensed to test marihuana, including certification for potency and the presence of contaminants.

“*School*” means a pre-existing public or private school with a curriculum equivalent to kindergarten through 12th grade.

“*Secure Transporter*” means a person licensed to obtain marihuana form marihuana establishments in order to transport Marihuana to Marihuana Establishments.

“*Stacked License*” means more than 1 state License issued to a single licensee to operate as a class C Marihuana Grower as specified in each state License at a Marihuana Establishment.

“*State Operating License*” or, unless the context requires a different meaning, “*License*”, means a license issued by the Department that allows a person to operate a Marihuana Establishment.

“*Temporary Marihuana Event License*” means a state License held by a marihuana event

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organizer for an event where the onsite sale or consumption of marihuana products, or both, are authorized at the location indicated on the state License during the dates indicated on the state License.

“*Window*” means the time period set by the City Manager to receive Applications for evaluation by the competitive process as specified in this Ordinance.

Sec. 435-2. Municipal License Required; Eligibility; General Provisions

A. The City hereby authorizes the operation of the following types of Marihuana Establishments:

1. Growers, Class A
2. Growers, Class B
3. Growers, Class C
4. Processors
5. Retailer
6. Safety Compliance Facilities
7. Secure Transporters
8. Marihuana Microbusiness
9. Co-Located Facilities as defined in this Ordinance.

B. The following number of Municipal Licenses can be issued for each authorized Marihuana Establishment type:

1. Growers, Class A: 1
2. Growers, Class B: 1
3. Growers, Class C: 1
4. Processors: 1
5. Retailers: 2 total but only in the General Business Zone (as defined by Section 770-41 of the City of Royal Oak Zoning Ordinance and the Zoning Map) or General Industrial Zone (as defined by Section 770-44 of the City of Royal Oak Zoning Ordinance and the Zoning Map), except that no more than 1 may be located in the General Business Zone.
6. Safety Compliance Facilities: 1
7. Secure Transporters: 1
8. Marihuana Microbusiness: 2 total but only in the General Business Zone (as defined by Section 770-41 of the City of Royal Oak Zoning Ordinance and the Zoning Map) or General Industrial Zone (as defined by Section 770-44 of the City of Royal Oak Zoning Ordinance and the Zoning Map), except that no more than 1 may be located in the General Business Zone.

C. No person shall operate a Marihuana Establishment at any time or any location within the City unless a currently effective Municipal License for that person at that location has been issued under this Ordinance. No Marihuana Establishments are allowed nor shall a Municipal License be considered or granted for those activities

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and facilities defined as a “special license” being a state license described under section 8 of the MRTMA and issued by the state pursuant to section 9 of the MRTMA, MCL 333.2795 and 333.27959, as may be amended, including but not limited to, Designated Consumption Establishment, Excess Marihuana Grower, Marihuana Event Organizer, Temporary Marihuana Event, and any special license types hereafter recognized by the state.

- D. Marihuana Establishments shall operate only as allowed under this Ordinance.
- E. The City Manager is granted the power to fully and effectively implement and administer the Municipal License Application process.
- F. The requirements set forth in this Ordinance shall be in addition to, and not in lieu of, any other licensing or Municipal Licensing requirements imposed by applicable federal, state or local laws, regulations, codes or ordinances.
- G. As specified in this Ordinance, each Applicant shall pay nonrefundable Review fees, Application fees, annual fees, renewal fees and inspection fees for Municipal Licenses to the City to defray the costs incurred by the City for inspection, administration and enforcement of the local regulations regarding Marihuana Establishments. The City Commission shall by resolution set the fees in an amount not to exceed any limitations imposed by Michigan law. The Municipal License fee requirement shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other federal, state or City law or ordinance, including, by way of example, any applicable zoning or building permits.
- H. The City has no obligation to process or approve any incomplete Application.
- I. A Municipal License shall remain valid for one year following removal of all stipulations on an issued Municipal License.
- J. It is the sole and exclusive responsibility of each Municipal License Holder or Applicant at all times during the Application period and during its operation to immediately provide the City with all material changes in any information submitted on an Application and any other changes that may materially affect any state License or its City Municipal License.
- K. No Municipal License issued under this Ordinance may be assigned or transferred to another person or entity except as specified in this Ordinance. No Municipal License issued under this Ordinance is transferrable to any other location except for the Municipally-Licensed Premises on the Municipally-Licensed Property.
- L. The original Municipal License issued under this Ordinance shall be prominently displayed at the Municipally-Licensed Premises in a location where it can be easily viewed by the public, law enforcement and administrative authorities.

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- M. A Municipal License Holder may not engage in any other Marihuana Establishment in the Municipally-Licensed Premises or on the Municipally-Licensed Property, or in its name at any other location within the City, without first obtaining a separate Municipal License.
- N. No Municipal License shall be granted or renewed for a Marihuana Establishment in a residence.
- O. Co-located Facilities are subject to state law for multiple uses per premises, subject to the City Manager or his designee's determination that such uses are compatible together at that location, are consistent on a shared basis with all the provisions of the MRTMA and each use is consistent with zoning and other provisions of the City Code of Ordinances. If these conditions are met, more than one business may be located on one parcel.

Sec. 435-3. Other Laws and Ordinances

In addition to the terms of the Ordinance, any Marihuana Establishment shall comply with all City Ordinances, including without limitation the City Zoning Ordinance, and with all other applicable state and local ordinances, laws, codes and regulations.

Sec. 435-4. Application for and Renewal of Municipal License

- A. *Application Documents.* Application Documents for a Municipal License for a Marihuana Establishment shall be submitted to the City Clerk, and on or after the effective date of this Ordinance shall contain the following information. Information obtained from the Applicant is exempt from public disclosure under state law. Upon receipt, review, and approval as outlined in this Ordinance of all Application Documents by City staff, the Documents will be considered a complete Application.
 - 1. The name, address, phone number and email address of the Applicant and the proposed Marihuana Establishment.
 - 2. The names, home addresses and personal phone numbers for all Applicants and the Marihuana Establishment.
 - 3. One (1) copy of the following:
 - a. Pre-approval for a Marihuana Establishment license by the State of Michigan.
 - b. For Class A, B, or C Growers or Processors or Microbusinesses, documentary evidence by a licensed engineer demonstrating the electric system's ability to deliver the estimated peak capacity (kW) and energy (kWh) of the Marihuana Establishment.
 - c. All documentation of the Applicant's valid tenancy, ownership or other

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legal interest in the proposed Municipally-Licensed Property and Municipally-Licensed Premises. If the Applicant is not the owner of the proposed Municipally-Licensed Property and Municipally-Licensed Premises, a notarized statement from the owner of such property authorizing the use of the property for a Marihuana Establishment.

- d. If the Applicant is a corporation, non-profit organization, limited liability company or any other entity other than a natural person, indicate its legal status, attach a copy of all company formation documents (including amendments), proof of registration with the State of Michigan, and a certificate of good standing.
- e. A valid, unexpired driver's license or state issued ID for all Applicants for the proposed Marihuana Establishment.
- f. Evidence of a valid sales tax license for the business if such a license is required by state law or local regulations.
- g. Non-refundable Marihuana Establishment Application Document Review fee.
- h. Business and Operations Plan, showing in detail the Marihuana Establishment's proposed plan of operation, including without limitation, the following:
 1. A description of the type of Marihuana Establishment proposed and the anticipated or actual number of employees.
 2. A security plan meeting the requirements of Section 435-5 of this Ordinance.
 3. A description by category of all products to be sold.
 4. An affidavit indicating the Applicant will, prior to applying for a building permit:
 - a. Submit a list of Material Safety Data Sheets for all nutrients, pesticides, and other chemicals proposed for use in the Marihuana Establishment.
 - b. Submit a comprehensive report identifying all hazardous materials and processes that will be utilized by the Marihuana Establishment. This list must include all cleaning supplies, as well as chemicals used and/or produced either as products or as waste products in the processes at the

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establishment. The report shall determine the acceptability of technologies, processes, products, facilities, materials and uses attending the design, operation, or use of a building or premises. All hazardous materials and chemicals must be listed as to how to handle the disposal of these materials. The opinion and report shall be prepared by a qualified third person, firm or corporation approved by the City.

- c. Obtain a wastewater discharge permit before connecting to or contributing to the Publicly Owned Treatment Works (POTW). Refer to City of Royal Oak Code of Ordinances Section 740-7.
5. A description and plan of all equipment and methods that will be employed to stop any impact to adjacent uses, including enforceable assurances that no odor will be detectable from outside of the Municipally-Licensed Premises.
6. A plan for the disposal of Marihuana and related byproducts that will be used at the Marihuana Establishment.
- i. Whether any Applicant has ever applied for or has been granted any commercial license or certificate issued by a licensing authority in Michigan or any other jurisdiction that has been denied, restricted, suspended, revoked, or not renewed and a statement describing the facts and circumstances concerning the application, denial, restriction, suspension, revocation, or nonrenewal, including the licensing authority, the date each action was taken, and the reason for each action.
- j. A site plan of the Municipally-Licensed Premises and the Municipally-Licensed Property prepared in accordance with Section 770-12, Site Plan Review, of the City Zoning Ordinance signed and sealed by a registered architect, or professional engineer. Site plan must include distance between the Municipally-Licensed Premises and all applicable buffered uses identified in Section 435-5(A)(5) of this Ordinance, unless those uses are greater than 1,500 ft. from the Municipally-Licensed Premises.
- k. The amount of water usage estimated for the facility, including the estimated average gallons per day and peak gallons per minute as well as estimated needs for fire suppression, if applicable.
- l. Information regarding any other Marihuana Establishment or Medical Marihuana Facility that the Applicant or any of the Applicant's Owners directors, officers or managers is authorized to operate in

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any other jurisdiction within the State, or another State, and their involvement in each Marihuana Establishment or Medical Marihuana Facility.

4. Any other information reasonably requested by the City to be relevant to the processing or consideration of the Application.

B. *Review of Application Documents.* Applications must be complete and shall be considered on a competitive basis as required and set forth by MCL 333.27959.4, as may be amended. All Application Documents submitted by a potential Applicant will be reviewed by City staff for completeness with the requirements of Section 435-4 of this Ordinance before being considered a complete Application. All Application Documents will be stamped or otherwise identified by City staff at the date and time they are submitted by a potential Applicant.

