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Battle Creek Code of Ordinances

CHAPTER 835

Adult Use Marihuana Establishments

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CROSS REFERENCES

Michigan Regulation and Taxation of Marihuana Act, generally Initiated Law 1 of 2018, M.C.L.A. 333.27951 - 333.27967

Michigan Public Health Code, M.C.L.A. 333.7410

Zoning - Ch. 1230 generally and Chapter 1299

Licensing in general; fees, bonds and insurance - see B.R. & T. Ch. 802

835.01 FINDINGS AND PURPOSE.

The City intends to issue permits for certain adult use recreational marihuana establishments, and to regulate the same, to the extent they are permitted under the Michigan Regulation and Taxation of Marihuana Act. The City does not intend that permitting and regulation under this chapter should be construed as a finding that such establishments comply with any law. By

requiring a City Adult Use Marihuana Establishment (AUME) Permit and compliance with the requirements of this chapter, the City intends to protect the public health, safety and welfare by:

- (a) Promoting the safe, regulated manufacturing, production, and sale by state-licensed establishments of adult use recreational marihuana to adults age twenty-one and over, and to ensure the safe access to recreational marihuana to the City's residents of requisite age;
- (b) Discouraging the sale of unsafe and unlicensed adult use recreational marihuana products;
- (c) Specifically prohibiting the granting of special licenses within the City;
- (d) Preserving and protecting the health, safety, and welfare of the residents of the City and the general public by minimizing unsafe and unregulated adult use recreational marihuana production and sale; and
- (e) Establishing standards and procedures by which the siting, operating, and maintaining of an adult recreational marihuana establishment shall be governed.

(Ord. 14-2019. Passed 10-15-19.)

835.02 DEFINITIONS.

(a) Words and phrases contained in the Michigan Regulation and Taxation of Marihuana Act ("MRTMA"). This Chapter contains many words and phrases that are defined in the MRTMA. As used in this Chapter, they have the same meaning as provided in the MRTMA, except that if at any time the definition of a word or phrase set forth in this section conflicts with the definition in the MRTMA, then the definition in the MRTMA shall apply. The following words and phrases are, and mean, as follows:

(1) "Department" means the department of licensing and regulatory affairs.

(2) "Licensee" means a person holding a state license.

(3) "Marihuana" means all parts of the plant of the genus cannabis, growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including marihuana concentrate and marihuana-infused products. For purposes of this chapter, marihuana does not include:

A. The mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from those stalks, fiber, oil, or cake, or any sterilized seed of the plant that is incapable of germination;

B. Industrial hemp; or

C. Any other ingredient combined with marihuana to prepare topical or oral administrations, food, drink, or other products.

(4) "Marihuana, Adult Use Establishment" or "Marihuana Establishment" means a marihuana grower, marihuana safety compliance marihuana establishment, marihuana processor, marihuana microbusiness, marihuana retailer, marihuana secure transporter, or any other type of marihuana-related business licensed to operate by the marihuana regulatory agency as authorized by the Michigan Regulation and Taxation of Marihuana Act (2018).

A. "Marihuana Grower" means a person licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.

B. "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 twenty-one years of age or older or to a marihuana safety compliance marihuana establishment, but not to other marihuana establishments.

C. "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.

D. "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 twenty-one years of age or older.

E. "Marihuana Secure Transporter" means a person licensed to obtain marihuana from marihuana establishments in order to transport marihuana to marihuana establishments.

F. "Marihuana Safety Compliance Marihuana establishment means a person licensed to test marihuana, including certification for potency and the presence of contaminants.

(5) "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.

(6) "Marijuana Regulatory Agency" or "Agency" means a Type I agency within the Department of Licensing and Regulatory Affairs (the "Department") with the powers as set out in MCL 333.27001, including but not limited to, all of the authorities, powers, duties, functions, and responsibilities of the Department, including its Bureau of Marihuana Regulation, under the MRTMA, 2018 IL 1, MCL 333.27951 to 333.27967.