1. City staff has a reasonable amount of time to review the Application Documents and determine if they are complete.

2. Complete Application Documents will be accepted as an Application under this Ordinance and processed. A determination of a complete Application shall not prohibit the City from requiring supplemental information at any time during the Application process.

3. If Application Documents are found to be incomplete, the prospective Applicant will be notified in writing of the deficiencies and given ten (10) business days to correct those deficiencies.

a. If the deficiencies are corrected within the ten (10) business days, the Application Documents will be considered complete and accepted as an Application under this Ordinance.

b. If deficiencies are not corrected within the ten (10) business days, the Application Documents will be returned to the prospective Applicant. If the prospective Applicant wishes to re-submit Application Documents, they must be re-submitted in their entirety with a new Application Document Review fee. This re-submission will be considered a new set of Application Documents and will be newly date and time stamped.

C. *Competitive Process per MCL 333.27959.4, as may be amended.*

1. If a Marihuana Establishment type has a limited number of Municipal Licenses available to be issued due to a cap imposed herein, the City Manager shall open a Window. The timing and duration of the Window shall be determined by the City Manager. If a Municipal License is available for a Marihuana Establishment type limited by cap, the City Manager must open a Window at least once per calendar year.

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2. At the end of a Window, if the number of Applications for a Marihuana Establishment Municipal License for exceeds the number of available Municipal Licenses, the City shall decide among Applications by a competitive process intended to select the Applicant(s) who are best suited to operate in compliance with the Act within the City.
3. Applications to be included in the competitive process include all those whose Application Documents were date and time stamped as submitted prior to the end of the Window and which were able to be considered complete and accepted as an Application.
4. The Applicants and their Applications will be ranked in the order of which is best suited to operate in compliance with the Act within the City as determined by the City Manager or his or her designee. This ranking will be used to fill available Municipal License Slots, starting with the best suited Applicant and Application, until all available Municipal License Slots are filled. The competitive criteria to be used shall be as follows:
 - a. Review of the Applicant's completely submitted, detailed Application (including plans which address the provisions of this Section and related provisions, such as security, lighting, processing, handling of hazardous waste, site plans, record-keeping, disposal, water/utility, ventilation, odor, etc.), which illustrates the likely success of the proposed business, in harmony with surrounding properties at the proposed site;
 - b. Whether the Applicant is currently in default/arrears on any taxes or fees otherwise due to the City, has a history of noncompliance or violations with City Ordinances or applicable laws, or has been served with any complaint or notice filed by or with any public body regarding the delinquency in the payment of any tax required under federal, state or local law;
 - c. Whether the Applicant is/was a business operating in the City of Royal Oak within the past two years;
 - d. Whether the Applicant has a history of criminal conviction/plea, other than as specified by the MRTMA, MCL 333.27958.1.(c), as may be amended;
 - e. Whether the Applicant has ever applied for or has been granted any commercial license or certificate issued by a licensing authority in Michigan or any other jurisdiction, that has been denied, restricted, suspended, revoked, or not renewed, or has proceedings pending related to such;

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- f. Whether the Applicant filed, or had filed against it/him/her, a proceeding for bankruptcy or been involved in any formal process to adjust, defer, suspend or otherwise work out payment of a debt in the past seven years;
- g. Whether there is performed and planned future outreach on behalf of the proposed business and a written plan evidencing the outcome of such meetings, and whether the Applicant has made, or plans to make, significant physical improvements to the building housing the Marihuana Establishment;
- h. Whether the Applicant has taken steps to encourage employee retention, attract capable workers, train employees, and any other employee-employer factors tending to show a successful workforce;
- i. Whether the Applicant has taken steps to include equity, diversity, and inclusion in their operations that would tend to yield greater profitability, innovation, and more effective teamwork; and
- j. Whether the proposed plan incorporates sustainable infrastructure and energy efficient elements and fixtures.

D. *Processing and Review of Applications.*

1. An Application will be held until a Window is established to select the Applications to fill an available Municipal License Slot.
2. An Application will be considered for a Municipal License Slot through the competitive process as specified in this Ordinance. When an Applicant is awarded the Municipal License Slot through the competitive process, the Applicant will be notified and will be given five (5) business days to pay the Marihuana Establishment Application Fee. If an Applicant does not pay the fee within the time allotted, the next Application as ranked by the competitive process during the applicable Window will be issued the Municipal License Slot.
3. Upon payment of the Marihuana Establishment Application Fee by an Applicant, the City Clerk shall refer a copy of the Application to the Department Head or designated staff person of the following for their review and approval: the Police Department, the Fire Department, the Community Development Department (Building Division, Engineering Division and Planning Division) and any other applicable departments.
4. In order for a Marihuana Establishment Application to be approved and a Municipal License to be issued, all of the following conditions must be met:

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- a. The Applicant has passed a criminal background check conducted by the City of Royal Oak Police Department.
- b. The Engineering Division will complete a preliminary review of the wastewater plan submitted.
- c. The Engineering Division will confirm that the necessary amount of water for the Marihuana Establishment is available and complete preliminary review of the plan submitted that includes the requested water pressure and fire flow protections.
- d. The Community Development Department will review all provided plans to ensure conformity with their previously supplied determination on the ability to supply electricity to the proposed Marihuana Establishment and general site requirements.
- e. The Planning Division has confirmed that the proposed location complies with the buffer requirements, and a preliminary review of the plan submitted.
- f. A Special Land Use Permit and Site Plan application has been submitted, Permit fees have been paid, and the Special Land Use Permit and Site Plan has been approved by the City Commission after recommendation from the Planning Commission.
- g. The Applicant must not have a conviction of or release from incarceration for a felony under the laws of this state, any other state, or the United States within the past ten (10) years or conviction of a controlled substance-related felony within the past ten (10) years, except that, consistent with MCL 333.27958.1.(c), as may be amended, a prior conviction solely for a marihuana-related offense does not disqualify an individual or otherwise affect eligibility for licensure, unless the offense involved distribution of a controlled substance to a minor.
- h. Other than as set forth in MCL 333.27958.1.(c), as may be amended, within the past five (5) years, conviction of a misdemeanor involving a controlled substance, theft, dishonesty, or fraud in any state or having been found responsible for violating a local ordinance in any state involving a controlled substance, dishonesty, theft, or fraud that substantially corresponds to a misdemeanor in that state.
- i. The Applicant has not knowingly submitted an application for a License that contains false, misleading or fraudulent information, or has not intentionally omitted pertinent information on the Application for a Municipal License.

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5. Following review by City Departments and prior to approval of a Special Land Use Permit and Site Plan, if deficiencies are found in the Application, the Applicant is notified in writing of the areas of deficiency and given thirty (30) days to correct those deficiencies. If the deficiencies are considered by City staff to be corrected, the Applicant's Special Land Use Permit and Site Plan will be considered by the Planning Commission. If the deficiencies are not considered to be corrected within the thirty (30) day time period, the Application will be deemed incomplete and denied. Another Application will then fill the Municipal License Slot.
6. All inspections, review and processing of the Application shall be completed within ninety (90) days of payment of the Marihuana Establishment Application Fee or within one hundred twenty (120) days if the location of the Municipally-Licensed Premises is proposed to be amended from an existing Municipally-Licensed location. The processing time may be extended upon written notice by the City for good cause, and any failure to meet the required processing time shall not result in the automatic grant of the Municipal License.
7. If all conditions of this Ordinance have been met, the City Clerk shall issue the Municipal License to the Applicant.
 - a. All Municipal Licenses issued have the following stipulations:
 1. Issuance of License Qualification by the State of Michigan for the Municipal License Holder under State law and the City of Royal Oak receiving a copy of that License Qualification prior to occupancy.
 2. Issuance of final certificate of occupancy for the Municipally-Licensed Premises by the Community Development Department. All construction must be in accordance with applicable zoning ordinances, building codes, and any other applicable state or local laws, rules or regulations.
 3. For Processors and Class A, B, and C Growers and Microbusinesses proposing to connect to or to contribute to the POTW, a wastewater discharge permit.
 4. Issuance of Final Approval by the State of Michigan and the City of Royal Oak receiving a copy of the Final Approval prior to the business opening.
 - b. A Municipal License Holder has one (1) year from the date of issuance to meet all stipulations of the Municipal License. If all

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stipulations are not met in this timeframe, the Municipal License is revoked and considered denied. A Municipal License Holder may request an extension up to six (6) months to this timeframe, which may be granted by the City Clerk.

8. If a Municipal License is denied, the denial must be in writing and must state the reason(s) for denial.
 - a. Applications which are denied will not be refunded the Marihuana Establishment Application Fee.
 - b. If the Applicant of a denied Application chooses to re-submit, this re-submission will be considered a new set of Application Documents and will be date and time stamped at the date and time they are re-submitted. A new Marihuana Establishment Application Fee will be required.
9. Upon denial, withdrawal, or failure for any reason of an Application within six (6) months of a competitive process being used to rank Applicants and their Applications as detailed in Section 435-4(C), the available Municipal License Slot will be awarded to the next best suited Applicant and Application as determined in that process. However, if more than six (6) months have passed since the last competitive process, a new Window must be opened to fill the Municipal License Slot and all Applications will be treated as new submissions.
10. Denial of an Application or non-renewal of a Municipal License may be appealed to the City Manager, who will set a date and time within ten (10) business days to conduct a hearing where the Applicant can be heard. The City Manager may uphold the denial, reverse the denial, or take such other action deemed appropriate. Appeals from the final determination of the City may be taken to a court of competent jurisdiction; during appeal, another Applicant for a Municipal License Slot may be considered by the City.

E. *Renewal Application.* Renewal Applications shall require City approval.

1. Renewal Applications for a Marihuana Establishment maintaining the location of the Municipally-Licensed Premises shall be received by the City Clerk not less than ninety (90) days prior to the expiration of the annual Municipal License. Renewal Applications for a Marihuana Establishment requesting a change in the location of the Municipally-Licensed Premises shall be submitted and received not less than one hundred twenty (120) days prior to the expiration of the Municipal License.
2. A Renewal Application must follow the same approval process as all new Applications with the exception of the following:

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- a. A Municipal License Holder that submits an application for a Renewal Municipal License at a previously Municipally-Licensed Premises shall be deemed in compliance with the spacing requirements set forth in Section 435-5(A)(5) of this Ordinance.
 - b. For any information required as part of the Application process that has not changed, the Municipal License Holder may submit an Affidavit of No Changes in place of the information when submitting a Renewal Application. If any of the items requested in the Application process has changed, such items must be submitted as required in this Ordinance.
 - c. A Municipal License Holder, as a stipulation of a renewal Municipal License issued by the City, must provide proof of having submitted a license renewal application no later than thirty (30) days after expiration of their State License. Once a renewed State license has been granted, a copy must be provided to the City of Royal Oak.
 - d. A renewal Municipal License issued by the City takes effect on the date of expiration of the original Municipal License issued and the Municipal License Holder has one year from that date until renewal is again required.
3. A Municipal License Holder whose Municipal License expires and for which a complete Renewal Application has not been received by the expiration date shall be deemed to have forfeited the Municipal License under this Ordinance. They will be considered denied. The City will not accept Renewal Applications after the expiration date of the Municipal License.
 4. A Municipal License Holder issued a renewal Municipal License by the City that is either denied a renewal license by the State of Michigan or that does not meet all stipulations within six (6) months of the renewal Municipal License being issued will have their Municipal License revoked and considered denied.
- F. *Changes to Application or Municipal License.*
1. If at any time before or after a Municipal License is issued pursuant to this Ordinance, any information required in the Municipal License Application, the MMFLA, MRTMA, or any rule of regulation promulgated thereunder, changes in any way from that which is stated in the Application, the Applicant or Municipal License Holder shall supplement such information in writing within ten (10) days from the date upon which such change occurs.
 - a. Changes to a new Application will be considered a minor or major

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change as determined by the City Clerk.

1. Minor changes include a change to person or persons associated with the Applicant entity, additional MSDS pages being provided, updating power, water or wastewater calculations or other similar information. Minor changes will be accepted as part of the Application.
 2. Major changes include changing the location of the Marihuana Establishment whether it be to a different site or changing the size of any new buildings, a change of Marihuana Establishment type, a change of Applicant entity, or other similar changes. A major change will result in the Application being returned to the Applicant. If the Applicant wishes to re-submit, the re-submission will be considered a new set of Application Documents and will be date and time stamped for processing at the date and time they are re-submitted. Any fees will not be waived.
2. An Applicant or Municipal License Holder has a duty to notify the City in writing of any pending criminal charge, and any criminal conviction of a felony or other offense involving a crime of moral turpitude by the Applicant, any owner, principal officer, director, manager, or employee within ten (10) days of the event.
 3. An Applicant or Municipal License Holder has a duty to notify the City in writing of any pending criminal charge, and any criminal conviction, whether a felony, misdemeanor, petty offense, or any violation of a local law related to the cultivation, processing, manufacture, storage, sale, distribution, testing or consumption of any form of marihuana, the MMMA, the MMFLA, the MRTMA, any building, fire, health or zoning statute, code or ordinance related to the cultivation, processing, manufacture, storage, sale, distribution, testing or consumption of any form of marihuana by the Applicant, any owner, principal officer, director, manager, or employee within ten (10) days of the event.
 4. A Municipal License may be assigned or transferred only if all of the following are true:
 - a. A Municipal License has been issued and all stipulations for that license have been met, including written final approval by the State of Michigan for State Licensure.
 - b. All current Municipal License Holders submit an affidavit approving the transfer.
 - c. The person(s) or entity proposed to receive the transferred Municipal

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License submit Application Documents and are issued a Municipal License Transfer Approval. Issuance of a Municipal License Transfer Approval includes the following:

1. Certification of a completed Application per the process of this Ordinance. The Applicant may submit an affidavit of no change to the Municipally Licensed Premises to forego the Application requirements as it pertains to the Municipally Licensed Premises if no physical changes will be completed as part of the assignment or transfer.
2. Payment of a License Transfer review fee as set by the City Commission.
3. Review of the Application per Section 435-4(D)(4)(c)-(f). If an affidavit of no change to the Municipally Licensed Premises is submitted, review of corresponding information and the requirement for a Special Land Use Permit and Site Plan approval would be considered satisfied.
4. Issuance or denial of the Municipal License Transfer Approval will be completed per Section 435-4(D)(4)(g)-(i). Stipulations of 435-4(D)(7)(a) will be considered met when the Applicant has all required licenses or permits in their name. Where an affidavit of no change to the Municipally Licensed Premises has been filed, the stipulation for a required proof of final occupancy will be waived.
5. Until the Municipal License Transfer Approval is issued, the existing Municipal License will remain with the current Municipal Licensee Holder. Transfer of the Municipal License will not change its date of expiration.

G. *Expiration of Application.* If an Application has been held waiting for a Municipal License Window to open for one (1) year, the City will contact the Applicant and request in writing confirmation that the Application is accurate and that the Application should be kept on file. If the Applicant asks the Application to be removed, or if confirmation in writing is not received in ten (10) business days, the Application will be removed from the list of Applications and a letter sent to the Applicant. If the Applicant wishes to re-submit after this point, this re-submission will be considered a new set of Application Documents and will be date and time stamped for processing order at the date and time they are re-submitted. A new Marihuana Establishment Application Fee will be required.

Sec. 435-5. Operational Requirements – Marihuana Establishments

A. A Marihuana Establishment issued a Municipal License under this Ordinance and

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operating in the City shall at all times comply with the following operational requirements, which the City may review and amend from time to time as it determines reasonable.

1. *Scope of Operation.* Marihuana Establishments shall comply with all respective applicable codes of the local zoning, building, and health departments. The Marihuana Establishment must hold a valid local Municipal License and State Marihuana Establishment License for the type of Marihuana Establishment intended to be carried out on the Municipally-Licensed Property. The Marihuana Establishment operator, owner or Licensee must have documentation available that local and State sales tax requirements, including holding any licenses, if applicable, are satisfied.
2. *Required Documentation.* Each Marihuana Establishment shall be operated from the Municipally-Licensed Premises on the Municipally-Licensed Property. No Marihuana Establishment shall be Municipally-Licensed to operate from a moveable, mobile or transitory location, except for a Municipally-Licensed or Licensed Secure Transporter when engaged in the lawful transport of Marihuana. No person under the age of eighteen (18) shall be allowed to enter into the Municipally-Licensed Premises without a parent or legal guardian.
3. *Security.* Municipal License Holders shall at all times maintain a security system that meets State law requirements, and in addition shall also include the following:
 - a. Robbery and burglary alarm systems which are professionally monitored and operated twenty-four (24) hours a day, seven (7) days a week and which will contact local law enforcement if triggered;
 - b. A locking safe permanently affixed to the Municipally-Licensed Premises that shall store all Marihuana and cash remaining in the Marihuana Establishment overnight;
 - c. All Marihuana in whatever form stored at the Municipally-Licensed Premises shall be kept in a secure manner and shall not be visible from outside the Municipally-Licensed Premises, nor shall it be grown, processed, exchanged, displayed or dispensed outside the Municipally-Licensed Premises; and
 - d. All security recordings and documentations shall be preserved for at least thirty (30) days by the Municipal License Holder and made available to any law enforcement upon request for inspection.
4. *Operating Hours.* No Retailer or retail portion of a microbusiness shall operate between the hours of 8:00 p.m. and 8:00 a.m.

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5. *Required Spacing.* The following spacing requirements for Marihuana Establishments are required:
 - a. No Marihuana Establishment shall be permitted within a 1,000-foot radius of any school.
 - b. No Marihuana Retailer or Marihuana Microbusiness shall be permitted within a 1,000-foot radius of any existing retailer or microbusiness.
 - c. Measurement of either radius shall be made from the outermost boundaries of the lot or parcel upon which the respective establishments are or would be situated.

Spacing requirements become effective upon issuance of a Municipal License, whether conditional or not.

6. *Amount of Marihuana.* The amount of Marihuana on the Municipally-Licensed Property and under the control of the Municipal License Holder, owner or operator of the Marihuana Facility shall not exceed that amount permitted by the state License or the City's Municipal License.
7. *Sale of Marihuana.* The Marihuana offered for sale and distribution must be packaged and labeled in accordance with state law. The Marihuana Establishment is prohibited from selling, soliciting or receiving orders for Marihuana or Marihuana Products over the internet.
8. *Sign Restrictions.* No signs, pictures, photographs, drawings or other depictions shall appear on the outside of any Municipally-Licensed Premises nor be visible outside of the Municipally-Licensed Premises on the Municipally-Licensed Property nor advertise in a way that is inconsistent with the provisions of the MRTMA, LARA rules, or the City of Royal Oak Sign Ordinance.
9. *Use of Marihuana.* The sale, consumption or use of alcohol or tobacco products on the Municipally-Licensed Premises is prohibited. Smoking or consumption of controlled substances, including Marihuana, on the Municipally-Licensed Premises is prohibited.
10. *Indoor Operation.* All activities of Marihuana Establishment, including without limitation, distribution, growth, cultivation, or the sale of Marihuana, and all other related activity Municipally-Licensed under the Municipal License Holder's License or Municipal License must occur indoors. The Marihuana Establishment's operation and design shall minimize any impact to adjacent uses, including the control of any odor by maintaining and

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operating an air filtration system so that no odor is detectable outside the Municipally-Licensed Premises. No consumption of marihuana shall take place on the premises of a Marihuana Establishment.