(7) "Person" means an individual, corporation, limited liability company, partnership of any type, trust, or other legal entity.

(8) "Plant" means any living organism that produces its own food through photosynthesis and has observable root formation or is in growth material.

(9) "Rules" means rules promulgated under the administrative procedures act of 1969, 1969 PA 306, M.C.L.A. 24.201 to 24.328, by the department in consultation with the Agency to implement this act, which shall include, but is not limited to, the Emergency Rules issued under the administrative procedures act on July 3, 2019.

(10) "Special Licenses" mean additional types or classes of state licenses to operate marihuana-related businesses as described under section 8 of the Act, including but not limited to:

- A. Designated consumption establishment licenses;
- B. Excess marihuana grower licenses;
- C. Marihuana event organizer licenses; and
- D. Temporary marihuana event licenses.

(11) "State license" or, unless the context requires a different meaning, "license" means a license that is issued by the department under this act that allows the licensee to operate a marihuana establishment.

(b) Other words and phrases. The words and phrases in this chapter, as used in this chapter, shall have the following meanings:

(1) "Applicant" means a person who applies for a state license: 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:

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

B. For a partnership and limited liability partnership: all partners and their spouse.

C. For a limited partnership and limited liability 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.

D. 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.

E. 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.

F. 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.

G. 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.

H. 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.

(2) "AUME Permit" or, unless the context requires a different meaning, "permit" means a marihuana adult use establishment permit that is issued under this chapter that allows the permittee to operate as one of the following, specified in the AUME permit:

A. A marihuana grower.

B. A marihuana processor.

C. A marihuana secure transporter.

D. A marihuana retailer.

E. A marihuana safety compliance marihuana establishment.

F. A marihuana microbusiness.

(3) "AUME Permit On-site Operator" means a person who generally oversees, manages, and/or supervises operations of the AUME permit business and is generally on the site during the majority of each business day of the AUME permit business.

(4) "AUME Permit Retailer and/or Microbusiness Pick List" means a City-generated list of desired property and community attributes including but not limited to energy efficiency, aesthetic improvements, stormwater reduction, etc. for which applicants voluntarily select to incorporate into their AUME permit retailer and/or microbusiness application when located in the C-2 to C-7 zoning districts.

(5) "Authorized person" means:

A. An owner of a marihuana establishment;

B. The directors, officers, members, partners, and individuals of a marihuana establishment that is a corporation, limited liability company, partnership, or sole partnership.

C. Any person who is in charge of and on the premises of the marihuana establishment during business hours.

(6) "Class A grower" means a grower of not more than 100 marihuana plants.

(7) "Class B grower" means a grower of not more than 500 marihuana plants.

(8) "Class C grower" means a grower of not more than 2,000 marihuana plants.

(9) "Competing AUME Retailer and/or Microbusiness Permit Applications" means two or more complete marihuana retailer and/or marihuana microbusiness AUME permit applications submitted for properties located less than 1,000 feet from each other when submitted during the same twenty-four-hour period, defined as falling between 3:00 p.m. to 2:59 p.m. the following business day.

(10) "Conditional Approval AUME Permit" means 90-day authorization to the applicant to apply for and seek site plan review approval, and building/trade permits. A conditional approval AUME permit does not authorize use of an adult use marihuana establishment.

(11) "Licensee" means a person holding a City AUME permit under this chapter.

(12) "Michigan Regulation and Taxation of Marihuana Act" and "MRTMA" mean Initiated Act 1 of 2018, M.C.L. 333.27951, et. seq.

(13) "Person" means the entities included in the definition of "person" in Section 202.03 of the City of Battle Creek Ordinances, in addition to the entities included in the definition of "person" in the MRTMA.

(14) "Sponsorship" means any marketing or advertising in association with a specific event, project, or program, including but not limited to where a person or entity pays for all or some of the associated costs.

(Ord. 14-2019. Passed 10-15-19.)