11. *Distribution.* No person operating a Marihuana Establishment shall provide or otherwise make available Marihuana to any person who is not legally authorized to receive Marihuana under state law.
12. *Permits.* All necessary building, electrical, plumbing and mechanical Municipal Licenses must be obtained for any part of the Municipally-Licensed Premises in which electrical, wiring, lighting or watering devices that support the cultivation, growing, harvesting or testing of Marihuana are located.
13. *Waste Disposal.* The Municipal License holder, owner and operator of the Marihuana Establishment shall use lawful methods in controlling waste or by-products from any activities allowed under the License or Municipal License. All waste or by-products stored must be contained in a dumpster that is locked or located within a locked enclosure.
14. *Proof of Insurance.* A Municipal License Holder shall at all times maintain full force and effect for duration of the license, worker's compensation insurance 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. A Municipal License Holder shall provide proof of insurance to the City Clerk in the form of a certificate of insurance evidencing the existence of a valid and effective policy which discloses the limits of each policy, the name of the insurer, the effective date and expiration date of each policy, the policy number, and the names of the additional insureds. The policy shall name the City of Royal Oak and its officials and employees as additional insureds to the limits required by this Subsection. A licensee or its insurance broker shall notify the City of any cancellation or reduction in coverage within seven 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.
15. *Transportation.*
 - a. Marihuana may be transported by a Secure Transporter within the City under this Ordinance, and to effectuate its purpose, only:
 1. By persons who are otherwise authorized by state law to possess Marihuana;

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2. In a manner consistent with all applicable state laws and rules, as may be amended; and
 3. In a secure manner designed to prevent the loss of Marihuana.
- b. No vehicle used for the transportation or delivery of Marihuana under this Ordinance shall have for markings the words “Marihuana”, “Marijuana” or “cannabis” or any similar words; pictures or other renderings of the Marihuana plant; advertisements for Marihuana or for its sale, transfer, cultivation, delivery, transportation or manufacture, or any other word, phrase or symbol indicating or tending to indicate that the vehicle is transporting Marihuana.
 - c. No vehicle may be used for the ongoing or continuous storage of Marihuana, but may only be used incidental to, and in furtherance of, the transportation of Marihuana.
16. *Additional Conditions.* The City may impose such reasonable Terms and Conditions on a Marihuana Establishment special use as may be necessary to protect the public health, safety and welfare, and to obtain compliance with the requirements of this Ordinance and applicable law.

Sec. 435-6. Penalties and Consequences for Violation

- A. In addition to any other penalties or legal consequences provided under applicable federal, state and local law, regulations, codes and ordinances, a violation of the provisions of this Ordinance or failure to comply with any of the requirements of this Ordinance shall constitute a misdemeanor, punishable by up to 93 days in jail and/or a fine of up to \$500, plus the costs of prosecution. Each day a violation continues shall be considered a separate offense.
- B. The owner of record or tenant of any building, structure or premises, or part thereof, and any architect, builder, contractor, agent or person who commits, participates in, assists in or maintains such violation may each be found guilty of a separate offense and suffer the penalties and forfeitures provided above, except as excluded from responsibility by state law.
- C. In addition to any other remedies, the City may institute proceedings for injunction, mandamus, abatement or other appropriate remedies to prevent, enjoin, abate or remove any violations of this Ordinance. The rights and remedies provided herein are both civil and criminal in nature. The imposition of any fine, jail sentence or forfeiture shall not exempt the violator from compliance with the provisions of this Ordinance.

Sec. 435-7. City Liability and Indemnification

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- A. By accepting a Municipal License issued pursuant to this Ordinance, the Municipal License Holder 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 Marihuana Establishment owners, operators, employees, clients or customers for a violation of state or federal laws, rules or regulations.
- B. By accepting a Municipal License issued pursuant to this Ordinance, all Municipal License Holders 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 Municipally-Licensed Property, arising out of, claimed to have arisen out of, or in any manner connected with the operation of a marihuana establishment or use of a product cultivated, processed, distributed or sold that is subject to the Municipal 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. Section 1964(c) or any other alleged violation of the law
- C. By accepting a Municipal License issued pursuant to this Ordinance, a Municipal License Holder 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 of any alleged violation of any existing law including the federal Controlled Substances Act, 21 U.S.C. Section 801 et seq. or Chapter 7 of the Michigan Public Health Code, MCL 333. 7101 et. seq., as may be amended.

Sec. 435-8. Municipal License as Revocable Privilege

- A. A Municipal 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. Each Municipal License is exclusive to the Municipal License Holder, and a Municipal License Holder or any other person must apply for and receive the City's approval before a Municipal License is transferred, sold, or purchased. A Municipal License Holder or any other person shall not lease, pledge, or borrow or loan money against a license. The attempted transfer, sale, or other conveyance of an interest in a Municipal License without prior state and local approval is grounds for suspension or revocation of the Municipal License or for other sanction considered appropriate by the City.
- B. *Nonrenewal, suspension or revocation of Municipal License.* The City may, after notice and hearing as provided in Section 434-4(D)(10) of this Ordinance,

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suspend, revoke, or refuse to renew a Municipal License for any of the following reasons:

1. The Applicant or Municipal License 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 Section or with any applicable state or local law or regulation;
2. The Applicant or Municipal License Holder, or his or her agent, manager or employee, has failed to comply with any special terms or conditions of its Municipal 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 Municipal License and those imposed as a result of any disciplinary proceedings held subsequent to the date of issuance of the Municipal License.
3. The Marihuana Establishment has been operated in a manner that adversely affects the public health, safety or welfare.

Evidence to support a finding under this subsection may include, without limitation, a continuing pattern of conduct, a continuing pattern of drug-related criminal conduct within the premises of the Marihuana Establishment or in the immediate area surrounding such Marihuana Establishment, a continuing pattern of criminal conduct directly related to or arising from the operation of the Marihuana Establishment, or an ongoing nuisance condition emanating from or caused by the Marihuana Establishment. Criminal conduct shall be limited to the violation of a state law or regulation or City ordinance.

Sec. 435-9. Authorization to Inspect, Search and Examine

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 Royal Oak Police Department, the Department of State Police, or the Royal Oak Building Department and the Application for a Marihuana Establishment constitutes consent by the Applicant, and all owners, managers, and employees of the Marihuana Establishment, and the owner of the property to permit the City Manager to conduct routine examination and inspection of the Marihuana Establishment to ensure compliance with this Ordinance or any other applicable law, rule, or regulation without a search warrant and consent to seizure of any surveillance records, camera recordings, reports, or other materials required as a condition of a Municipal License without a search warrant.”

SECTION 4. SEVERABILITY. If any Section, subsection, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent portion of this ordinance, and such holding shall not affect the validity of the remaining portions of this ordinance.

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SECTION 5. SAVINGS. All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this ordinance takes effect are saved and may be consummated according to the law in force when they are commenced.

SECTION 6. REPEALER. All ordinances or parts of ordinances in conflict herewith are hereby repealed only to the extent necessary to give this ordinance full force and effect.

SECTION 7. EFFECTIVE DATE. This ordinance shall take effect on August 15, 2020.

CITY OF ROYAL OAK, MICHIGAN ORDINANCE NO. 2020-____

AN ORDINANCE TO AMEND THE CITY OF ROYAL OAK CODE OF ORDINANCES TO IMPLEMENT THE PROVISIONS OF THE MICHIGAN REGULATION AND TAXATION OF MARIHUANA ACT, PROP 1 OF 2018, SO AS TO PROTECT THE PUBLIC HEALTH, SAFETY, AND WELFARE OF THE RESIDENTS OF THE CITY BY SETTING FORTH THE MANNER IN WHICH RECREATIONAL MARIHUANA ESTABLISHMENTS CAN BE OPERATED IN THE CITY.

THE CITY OF ROYAL OAK ORDAINS:

SECTION 1. SHORT TITLE. This Ordinance shall be known as may be referred to as the Recreational Marihuana Licensing Ordinance.

SECTION 2. STATEMENT OF PURPOSE. This is an ordinance to amend the City of Royal Oak Code of Ordinances to implement the provisions of the Michigan Regulation and Taxation of Marihuana Act, Prop 1 of 2018, so as to protect the public health, safety, and welfare of the residents of the City by setting forth the manner in which recreational marihuana establishments can be operated in the City. Further, the purpose of this ordinance is to:

1. Provide a means to regulate and control the commercial production and distribution of marihuana, the lawful production of related products as set forth in, and for purposes of implementing, the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951 et. seq., as may be amended (hereafter referred to as the “MRTMA” or the “Act”);
2. Protect public health and safety through reasonable limitations on marihuana commercial entity operations, and limitations upon other marihuana-related activities provided for by the MRTMA, as they relate to noise, air and water quality, neighborhood safety, security for the establishment and its personnel, and other health and safety concerns;
3. Impose fees to defray and recover the costs to the City of the administrative and enforcement costs associated with Marihuana Establishments, and Municipally-Licensed marihuana activities as provided for in the MRTMA;
4. Coordinate with laws and regulations that may be enacted by the State addressing marihuana, including but not limited to the Department of Licensing and Regulatory Affairs Marihuana Regulatory Agency Adult – Use Marihuana Establishments Emergency Rules (LARA Rules), as amended from time to time;
5. Restrict the issuance of Marihuana Establishment Municipal Licenses only to individuals and entities that have demonstrated an intent and ability to comply with this Section, and with State law and regulation, without monitoring by City officials;

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6. Recognize that regulations for marihuana may not be adequate at the state level to address the impacts on the City of the commercialization of marihuana, making it appropriate for local regulation of the impact of marihuana establishments;
7. Recognize that nothing in this Ordinance is intended to promote or condone the production, distribution, sale or possession of marihuana in violation of any applicable law;
8. Recognize that this Ordinance is to be construed to protect the public over Marihuana Establishment interests. Operation of a Marihuana Establishment is a revocable privilege and not a right in the City. There is no property right for an individual or establishment to engage or obtain a municipal license to engage in marihuana as a commercial enterprise in the City;
9. Make it known that because marihuana is a heavily regulated industry in the City, all Municipal License Holders are assumed to be fully aware of the law and the City shall not therefore be required to issue warning before issuing citations for violation of this Ordinance; and
10. Recognize that 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.

SECTION 3. AMENDMENT. The City of Royal Oak Code of Ordinances is hereby amended by the addition of Chapter 435, Marihuana, which shall read as follows:

“CHAPTER 435. MARIHUANA

ARTICLE I

Recreational Marihuana Establishments

Sec. 435-1. Definitions

The following words, terms and phrases when used in this Article shall have the meanings ascribed as follows:

“*Applicant*”, unless specifically stated to mean a state License, means an individual, organization, partnership, company, corporation enterprise, or other entity that applies for a Municipal License as well as the person or persons associated with the Applicant. For purposes of this definition, an Applicant includes a managerial employee of the Applicant, a person holding a direct or indirect ownership interest of more than 10% in the Applicant, and the following for each type of Applicant:

- For an individual or sole proprietorship: the proprietor and spouse.

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- For a partnership and limited liability partnership: all partners and their spouses.
- For a limited partnership and limited liability limited partnership: all general and limited partners, not including a limited partner holding a direct or indirect ownership interest of 10% or less and who does not exercise control over or participate in the management of the partnership, and their spouses.
- For a limited liability company: all members and managers, not including a member holding a direct or indirect ownership interest of 10% or less and who does not exercise control over or participate in the management of the company, and their spouses.
- For a privately held corporation: all corporate officers or persons with equivalent titles and their spouses, all directors and their spouses, and all stockholders, not including those holding a direct or indirect ownership interest of 10% or less, and their spouses.
- For a publicly held corporation: all corporate officers or persons with equivalent titles and their spouses, all directors and their spouses, and all stockholders, not including those holding a direct or indirect ownership interest of 10% or less, and their spouses.
- For a multilevel ownership enterprise: any entity or person that receives or has the right to receive more than 10% of the gross or net profit from the enterprise during any full or partial calendar or fiscal year.
- For a nonprofit corporation: all individuals and entities with membership or shareholder rights in accordance with the articles of incorporation or the bylaws and their spouses.

For purposes of this definition, an Applicant does not include:

- A person who provides financing to an applicant or licensee under a bona fide financing agreement at a reasonable interest rate.
- A franchisor who grants a franchise to an applicant, provided that the franchisor does not have the right to receive royalties based upon the sale of marihuana or marihuana- infused products by the applicant who is a franchisee. Nothing herein shall be construed to preclude a franchisor from charging an applicant who is a franchisee a fixed fee. As used in this definition, the terms “franchise,” “franchisor,” and “franchisee” shall have the meanings set forth in section 2 of the Franchise Investment Law, 1974 PA 269, MCL 445.1502, as may be amended.
- A person receiving reasonable payment for rent on a fixed basis under a bona fide lease or rental obligation.
- A person receiving reasonable payment under a licensing agreement or contract concerning the licensing of intellectual property including, but not limited to, brands and recipes.

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“*Application*” means an Application for a Municipal License under this Ordinance and includes all supplemental documentation attached or required to be attached thereto; the Person filing the Application shall be known as the “Applicant.”

“*Application Documents*” means the items required as part of an Application submitted to the City prior to them being accepted as complete as provided in Section 435-4.

“*Board*” means the marihuana licensing board, as anticipated by the MRTMA to be created at LARA in order to regulate and administer state licenses.

“*Clerk*” means the City of Royal Oak Clerk or his/her designee.

“*Co-located Facility or Co-location*” means marihuana businesses holding 2 or more types of state operating licenses under the MRTMA and MMFLA operating within a single location.

“*Cultivate or Cultivation*” means to propagate, breed, grow, harvest, dry, cure, or separate parts of the marihuana plant by manual or mechanical means.

“*Department*” means the Michigan State Department of Licensing and Regulatory Affairs or any authorized designated Michigan agency authorized to regulate, issue or administer a Michigan License for a Marihuana Establishment.

“*Designated Consumption Establishment*” means a commercial space that is licensed by the agency and authorized to permit adults 21 years of age and older to consume marihuana products at the location indicated on the state License.

“*Excess Marihuana Grower*” means a license issued to a person holding 5 class C marihuana grower licenses and licensed to cultivate marihuana and sell or otherwise transfer marihuana to Marihuana Establishments.

“*Grower*” means a person licensed to cultivate marihuana and sell or otherwise transfer marihuana to Marihuana Establishments.

“*License*” means a current and valid License for Marihuana Establishment issued by the State of Michigan.

“*Licensee*” means a Person holding a current and valid Michigan License for a Marihuana Establishment.

“*Marihuana*” means that term as defined in Section 3 of the MRTMA, MCL 333.27953, as may be amended.

“*Marihuana Accessories*” means any equipment, product, material, or combination of equipment, products, or materials, which is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting,

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producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marihuana into the human body.

“*Marihuana Concentrate*” means the resin extracted from any part of the plant of the genus cannabis.

“*Marihuana Establishment*” means a marihuana grower, marihuana safety compliance facility, marihuana processor, marihuana microbusiness, marihuana retailer, marihuana secure transporter, marihuana designated consumption establishment, or any other type of marihuana-related business licensed by the department pursuant to MCL 333.27951, as may be amended.

“*Marihuana Event Organizer*” means a person licensed to apply for a temporary marihuana event license under these rules.

“*Marihuana-Infused Product*” means a topical formulation, tincture, beverage, edible substance, or similar product containing marihuana and other ingredients and that is intended for human consumption.

“*Marihuana Microbusiness*” means a person licensed to cultivate not more than 150 marihuana plants; process and package marihuana; and sell or otherwise transfer marihuana to individuals who are 21 years of age or older or to a marihuana safety compliance facility, but not to other marihuana establishments.

“*Marihuana Processor*” means a person licensed to obtain marihuana from marihuana establishments; process and package marihuana; and sell or otherwise transfer marihuana to marihuana establishments.

“*Marihuana Retailer*” means a person licensed to obtain marihuana from marihuana establishments and to sell or otherwise transfer marihuana to marihuana establishments and to individuals who are 21 years of age or older.

“*Michigan Medical Marihuana Act*” or MMMA means 2008 IL 1, MCL 333.26421 et seq., as may be amended.

“*Michigan Marihuana Facilities Licensing Act*” or MMFLA means Public Act 281 of 2016, MCL 333.27101 et seq. as may be amended.

“*Michigan Marihuana Tracking Act*” means Public Act 282 of 2016, MCL 333.27901 et seq. as may be amended.

“*Municipal License*” means a current and valid license for a Marihuana Establishment issued under this Ordinance, which shall be granted to a Municipal License Holder only for and limited to a specific Municipally-Licensed Premises and a specific Municipally-licensed Property. Said Municipal License shall be in addition to the Special Use Permit and Site Plan approval required to be obtained pursuant to the City Zoning Ordinance.

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“*Municipal License Holder*” means the an individual, organization, partnership, company, corporation enterprise, or other entity that holds a current and valid Municipal License issued under this Ordinance as well as the person or persons associated with the Municipal License Holder as Applicant(s) for that Municipal License.

“*Municipal License Slot*” means an unissued permit available to be issued to an Applicant.

“*Municipally-Licensed Premises*” means the particular building, buildings, or tenant space within which the Municipal License Holder will be authorized to conduct the Facility’s activities pursuant to the Municipal License.

“*Municipally-Licensed Property*” means the real property comprised of a lot, parcel or other designated unit of real property upon which the Municipally-Licensed Premises is situated.

“*Person*” means a natural person, company, partnership, profit or non-profit corporation, limited liability company, or any joint venture for a common purpose.

“*Premises*” means the particular building, buildings, section of land, or tenant space within which a particular use is conducted.

“*Public Place*” means any area in which the public is invited or generally permitted in the usual course of business.

“*Rules*” means rules promulgated by the Department in consultation with the Board to implement this Act, including the LARA Rules as may be amended.

“*Safety Compliance Establishment*” means a person licensed to test marihuana, including certification for potency and the presence of contaminants.

“*School*” means ~~any property owned~~ a pre-existing public or ~~leased by an elementary, parochial, private, or secondary~~ school, including buildings, fields, or other property utilized by the school with a curriculum equivalent to kindergarten through 12th grade.

“*Secure Transporter*” means a person licensed to obtain marihuana form marihuana establishments in order to transport Marihuana to Marihuana Establishments.

“*Stacked License*” means more than 1 state License issued to a single licensee to operate as a class C Marihuana Grower as specified in each state License at a Marihuana Establishment.

“*State Operating License*” or, unless the context requires a different meaning, “*License*”, means a license issued by the Department that allows a person to operate a Marihuana Establishment.

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“*Temporary Marihuana Event License*” means a state License held by a marihuana event organizer for an event where the onsite sale or consumption of marihuana products, or both, are authorized at the location indicated on the state License during the dates indicated on the state License.

“*Window*” means the time period set by the City Manager to receive Applications for evaluation by the competitive process as specified in this Ordinance.

Sec. 435-2. Municipal License Required; Eligibility; General Provisions

A. The City hereby authorizes the operation of the following types of Marihuana Establishments:

1. Growers, Class A
2. Growers, Class B
3. Growers, Class C
4. Processors
5. Retailer
6. Safety Compliance Facilities
7. Secure Transporters
8. Marihuana Microbusiness
9. Co-Located Facilities as defined in this Ordinance.

B. The following number of Municipal Licenses can be issued for each authorized Marihuana Establishment type:

1. Growers, Class A: 1
2. Growers, Class B: 1
3. Growers, Class C: 1
4. Processors: 1

5. ~~Retailers: 1~~

5. Retailers: 2 total but only in the General Business Zone (as defined by Section 770-41 of the City of Royal Oak Zoning Ordinance and the Zoning Map) or General Industrial Zone (as defined by Section 770-44 of the City of Royal Oak Zoning Ordinance and the Zoning Map), except that no more than 1 may be located in the General Business Zone.

6. Safety Compliance Facilities: 1

7. Secure Transporters: 1

8. ~~Marihuana Microbusiness: 1~~

8. Marihuana Microbusiness: 2 total but only in the General Business Zone (as defined by Section 770-41 of the City of Royal Oak Zoning Ordinance and the Zoning Map) or General Industrial Zone (as defined by Section 770-44 of the City of Royal Oak Zoning Ordinance and the Zoning Map), except that no more than 1 may be located in the General Business Zone.

C. No person shall operate a Marihuana Establishment at any time or any location

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within the City unless a currently effective Municipal License for that person at that location has been issued under this Ordinance. No Marihuana Establishments are allowed nor shall a Municipal License be considered or granted for those activities and facilities defined as a “special license” being a state license described under section 8 of the MRTMA and issued by the state pursuant to section 9 of the MRTMA, MCL 333.2795 and 333.27959, as may be amended, including but not limited to, Designated Consumption Establishment, Excess Marihuana Grower, Marihuana Event Organizer, Temporary Marihuana Event, and any special license types hereafter recognized by the state.