835.03 MARIHUANA ESTABLISHMENTS AUTHORIZED; SPECIAL LICENSES PROHIBITED.

(a) Marihuana Establishments Permitted. Pursuant to the MRTMA, the City of Battle Creek authorizes the operation in the City of the following marihuana adult use establishments, provided they possess a state operating license issued under the MRTMA and they comply with the additional requirements of this chapter, Chapter 1299 Marihuana Facilities and Establishments (Zoning) and all other applicable laws, administrative rules, and ordinances:

(1) Marihuana grower, including Class A grower; Class B grower; and Class C grower.

(2) A marihuana processor.

(3) A marihuana secure transporter.

(4) A marihuana retailer.

(5) A marihuana safety compliance marihuana establishment.

(6) A marihuana microbusiness.

(b) Special Licenses Prohibited. Pursuant to the MRTMA, Section 6(1), the City elects to prohibit the licensing and operation of special licenses within its boundaries to the extent it is permitted to prohibit them under the Act, which shall specifically prohibit:

- (1) Designated consumption establishment license.
- (2) Excess marihuana grower license.
- (3) Marihuana event organizer license.
- (4) Temporary marihuana event license.

(Ord. 14-2019. Passed 10-15-19.)

835.04 CITY AUME PERMIT REQUIRED.

(a) No person shall operate a marihuana establishment for which an annual AUME permit as provided for in this chapter has not been issued.

(b) No person or entity that was open or operating any marihuana establishment purporting to produce, manufacture, test, transfer or transport medical marihuana or marihuana prior to the adoption of Ordinance 14-2019 by the City Commission shall be considered a lawful use or lawful nonconforming use.

(c) The AUME permit requirement in this chapter applies to all establishments that exist on the effective date of this chapter or are established after the effective date of this chapter. This includes all persons who engage or have engaged in any of the activities that are included in the definitions in the MRTMA of the types of entities that may obtain a state operating license, without regard to whether they called or call their businesses "dispensaries," "cultivation facilities," "clubs," "cooperatives," or any other similar label. A person who engaged in any of the activities that are included in the definitions in the MRTMA of the types of entities that may obtain a state operating license before the effective date of the MRTMA or before obtaining a state operating license does not have a vested right to obtain a City AUME permit.

(d) The AUME permit requirement in this chapter applies to all marihuana establishments whether operated for profit or not for profit.

(e) The AUME permit requirement in this chapter shall be in addition to any other requirements imposed by any other state or local law, including but not limited to state or local laws applicable to commercial entities performing functions similar to the functions performed by marihuana establishments.

(f) The issuance of any AUME permit pursuant to this chapter does not create an exception, defense or immunity to any person with regard to any potential criminal or civil liability the person may have under any federal or state law or city ordinance.

(g) This section does not apply to, or regulate, any protected patient or caregiver conduct pursuant to the Michigan Medical Marihuana Act of 2008.

(h) The term of the final AUME permit shall not exceed one year (except as provided below for permits issued in the month of December), and fees are not prorated. The permit year shall begin on January 1 in each year, or the date upon which the final AUME permit was approved, whichever occurs later, and shall terminate on December 31 unless earlier terminated as provided in Section 835.11. An annual permit issued between December 1 and December 31 of any year shall expire on December 31 of the next calendar year following issuance thereof, unless terminated sooner under Section 835.11. All permits issued pursuant to this chapter must be renewed on an annual basis. To renew an existing permit the licensee shall submit an application

in the same manner as is required to apply for a new permit no sooner than ninety days before the expiration date and no later than sixty days before the expiration date. An application for a permit renewal received after November 1 of each year shall be considered late and will be subject to a late fee.

(Ord. 14-2019. Passed 10-15-19.)

835.05 GENERAL PROVISIONS.

(a) An AUME permit issued under this chapter is valid only for the location of the marihuana establishment and type of marihuana establishment that is listed on the AUME permit application, providing the marihuana establishment remains in compliance with all other requirements in this chapter and Chapter 1299.

(b) An AUME permit issued under this chapter is valid only if the permit holder also holds a valid current state operating license, and a copy of the valid current state license has been provided to the City Clerk by the AUME permit holder.

(c) The revocation, suspension, and placement of restrictions by the state on a state operating license apply equally to an AUME permit issued by the City.

(d) The expiration date of the state operating license that corresponds to an AUME permit issued under this chapter constitutes the expiration date of the license, however, operation of the marihuana establishment under the expired license is permitted to the extent that operation under the expired state operating license is permitted under the MRTMA.

(e) An AUME permit issued by the City under this chapter and the State MRTMA establishment license shall be conspicuously posted in the marihuana establishment where it is easily open to public view, City officials, including BCPD and the Fire Department.

(f) Acceptance of an AUME permit from the city under this chapter constitutes consent by the permittee, owners, managers and employees to permit the City Administrator or designee to conduct inspections of the marihuana establishment to ensure compliance with this chapter.

(Ord. 14-2019. Passed 10-15-19.)

835.06 APPLICATION REQUIREMENTS FOR AND ISSUANCE OF A NEW CITY AUME PERMIT; CONDITIONAL APPROVAL.

(a) Application for New Annual AUME Permit. An application for a new annual AUME permit for a marihuana establishment shall be submitted in person by the applicant or their state licensed attorney to the City Clerk on a form provided by the City, which shall fulfill all of the requirements indicated on the form. An applicant shall truthfully and fully provide all of the information requested on the application, including but not limited to, the following:

(1) The name and address of the proposed marihuana establishment and any other contact information requested on the application form.

(2) The applicant's full name, business address, e-mail address and phone number and presentation of a valid, government-issued photo identification.

(3) The name and address of all owners of the real property where the proposed marihuana establishment is located.

(4) Name and address of all business managers of the marihuana establishment.

(5) A statement with respect to each person named on the application whether the person has:

A. Ever been convicted of a felony involving controlled substances as defined under the Michigan Public Health Code, M.C.L.A. 333.1101 et seq., the federal law, or the law of any other state and, if so, the date of the conviction and the law under which the person was convicted.

B. Ever been convicted of any other type of felony under the law of Michigan, the United States, or another state, and, if so, the date of the conviction and the law under which the person was convicted.

(6) Proof of an applicant's ownership or legal possession of the premises and, if the applicant is not the owner, the written, notarized consent of the property owner where the marihuana establishment is proposed to be located to operate a marihuana establishment at that location.

(7) A City-issued zoning assurance letter, provided with the AUME permit application, signed by the applicant which affirms that the applicant has reviewed all applicable zoning ordinances relative to the proposed use, including Ch. 1299 and all regulations addressing site development including, but not limited to parking, setbacks, and signage.

(8) State of Michigan Department of Licensing and Regulatory Affairs document indicating approved prequalification status by the Marihuana Regulatory Agency for the applicant or applicant's entity.

(9) If the type(s) of marihuana adult use establishments under the MRTMA application consists of a marihuana grower's permit, the maximum number of plants that the applicant intends to grow. The application form for a marihuana grower's permit is the same for a Class A, Class B, or Class C license and one application fee for a grower's license shall apply without regard to the class of state operating license the permit application seeks. An application fee pursuant to Section 802.24 for each marihuana grower's license Class shall apply.

(10) Payment of a non-refundable application fee, which shall be established by resolution of the City Commission and set out in the fee, bond, and insurance schedule provided for in Section 802.24.

(11) AUME marihuana retailer and/or marihuana microbusiness pick list and supporting documentation, which shall be incorporated into the AUME marihuana retailer and/or marihuana microbusiness application regardless of any competing AUME permit marihuana retailer and/or marihuana microbusiness applications. Once items on the pick list have been voluntarily selected and submitted with the application, it is mandatory that those items be satisfied.

(12) If license holder is not the on-site operator, indicate name and contract information of the on-site operator.

(b) Upon filing of the application for an AUME permit, the City Clerk shall review and evaluate the application, along with other necessary City departments. In determining whether an AUME permit should be issued, the City shall evaluate whether the application is complete.