- D. Marihuana Establishments shall operate only as allowed under this Ordinance.
- E. The City Manager is granted the power to fully and effectively implement and administer the Municipal License Application process.
- F. The requirements set forth in this Ordinance shall be in addition to, and not in lieu of, any other licensing or Municipal Licensing requirements imposed by applicable federal, state or local laws, regulations, codes or ordinances.
- G. As specified in this Ordinance, each Applicant shall pay nonrefundable Review fees, Application fees, annual fees, renewal fees and inspection fees for Municipal Licenses to the City to defray the costs incurred by the City for inspection, administration and enforcement of the local regulations regarding Marihuana Establishments. The City Commission shall by resolution set the fees in an amount not to exceed any limitations imposed by Michigan law. The Municipal License fee requirement shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other federal, state or City law or ordinance, including, by way of example, any applicable zoning or building permits.
- H. The City has no obligation to process or approve any incomplete Application.
- I. A Municipal License shall remain valid for one year following removal of all stipulations on an issued Municipal License.
- J. It is the sole and exclusive responsibility of each Municipal License Holder or Applicant at all times during the Application period and during its operation to immediately provide the City with all material changes in any information submitted on an Application and any other changes that may materially affect any state License or its City Municipal License.
- K. No Municipal License issued under this Ordinance may be assigned or transferred to another person or entity except as specified in this Ordinance. No Municipal License issued under this Ordinance is transferrable to any other location except for the Municipally-Licensed Premises on the Municipally-Licensed Property.
- L. The original Municipal License issued under this Ordinance shall be prominently

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displayed at the Municipally-Licensed Premises in a location where it can be easily viewed by the public, law enforcement and administrative authorities.

- M. A Municipal License Holder may not engage in any other Marihuana Establishment in the Municipally-Licensed Premises or on the Municipally-Licensed Property, or in its name at any other location within the City, without first obtaining a separate Municipal License.
- N. No Municipal License shall be granted or renewed for a Marihuana Establishment in a residence.
- O. Co-located Facilities are subject to state law for multiple uses per premises, subject to the City Manager or his designee's determination that such uses are compatible together at that location, are consistent on a shared basis with all the provisions of the MRTMA and each use is consistent with zoning and other provisions of the City Code of Ordinances. If these conditions are met, more than one business may be located on one parcel. ~~Unless higher performance is required by applicable law, there must be a minimum of a one-hour fire wall separating any Marihuana Establishment and any adjacent businesses.~~

Sec. 435-3. Other Laws and Ordinances

In addition to the terms of the Ordinance, any Marihuana Establishment shall comply with all City Ordinances, including without limitation the City Zoning Ordinance, and with all other applicable state and local ordinances, laws, codes and regulations.

Sec. 435-4. Application for and Renewal of Municipal License

- A. *Application Documents.* Application Documents for a Municipal License for a Marihuana Establishment shall be submitted to the City Clerk, and on or after the effective date of this Ordinance shall contain the following information. Information obtained from the Applicant is exempt from public disclosure under state law. Upon receipt, review, and approval as outlined in this Ordinance of all Application Documents by City staff, the Documents will be considered a complete Application.
 - 1. The name, address, phone number and email address of the Applicant and the proposed Marihuana Establishment.
 - 2. The names, home addresses and personal phone numbers for all Applicants and the Marihuana Establishment.
 - 3. One (1) copy of the following:
 - a. Pre-approval for a Marihuana Establishment license by the State of Michigan.
 - b. For Class A, B, or C Growers or Processors or Microbusinesses, a

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~~preapproval from the Community Development Department of documentary evidence by a licensed engineer demonstrating the electric system's ability to deliver the estimated peak capacity (kW) and energy (kWh) of the Marihuana Establishment.~~

- c. All documentation of the Applicant's valid tenancy, ownership or other legal interest in the proposed Municipally-Licensed Property and Municipally-Licensed Premises. If the Applicant is not the owner of the proposed Municipally-Licensed Property and Municipally-Licensed Premises, a notarized statement from the owner of such property authorizing the use of the property for a Marihuana Establishment.
- d. If the Applicant is a corporation, non-profit organization, limited liability company or any other entity other than a natural person, indicate its legal status, attach a copy of all company formation documents (including amendments), proof of registration with the State of Michigan, and a certificate of good standing.
- e. A valid, unexpired driver's license or state issued ID for all Applicants for the proposed Marihuana Establishment.
- f. Evidence of a valid sales tax license for the business if such a license is required by state law or local regulations.

~~g. Application for Sign Permit, if any sign is proposed.~~

h.g. Non-refundable Marihuana Establishment Application Document Review fee.

i.h. Business and Operations Plan, showing in detail the Marihuana Establishment's proposed plan of operation, including without limitation, the following:

- 1. A description of the type of Marihuana Establishment proposed and the anticipated or actual number of employees.
- 2. A security plan meeting the requirements of Section 435-5 of this Ordinance.
- 3. A description by category of all products to be sold.
- 4. An affidavit indicating the Applicant will, prior to applying for a building permit:
 - a. Submit a list of Material Safety Data Sheets for all

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nutrients, pesticides, and other chemicals proposed for use in the Marihuana Establishment.

b. Submit a comprehensive report identifying all hazardous materials and processes that will be utilized by the Marihuana Establishment. This list must include all cleaning supplies, as well as chemicals used and/or produced either as products or as waste products in the processes at the establishment. The report shall determine the acceptability of technologies, processes, products, facilities, materials and uses attending the design, operation, or use of a building or premises. All hazardous materials and chemicals must be listed as to how to handle the disposal of these materials. The opinion and report shall be prepared by a qualified third person, firm or corporation approved by the City.

c. Obtain a wastewater discharge permit before connecting to or contributing to the POTW. Publicly Owned Treatment Works (POTW). Refer to City of Royal Oak Code of Ordinances Section 740-7.

5. A description and plan of all equipment and methods that will be employed to stop any impact to adjacent uses, including enforceable assurances that no odor will be detectable from outside of the Municipally-Licensed Premises.
6. A plan for the disposal of Marihuana and related byproducts that will be used at the Marihuana Establishment.

j.i. Whether any Applicant has ever applied for or has been granted any commercial license or certificate issued by a licensing authority in Michigan or any other jurisdiction that has been denied, restricted, suspended, revoked, or not renewed and a statement describing the facts and circumstances concerning the application, denial, restriction, suspension, revocation, or nonrenewal, including the licensing authority, the date each action was taken, and the reason for each action.

k.i. A site plan ~~and interior floor plan~~ of the Municipally-Licensed Premises and the Municipally-Licensed Property prepared in accordance with Section 770-12, Site Plan Review, of the City Zoning Ordinance signed and sealed by a ~~Michigan~~-registered architect, or professional engineer. Site plan must include distance between the Municipally-Licensed Premises and all applicable buffered uses identified in Section 435-5(A)(5) of this Ordinance, unless those uses are greater than 1,500 ft. from the Municipally-

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Licensed Premises.

l.k. The amount of water usage estimated for the facility, including the estimated average gallons per day and peak gallons per minute as well as estimated needs for fire suppression, if applicable.

m.l. Information regarding any other Marihuana Establishment or Medical Marihuana Facility that the Applicant or any of the Applicant's Owners directors, officers or managers is authorized to operate in any other jurisdiction within the State, or another State, and their involvement in each Marihuana Establishment or Medical Marihuana Facility.

4. Any other information reasonably requested by the City to be relevant to the processing or consideration of the Application.

B. *Review of Application Documents.* Applications must be complete and shall be considered on a competitive basis as required and set forth by MCL 333.27959.4, as may be amended. All Application Documents submitted by a potential Applicant will be reviewed by City staff for completeness with the requirements of Section 435-4 of this Ordinance before being considered a complete Application. All Application Documents will be stamped or otherwise identified by City staff at the date and time they are submitted by a potential Applicant.

1. City staff has ~~ten (10) business days~~ a reasonable amount of time to review the Application Documents and determine if they are complete.

2. Complete Application Documents will be accepted as an Application under this Ordinance and processed. A determination of a complete Application shall not prohibit the City from requiring supplemental information at any time during the Application process.

3. If Application Documents are found to be incomplete, the prospective Applicant will be notified in writing of the deficiencies and given ten (10) business days to correct those deficiencies.

a. If the deficiencies are corrected within the ten (10) business days, the Application Documents will be considered complete and accepted as an Application under this Ordinance.

b. If deficiencies are not corrected within the ten (10) business days, the Application Documents will be returned to the prospective Applicant. If the prospective Applicant wishes to re-submit Application Documents, they must be re-submitted in their entirety with a new Application Document Review fee. This re-submission will be considered a new set of Application Documents and will be newly date and time stamped.

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C. *Competitive Process per MCL 333.27959.4, as may be amended.*

1. If a Marihuana Establishment type has a limited number of Municipal Licenses available to be issued due to a cap imposed herein, the City Manager shall open a Window. The timing and duration of the Window shall be determined by the City Manager. If a Municipal License is available for a Marihuana Establishment type limited by cap, the City Manager must open a Window at least once per calendar year.
2. At the end of a Window, if the number of Applications for a Marihuana Establishment Municipal License for exceeds the number of available Municipal Licenses, the City shall decide among Applications by a competitive process intended to select the Applicant(s) who are best suited to operate in compliance with the Act within the City.
3. Applications to be included in the competitive process include all those whose Application Documents were date and time stamped as submitted prior to the end of the Window and which were able to be considered complete and accepted as an Application.
4. The Applicants and their Applications will be ranked in the order of which is best suited to operate in compliance with the Act within the City as determined by the City Manager or his or her designee. This ranking will be used to fill available Municipal License Slots, starting with the best suited Applicant and Application, until all available Municipal License Slots are filled. The competitive criteria to be used shall be as follows:
 - a. Review of the Applicant's completely submitted, detailed Application (including plans which address the provisions of this Section and related provisions, such as security, lighting, processing, handling of hazardous waste, site plans, record-keeping, disposal, water/utility, ventilation, odor, etc.), which illustrates the likely success of the proposed business, in harmony with surrounding properties at the proposed site;
 - b. Whether the Applicant is currently in default/arrears on any taxes or fees otherwise due to the City, has a history of noncompliance or violations with City Ordinances or applicable laws, or has been served with any complaint or notice filed by or with any public body regarding the delinquency in the payment of any tax required under federal, state or local law;
 - c. Whether the Applicant is/was a business operating in the City of Royal Oak within the past two years ~~that has demonstrated a commitment to doing business in the City, having contributed to~~

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~~helping the City grow and succeed in a manner harmonious for all residents and property types;~~

- d. Whether the Applicant has a history of criminal conviction/plea, other than as specified by the MRTMA, MCL 333.27958.1.(c), as may be amended;
- e. Whether the Applicant has ever applied for or has been granted any commercial license or certificate issued by a licensing authority in Michigan or any other jurisdiction, that has been denied, restricted, suspended, revoked, or not renewed, or has proceedings pending related to such;
- f. Whether the Applicant filed, or had filed against it/him/her, a proceeding for bankruptcy or been involved in any formal process to adjust, defer, suspend or otherwise work out payment of a debt in the past seven years;
- g. Whether there is performed and planned future outreach on behalf of the proposed business and a written plan evidencing the outcome of such meetings, and whether the Applicant ~~have~~has made, or ~~plan~~plans to make, significant physical improvements to the building housing the Marihuana Establishment;
- h. Whether the Applicant has taken steps to encourage employee retention, attract capable workers, train employees, and any other employee-employer factors tending to show a successful workforce;
- i. Whether the Applicant has taken steps to include equity, diversity, and inclusion in their operations that would tend to yield greater profitability, innovation, and more effective teamwork; and
- h.j. Whether the proposed plan incorporates sustainable infrastructure and energy efficient elements and fixtures.