(c) The City Clerk shall reject AUME permit marihuana retailer and/or marihuana microbusiness application(s) which selected fewer items in its pick list than a competing AUME permit marihuana retailer and/or marihuana microbusiness application(s) where each was submitted and determined to be complete during the same 24-hour period, defined as falling between 3:00 p.m. and 2:59 p.m. the following business day.

(1) The applicant of the denied application under this subsection may apply their submitted application fee from the denied application toward a new property location if submitted within ten business days after the initial application denial. If no new application is submitted within that

period, a partial refund shall be provided as set out in Section 802.24 Fee, Bond and Insurance Schedule.

(d) Conditional Approval Permit. Initial approval of the new annual AUME permit application after review as set out in below Section 835.11 will result in the issuance of a ninety-day conditional approval permit, which authorizes the applicant to apply for and seek site plan review approval, and building/trade permits. A conditional approval permit does not authorize use of a marihuana establishment. Within ninety days of issuance of the conditional approval permit, the applicant shall submit proof of an approved City site plan review and building/trade permits to the City Clerk.

(1) If application for site plan approval and local permits as outlined above were made but are not obtained within ninety days, then the conditional approval permit shall expire and a new permit application shall be submitted pursuant to Section 835.06 Extensions may be approved by the City Clerk based on substantial work having been completed as determined by the City and at the request of the applicant thirty days prior to the expiration of the conditional approval permit.

(2) If no site plan or building plans have been submitted for permits within the ninety days, then the conditional approval permit expires, and an applicant will be required to wait thirty days before submitting a new application.

(3) If application for site plan approval and local permits as outlined above were obtained within ninety days, but the local permits expired without the work having been completed, then the conditional approval permit shall expire and a new permit application shall be submitted pursuant to Section 835.06.

(4) If application for site plan approval and local permits as outlined above were obtained within ninety days, but if the local permits expire without the work having been completed and an extension was not timely applied for, or was denied, then the conditional approval permit shall expire and a new permit application shall be submitted pursuant to section 835.06.

(Ord. 14-2019. Passed 10-15-19.)

835.07 ISSUANCE OF FINAL AUME PERMIT AND AUTHORIZATION TO OPERATE MARIHUANA ESTABLISHMENT UNDER PERMIT.

(a) If the AUME permit applicant has successfully demonstrated compliance with all requirements included within the conditional approval permit for issuance of a permit, including but not limited to all requirements of below subsection (c) and, the location conforming to all standards of the zoning district in which it is located, then the City Clerk shall issue a final AUME permit to the applicant, or grant renewal of an existing AUME permit.

(b) An issued final AUME permit is active beginning the date of the issued permit and expires December 31 of same year except when a final AUME permit is issued during the month of December, which will expire on December 31 of the following year.

(c) The issuance of a final AUME permit under this chapter authorizes operation of the marihuana establishment only after the following additional requirements are met:

(1) The applicant has provided the City Clerk with copies of the applicant's state operating license and the certificate of occupancy for the premises.

(2) The applicant has provided the City Clerk a copy of the state approved premises security plan. The said security measures on the premises are subject to inspection and must be approved by the Battle Creek Police Department and comply with the following:

A. Fully operational security cameras shall monitor all areas of the premises as required by State Administrative Rules, including but not limited to Emergency Rule 35.

B. Recordings from security cameras shall be maintained for a minimum of thirty days, except for in instances of investigation or inspection by the Agency, or the City Police Department (BCPD), in which case the AUME permittee shall retain the recordings and make them available to BCPD upon request until such time as the agency or the BCPD notifies the AUME permittee that the recordings may be destroyed.

C. The City Manager may adopt regulations implementing security measures, including but not limited to regulations on the design, location, maintenance, and access to the cameras and recordings so long as they do not conflict with state rules and regulations. City regulations shall take effect thirty days after being filed with the City Clerk unless modified or disapproved by the City Commission.