D. *Processing and Review of Applications.*

1. An Application will be held until a Window is established to select the Applications to fill an available Municipal License Slot.
2. An Application will be considered for a Municipal License Slot through the competitive process as specified in this Ordinance. When an Applicant is awarded the Municipal License Slot through the competitive process, the Applicant will be notified and will be given five (5) business days to pay the Marihuana Establishment Application Fee. If an Applicant does not pay the fee within the time allotted, the next Application as ranked by the

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competitive process during the applicable Window will be issued the Municipal License Slot.

3. Upon payment of the Marihuana Establishment Application Fee by an Applicant, the City Clerk shall refer a copy of the Application to the Department Head or designated staff person of the following for their review and approval: the Police Department, the Fire Department, the Community Development Department (Building Division, Engineering Division and Planning Division) and any other applicable departments.
4. In order for a Marihuana Establishment Application to be approved and a Municipal License to be issued, all of the following conditions must be met:
 - a. The Applicant has passed a criminal background check conducted by the City of Royal Oak Police Department.
 - b. The Engineering Division will complete a preliminary review of the wastewater plan submitted.
 - c. The Engineering Division will confirm that the necessary amount of water for the Marihuana Establishment is available and complete preliminary review of the plan submitted that includes the requested water pressure and fire flow protections.
 - d. The Community Development Department will review all provided plans to ensure conformity with their previously supplied determination on the ability to supply electricity to the proposed Marihuana Establishment and general site requirements.
 - e. The Planning Division has confirmed that the proposed location complies with the buffer requirements, and a preliminary review of the plan submitted.
 - f. A Special Land Use Permit and Site Plan application has been submitted, Permit fees have been paid, and the Special Land Use Permit and Site Plan has been approved by the City Commission after recommendation from the Planning Commission.
 - g. The Applicant must not have a conviction of or release from incarceration for a felony under the laws of this state, any other state, or the United States within the past ten (10) years or conviction of a controlled substance-related felony within the past ten (10) years, except that, consistent with MCL 333.27958.1.(c), as may be amended, a prior conviction solely for a marihuana-related offense does not disqualify an individual or otherwise affect eligibility for licensure, unless the offense involved distribution of a controlled substance to a minor.

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- E. *Renewal Application.* Renewal Applications shall require City approval.
1. Renewal Applications for a Marihuana Establishment maintaining the location of the Municipally-Licensed Premises shall be received by the ~~Zoning Administrator~~City Clerk not less than ninety (90) days prior to the expiration of the annual Municipal License. Renewal Applications for a Marihuana Establishment requesting a change in the location of the Municipally-Licensed Premises shall be submitted and received not less than one hundred twenty (120) days prior to the expiration of the Municipal License.
 2. A Renewal Application must follow the same approval process as all new Applications with the exception of the following:
 - a. A Municipal License Holder that submits an application for a Renewal Municipal License at a previously Municipally-Licensed Premises shall be deemed in compliance with the spacing requirements set forth in Section 435-5(A)(5) of this Ordinance.
 - b. For any information required as part of the Application process that has not changed, the Municipal License Holder may submit an Affidavit of No Changes in place of the information when submitting a Renewal Application. If any of the items requested in the Application process has changed, such items must be submitted as required in this Ordinance.
 - c. A Municipal License Holder, as a stipulation of a renewal Municipal License issued by the City, must provide proof of having submitted a license renewal application no later than thirty (30) days after expiration of their State License. Once a renewed State license has been granted, a copy must be provided to the City of Royal Oak.
 - d. A renewal Municipal License issued by the City takes effect on the date of expiration of the original Municipal License issued and the Municipal License Holder has one year from that date until renewal is again required.
 3. A Municipal License Holder whose Municipal License expires and for which a complete Renewal Application has not been received by the expiration date shall be deemed to have forfeited the Municipal License under this Ordinance. They will be considered denied. The City will not accept Renewal Applications after the expiration date of the Municipal License.
 4. A Municipal License Holder issued a renewal Municipal License by the City that is either denied a renewal license by the State of Michigan or that does not meet all stipulations within six (6) months of the renewal Municipal

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License being issued will have their Municipal License revoked and considered denied.

F. *Changes to Application or Municipal License.*

1. If at any time before or after a Municipal License is issued pursuant to this Ordinance, any information required in the Municipal License Application, the MMFLA, MRTMA, or any rule of regulation promulgated thereunder, changes in any way from that which is stated in the Application, the Applicant or Municipal License Holder shall supplement such information in writing within ten (10) days from the date upon which such change occurs.
 - a. Changes to a new Application will be considered a minor or major change as determined by the City Clerk.
 1. Minor changes include a change to person or persons associated with the Applicant entity, additional MSDS pages being provided, updating power, water or wastewater calculations or other similar information. Minor changes will be accepted as part of the Application.
 2. Major changes include changing the location of the Marihuana Establishment whether it be to a different site or changing the size of any new buildings, a change of Marihuana Establishment type, a change of Applicant entity, or other similar changes. A major change will result in the Application being returned to the Applicant. If the Applicant wishes to re-submit, the re-submission will be considered a new set of Application Documents and will be date and time stamped for processing at the date and time they are re-submitted. Any fees will not be waived.
2. An Applicant or Municipal License Holder has a duty to notify the City in writing of any pending criminal charge, and any criminal conviction of a felony or other offense involving a crime of moral turpitude by the Applicant, any owner, principal officer, director, manager, or employee within ten (10) days of the event.
3. An Applicant or Municipal License Holder has a duty to notify the City in writing of any pending criminal charge, and any criminal conviction, whether a felony, misdemeanor, petty offense, or any violation of a local law related to the cultivation, processing, manufacture, storage, sale, distribution, testing or consumption of any form of marihuana, the MMMA, the MMFLA, the MRTMA, any building, fire, health or zoning statute, code or ordinance related to the cultivation, processing, manufacture, storage, sale, distribution, testing or consumption of any form of marihuana by the

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Applicant, any owner, principal officer, director, manager, or employee within ten (10) days of the event.

4. A Municipal License may be assigned or transferred only if all of the following are true:
 - a. A Municipal License has been issued and all stipulations for that license have been met, including written final approval by the State of Michigan for State Licensure.
 - b. All current Municipal License Holders submit an affidavit approving the transfer.
 - c. The person(s) or entity proposed to receive the transferred Municipal License submit Application Documents and are issued a Municipal License Transfer Approval. Issuance of a Municipal License Transfer Approval includes the following:
 1. Certification of a completed Application per the process of this Ordinance. The Applicant may submit an affidavit of no change to the Municipally Licensed Premises to forego the Application requirements as it pertains to the Municipally Licensed Premises if no physical changes will be completed as part of the assignment or transfer.
 2. Payment of a License Transfer review fee as set by the City Commission.
 3. Review of the Application per Section 435-4(D)(4)(c)-(f). If an affidavit of no change to the Municipally Licensed Premises is submitted, review of corresponding information and the requirement for a Special Land Use Permit and Site Plan approval would be considered satisfied.
 4. Issuance or denial of the Municipal License Transfer Approval will be completed per Section 435-4(D)(4)(g)-(i). Stipulations of 435-4(D)(7)(a) will be considered met when the Applicant has all required licenses or permits in their name. Where an affidavit of no change to the Municipally Licensed Premises has been filed, the stipulation for a required proof of final occupancy will be waived.
 5. Until the Municipal License Transfer Approval is issued, the existing Municipal License will remain with the current Municipal Licensee Holder. Transfer of the Municipal License will not change its date of expiration.

- G. *Expiration of Application.* If an Application has been held waiting for a Municipal License Window to open for one (1) year, the City will contact the Applicant and request in writing confirmation that the Application is accurate and that the Application should be kept on file. If the Applicant asks the Application to be removed, or if confirmation in writing is not received in ten (10) business days, the Application will be removed from the list of Applications and a letter sent to the Applicant. If the Applicant wishes to re-submit after this point, this re-submission will be considered a new set of Application Documents and will be date and time stamped for processing order at the date and time they are re-submitted. A new Marihuana Establishment Application Fee will be required.