D. A monitored alarm system consistent with State Administrative Rules, including but not limited to Emergency Rule 35.

E. A storage room for overnight storage of any marihuana product on the premises consistent with Emergency Rule 38.

(3) The applicant has provided the City Clerk proof that all City taxes and assessments owed by the applicant have been paid and any assessments, taxes, or liens on the real property to comprise the licensed premises and personal property located on the licensed premises are also paid.

(4) The applicant has provided the City Clerk proof that the applicant is not in violation of any City ordinances on any other property under the applicant's ownership or control located within the City.

(d) (1) The applicant shall provide the City with proof of financial responsibility for liability for bodily injury in an amount not less than one hundred thousand dollars (\$100,000), as well as a copy of an endorsement placed on each policy requiring ten days' notice by mail to the city before the insurer may cancel the policy for any reason:

A. Worker's compensation insurance in accordance with Michigan statutory limits.

B. A marihuana secure transporter shall show proof of auto insurance, vehicle registration, and registration as a commercial motor vehicle, as applicable, for any vehicles used to transport marihuana product as required by the Act.

(2) An original certificate of insurance may be provided as an initial indication of the required insurance. applicant shall be required to continue without interruption during the term of the AUME permit the above named insurance coverages. If any of the above coverages expire by their terms during the term of a permit, the applicant shall deliver proof of renewal and/or new policies to the City Clerk at least ten days prior to the expiration date. Insurance companies, named insured and policy forms shall be subject to the approval of the City Insurance Loss Control Specialist or designee, within five business days. Insurance policies shall not contain endorsements or policy conditions which reduce coverage required under the terms of the AUME permit.

(Ord. 14-2019. Passed 10-15-19.)

835.08 RENEWALS, AMENDMENTS AND RESCISSIONS.

(a) Renewal of Final AUME Permits.

(1) Only an issued AUME final permit may be renewed. Applicants seeking renewals shall file a new application pursuant to Section 835.06.

(b) Amendments.

(1) Amendment of AUME application without conditional or final AUME permit approval.

A. Prior to a decision of a conditional permit, an AUME application may be amended under any of the following circumstances:

1. Change in property ownership or property lessee/lessor name(s);
2. Clerical errors/omissions such as misspelling, wrong numbering, or other similar items in the submitted application; or
3. Any City required amendments of clarifications, clerical errors, additional entity background information, additional property information, or other relevant information required for City decision.

B. Applicants shall submit supporting documentation detailing basis for amendment and subsequent documents which amend the application.

C. Any amendments submitted as provided above shall be incorporated into the application and the amended terms shall be fully enforceable against the applicant.

(2) Non-substantive changes to approved conditional or final AUME permit:

A. After receiving an approved conditional or final AUME permit, and AUME application may be amended for any circumstance listed under subsection (b)(1)A.2.

B. Prior to receiving an approved final AUME permit, any change which will not increase the project intensity, as solely determined by the Zoning Administrator, including but not limited to: building size, number of marihuana plants, hours of operation, type of AUME use. The Zoning Administrator's decision as to whether the change shall be permitted as not increasing the project intensity shall be considered a final determination. If the Zoning Administrator determines that such change requires the submittal of a new or amended site plan application or building/trade permits, then these items shall be mandatory and enforceable.

C. Applicants shall submit supporting documentation detailing basis for amendment and subsequent documents which amend the application.

D. Any amendments submitted as provided above shall be incorporated into the application and the amended terms shall be fully enforceable against the applicant.

(3) Substantive changes to an approved conditional or final AUME permits. Substantive changes require the filing of a new application pursuant to Section 835.06. The following changes shall be considered "substantive," as intended by this subsection:

A. An increase in the project intensity as determined solely by the Zoning Administrator including, but not limited to: number of marihuana plants, hours of operation, or other aspects of the project which have an effect on the intensity, visual appearance, noise or odor levels, or other possible impacts to surrounding properties, public services/infrastructure.

B. Adding a new AUME use on the same property as the approved conditional or final AUME permit.

C. Lapse in the 90-day conditional permit period without having fulfilled requirements pursuant to Section 835.06(b).

D. A request to remove any item(s) selected on the submitted AUME marihuana retailer or microbusiness pick list.

(c) Transferring Approved Conditional or Final AUME Permit.

(1) The transferring of an approved conditional AUME permit which changes the listed applicant to a different entity or person is prohibited.

(2) The transferring of approved conditional or final AUME permits to another location is prohibited.

(3) The transferring of an approved final AUME permit which only changes the listed applicant to a different entity or person may be allowed with the submittal of:

A. Document consisting of a notarized and original signatures;

B. State of Michigan Licensing and Regulatory Affairs Department document indicating approval of applicant or applicant's entity of Department's Step 1: Prequalification Document Checklist; and

C. Fee as established in the fee, bond, and insurance schedule provided for in Section 802.24.

(d) Rescission of Approved Conditional or Final AUME Permit.

(1) An applicant may rescind an approved conditional or final AUME permit at any time to effectively remove such permit from the associated property.

(2) The rescission is effective as of the time and date of a City approval of a completed rescission City form.

(3) Once rescission is effective, an applicant receiving the approved rescission cannot file a new AUME application within ten business days anywhere within the City of Battle Creek.

(4) No fees paid in conjunction with the rescinded approved conditional or final AUME permits shall be refunded.

(Ord. 14-2019. Passed 10-15-19.)

835.09 CONDUCT OF BUSINESS AT A MARIHUANA ESTABLISHMENT.

(a) A marihuana establishment shall be conducted in compliance with the MRTMA, the rules promulgated pursuant to the MRTMA, including but not limited to the State Administrative Rules, and all other laws, rules, and regulations of the state of Michigan and the City of Battle Creek.

(b) A marihuana establishment may not allow cultivation, processing, sale, or display of marihuana accessories to be visible from a public place outside of the marihuana establishment without the use of binoculars, aircraft, or other optical aids.

(c) A marihuana establishment shall secure every entrance to the establishment so that access to areas containing marihuana is restricted to employees and other persons permitted by the marihuana establishment to access the area and to agents of the department or state and local law enforcement officers and emergency personnel and shall secure its inventory and equipment during and after opening hours to deter and prevent theft of marihuana and marihuana accessories.

(d) Marihuana establishments shall be closed for business, and no sale or any distribution, delivery or receipt of marihuana in any form shall occur upon the premises between the hours of

9:00 p.m. and 7:00 a.m.

(e) An authorized person shall consent to the entry into a marihuana establishment by the Building Official and Zoning Inspectors or their designee for the purpose of inspection to determine compliance with this chapter and Ch. 1299, pursuant to a notice posted in a conspicuous place on the premises two or more days before the date of the inspection or sent by first class mail to the address of the premises four or more calendar days before the date of the inspection.

(f) All security measures required in this chapter and the Rules shall be maintained in good working order. The premises shall be monitored and secured twenty-four hours per day.

(g) All marihuana in any form on the premises of a marihuana establishment shall be cultivated, manufactured, tested, sold, and packaged in the State of Michigan.

(h) Access to the marihuana establishment's restricted and limited access areas is restricted to the permittee; employees of the permittee, escorted visitors, City employees and police officers acting within the scope of their duty, and the Agency. A marihuana retailer or a marihuana microbusiness may grant access as provided in below subsection (i) to customers to a dedicated point of sale area.

(i) A marihuana retailer shall have a separate room that is dedicated as the point of sale area for the transfer or sale of marihuana product as provided in the Act and the Rules. The marihuana retailer shall keep marihuana products behind a counter or other barrier to ensure that a customer does not have direct access to the marihuana products.

(j) A person or entity that receives an AUME permit under this chapter shall display its permit and, when issued, its state marihuana establishment license in plain view clearly visible to City officials and State Agency authorized agents.

(k) Applicants and permittees shall notify the agency and local law enforcement authorities within twenty-four hours of becoming aware of or should have been aware of the theft or loss of any marihuana product or criminal activity at the marihuana establishment.