Sec. 435-5. Operational Requirements – Marihuana Establishments

- A. A Marihuana Establishment issued a Municipal License under this Ordinance and operating in the City shall at all times comply with the following operational requirements, which the City may review and amend from time to time as it determines reasonable.
1. *Scope of Operation.* Marihuana Establishments shall comply with all respective applicable codes of the local zoning, building, and health departments. The Marihuana Establishment must hold a valid local Municipal License and State Marihuana Establishment License for the type of Marihuana Establishment intended to be carried out on the Municipally-Licensed Property. The Marihuana Establishment operator, owner or Licensee must have documentation available that local and State sales tax requirements, including holding any licenses, if applicable, are satisfied.
 2. *Required Documentation.* Each Marihuana Establishment shall be operated from the Municipally-Licensed Premises on the Municipally-Licensed Property. No Marihuana Establishment shall be Municipally-Licensed to operate from a moveable, mobile or transitory location, except for a Municipally-Licensed or Licensed Secure Transporter when engaged in the lawful transport of Marihuana. No person under the age of eighteen (18) shall be allowed to enter into the Municipally-Licensed Premises without a parent or legal guardian.
 3. *Security.* Municipal License Holders shall at all times maintain a security system that meets State law requirements, and in addition shall also include the following:
 - a. Robbery and burglary alarm systems which are professionally monitored and operated twenty-four (24) hours a day, seven (7) days a week and which will contact local law enforcement if triggered;
 - b. A locking safe permanently affixed to the Municipally-Licensed Premises that shall store all Marihuana and cash remaining in the

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Marihuana Establishment overnight;

- c. All Marihuana in whatever form stored at the Municipally-Licensed Premises shall be kept in a secure manner and shall not be visible from outside the Municipally-Licensed Premises, nor shall it be grown, processed, exchanged, displayed or dispensed outside the Municipally-Licensed Premises; and
 - d. All security recordings and documentations shall be preserved for at least thirty (30) days by the Municipal License Holder and made available to any law enforcement upon request for inspection.
4. *Operating Hours.* No Retailer or retail portion of a microbusiness shall operate between the hours of 8:00 p.m. and 8:00 a.m.
5. *Required Spacing.* The following spacing requirements for Marihuana Establishments are required:
- a. No Marihuana Establishment shall be ~~located~~permitted within ~~one thousand feet (a 1,000') from~~000-foot radius of any school.
 - b. No Marihuana Retailer or Marihuana Microbusiness shall be ~~located~~permitted within ~~one thousand feet (a 1,000') from~~000-foot radius of any ~~other~~existing ~~Retailer~~retailer or ~~Microbusiness~~microbusiness.
 - c. ~~The distances provided in this Section~~Measurement of either radius shall be measured by following a straight line, without regard to intervening buildings, made from the nearest pointoutermost boundaries of the Municipally-Licensed Premises atlot or parcel upon which the proposed Marihuana Establishment is torespective establishments are or would be located to the nearest point of one of the following:
 - 1. ~~The lot line of the separated use, when a school is the only use on the parcel.~~
 - d.c. ~~The premises of the separated use, when a school is one of multiple uses on the parcel~~situated.
- Spacing requirements become effective upon issuance of a Municipal License, whether conditional or not.
6. *Amount of Marihuana.* The amount of Marihuana on the Municipally-Licensed Property and under the control of the Municipal License Holder, owner or operator of the Marihuana Facility shall not exceed that amount

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permitted by the state License or the City's Municipal License.

7. *Sale of Marihuana.* The Marihuana offered for sale and distribution must be packaged and labeled in accordance with state law. The Marihuana Establishment is prohibited from selling, soliciting or receiving orders for Marihuana or Marihuana Products over the internet.
8. *Sign Restrictions.* No signs, pictures, photographs, drawings or other depictions shall appear on the outside of any Municipally-Licensed Premises nor be visible outside of the Municipally-Licensed Premises on the Municipally-Licensed Property nor advertise in a way that is inconsistent with the provisions of the MRTMA, LARA rules, or the City of Royal Oak ZoningSign Ordinance.
9. *Use of Marihuana.* The sale, consumption or use of alcohol or tobacco products on the Municipally-Licensed Premises is prohibited. Smoking or consumption of controlled substances, including Marihuana, on the Municipally-Licensed Premises is prohibited.
10. *Indoor Operation.* All activities of Marihuana Establishment, including without limitation, distribution, growth, cultivation, or the sale of Marihuana, and all other related activity Municipally-Licensed under the Municipal License Holder's License or Municipal License must occur indoors. The Marihuana Establishment's operation and design shall minimize any impact to adjacent uses, including the control of any odor by maintaining and operating an air filtration system so that no odor is detectable outside the Municipally-Licensed Premises. No consumption of marihuana shall take place on the premises of a Marihuana Establishment.
11. *Distribution.* No person operating a Marihuana Establishment shall provide or otherwise make available Marihuana to any person who is not legally authorized to receive Marihuana under state law.
12. *Permits.* All necessary building, electrical, plumbing and mechanical Municipal Licenses must be obtained for any part of the Municipally-Licensed Premises in which electrical, wiring, lighting or watering devices that support the cultivation, growing, harvesting or testing of Marihuana are located.
13. *Waste Disposal.* The Municipal License holder, owner and operator of the Marihuana Establishment shall use lawful methods in controlling waste or by-products from any activities allowed under the License or Municipal License. All waste or by-products stored must be contained in a dumpster that is locked or located within a locked enclosure.
14. *Proof of Insurance.* A Municipal License Holder shall at all times maintain

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full force and effect for duration of the license, worker's compensation insurance 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. A Municipal License Holder shall provide proof of insurance to the City Clerk in the form of a certificate of insurance evidencing the existence of a valid and effective policy which discloses the limits of each policy, the name of the insurer, the effective date and expiration date of each policy, the policy number, and the names of the additional insureds. The policy shall name the City of Royal Oak and its officials and employees as additional insureds to the limits required by this Subsection. A licensee or its insurance broker shall notify the City of any cancellation or reduction in coverage within seven 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.

15. *Transportation.*

- a. Marihuana may be transported by a Secure Transporter within the City under this Ordinance, and to effectuate its purpose, only:
 1. By persons who are otherwise authorized by state law to possess Marihuana;
 2. In a manner consistent with all applicable state laws and rules, as may be amended; and
 3. In a secure manner designed to prevent the loss of Marihuana.
- b. No vehicle used for the transportation or delivery of Marihuana under this Ordinance shall have for markings the words "Marihuana", "Marijuana" or "cannabis" or any similar words; pictures or other renderings of the Marihuana plant; advertisements for Marihuana or for its sale, transfer, cultivation, delivery, transportation or manufacture, or any other word, phrase or symbol indicating or tending to indicate that the vehicle is transporting Marihuana.
- c. No vehicle may be used for the ongoing or continuous storage of Marihuana, but may only be used incidental to, and in furtherance of, the transportation of Marihuana.

16. *Additional Conditions.* The City may impose such reasonable Terms and Conditions on a Marihuana Establishment special use as may be necessary to protect the public health, safety and welfare, and to obtain compliance

with the requirements of this Ordinance and applicable law.

Sec. 435-6. Penalties and Consequences for Violation

- A. In addition to any other penalties or legal consequences provided under applicable federal, state and local law, regulations, codes and ordinances, a violation of the provisions of this Ordinance or failure to comply with any of the requirements of this Ordinance shall constitute a misdemeanor, punishable by up to 93 days in jail and/or a fine of up to \$500, plus the costs of prosecution. Each day a violation continues shall be considered a separate offense.
- B. The owner of record or tenant of any building, structure or premises, or part thereof, and any architect, builder, contractor, agent or person who commits, participates in, assists in or maintains such violation may each be found guilty ~~or responsible~~ of a separate offense and suffer the penalties and forfeitures provided above, except as excluded from responsibility by state law.
- C. In addition to any other remedies, the City may institute proceedings for injunction, mandamus, abatement or other appropriate remedies to prevent, enjoin, abate or remove any violations of this Ordinance. The rights and remedies provided herein are both civil and criminal in nature. The imposition of any fine, jail sentence or forfeiture shall not exempt the violator from compliance with the provisions of this Ordinance.

Sec. 435-7. City Liability and Indemnification

- A. By accepting a Municipal License issued pursuant to this Ordinance, the Municipal License Holder 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 Marihuana Establishment owners, operators, employees, clients or customers for a violation of state or federal laws, rules or regulations.
- B. By accepting a Municipal License issued pursuant to this Ordinance, all Municipal License Holders 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 Municipally-Licensed Property, arising out of, claimed to have arisen out of, or in any manner connected with the operation of a marihuana establishment or use of a product cultivated, processed, distributed or sold that is subject to the Municipal 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. Section 1964(c) or any other alleged violation of the law

- C. By accepting a Municipal License issued pursuant to this Ordinance, a Municipal License Holder 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 of any alleged violation of any existing law including the federal Controlled Substances Act, 21 U.S.C. Section 801 et seq. or Chapter 7 of the Michigan Public Health Code, MCL 333. 7101 et. seq., as may be amended.

Sec. 435-8. Municipal License as Revocable Privilege

- A. A Municipal 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. Each Municipal License is exclusive to the Municipal License Holder, and a Municipal License Holder or any other person must apply for and receive the City's approval before a Municipal License is transferred, sold, or purchased. A Municipal License Holder or any other person shall not lease, pledge, or borrow or loan money against a license. The attempted transfer, sale, or other conveyance of an interest in a Municipal License without prior state and local approval is grounds for suspension or revocation of the Municipal License or for other sanction considered appropriate by the City.
- B. *Nonrenewal, suspension or revocation of Municipal License.* The City may, after notice and hearing as provided in Section ~~679-5.434-4(D-)~~(10) of this Ordinance, suspend, revoke, or refuse to renew a Municipal License for any of the following reasons:
 - 1. The Applicant or Municipal License 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 Section or with any applicable state or local law or regulation;
 - 2. The Applicant or Municipal License Holder, or his or her agent, manager or employee, has failed to comply with any special terms or conditions of its Municipal 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 Municipal License and those imposed as a result of any disciplinary proceedings held subsequent to the date of issuance of the Municipal License.
 - 3. The Marihuana Establishment has been operated in a manner that adversely affects the public health, safety or welfare.

Evidence to support a finding under this subsection may include, without limitation, a continuing pattern of conduct, a continuing pattern of drug-related criminal

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conduct within the premises of the Marihuana Establishment or in the immediate area surrounding such Marihuana Establishment, a continuing pattern of criminal conduct directly related to or arising from the operation of the Marihuana Establishment, or an ongoing nuisance condition emanating from or caused by the Marihuana Establishment. Criminal conduct shall be limited to the violation of a state law or regulation or City ordinance.

Sec. 435-9. Authorization to Inspect, Search and Examine

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 Royal Oak Police Department, the Department of State Police, or the Royal Oak Building Department and the Application for a Marihuana Establishment constitutes consent by the Applicant, and all owners, managers, and employees of the Marihuana Establishment, and the owner of the property to permit the City Manager to conduct routine examination and inspection of the Marihuana Establishment to ensure compliance with this Ordinance or any other applicable law, rule, or regulation without a search warrant and consent to seizure of any surveillance records, camera recordings, reports, or other materials required as a condition of a Municipal License without a search warrant.”

SECTION 4. SEVERABILITY. If any Section, subsection, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent portion of this ordinance, and such holding shall not affect the validity of the remaining portions of this ordinance.

SECTION 5. SAVINGS. All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this ordinance takes effect are saved and may be consummated according to the law in force when they are commenced.

SECTION 6. REPEALER. All ordinances or parts of ordinances in conflict herewith are hereby repealed only to the extent necessary to give this ordinance full force and effect.

SECTION 7. EFFECTIVE DATE. This ordinance shall take effect on August 15, 2020.