(l) Marihuana establishments shall not allow onsite or as part of the marihuana establishment the sale, consumption, or serving of food or alcohol. However, the establishment may allow the consumption of food by employees or visitors provided the marihuana establishment has a designated area for the consumption of food that includes, but is not limited to, a room with floor to ceiling walls and a door that separates the room from any marihuana product as provided in Emergency Rule 56.

(m) Before selling or transferring marihuana to an individual twenty-one years of age or older, the permittee or its employee shall verify the individual appeared to be twenty-one years of age or older by means of government issued photographic identification containing a date of birth and that the sale or transfer will not exceed the single transaction limit in these rules.

(Ord. 14-2019. Passed 10-15-19.)

835.10 PROHIBITED ACTS.

It shall be unlawful:

(a) For any person to violate any provision of this chapter or any condition of any permit granted pursuant to this chapter.

(b) For any person to produce, sell, distribute or possess more marihuana than allowed by any applicable state or local law.

(c) For any person to produce, distribute or possess marihuana in violation of this chapter or any other applicable state or local law, including but not limited to applicable zoning ordinances, Chapter 1299 of these ordinances, and state administrative rules.

(d) For any person to make any changes or allow any changes to be made in the operation of the marihuana establishment as represented in the AUME permit application, without first notifying the City by amending its application.

(e) For any AUME permittee to advertise or market marihuana product where the advertisement is visible to members of the public from any street, sidewalk, park, or other public place unless the permittee has reliable evidence that no more than 30% of the audience or readership for the television program, radio program, internet web site, or print publication is reasonably expected to be under twenty-one years of age. Any marihuana product permitted to be advertised or marketed under this rule shall include the warnings listed in State Emergency Rule 49(1)(k).

(f) For any person to market or advertise marihuana products to individuals under twenty-one years of age. Sponsorships targeted to members aged twenty-one years or younger are prohibited.

(g) For an AUME permittee of a marihuana establishment to allow a physician to conduct a medical examination or issue a medical certification document at a marihuana establishment for the purpose of obtaining a registry identification card, regardless of whether the permittee was present at the time the prohibited conduct took place.

(h) For an AUME permittee of a marihuana establishment to allow the sale, consumption, transfer, or use of alcohol or tobacco products on the premises.

(i) For any person to reside or permit any person to reside in or on the premises of a marihuana establishment.

(j) For any person to consume, use, or inhale a marihuana product in any form, anywhere within a marihuana establishment or on the property of a marihuana establishment.

(k) No marihuana retailer may sell or otherwise transfer marihuana that is not contained in an opaque, resealable, child-resistant package designed to be significantly difficult for children under five years of age to open and not difficult for normal adults to use properly as defined by 16 C.F.R. 1700.20 (1995).

(l) No marihuana establishment may allow a person under twenty-one years of age to volunteer or work for the marihuana establishment.

(m) A marihuana microbusiness shall not operate at multiple locations.

(Ord. 14-2019. Passed 10-15-19.)

835.11 GROUNDS FOR DENIAL, SUSPENSION OR REVOCATION OF AUME PERMIT; AUME PERMIT FORFEITURE; HEARING.

(a) Grounds for Denial.

(1) The City Clerk shall reject any application that does not meet the requirements of the MRTMA or this chapter. The City Clerk shall reject any application that contains any misrepresentation or omission of any material fact (materiality as determined by the City), or false or misleading information, or the applicant has provided the city with any other false or misleading information related to the marihuana establishment.

(2) An applicant is ineligible to receive a permit under this chapter if any of the following circumstances exist regarding the applicant or an applicant's affiliate (as defined by the MRTMA):

A. Prior conviction under the laws of this state, any other state, or the United States that involved distribution of a controlled substance to a minor.

B. Any person required to be named on the permit application is convicted of a crime which, if it had occurred prior to submittal of the application, could have been cause for denial of the permit application.

C. The applicant has knowingly submitted an application for a permit that contains false, misleading or fraudulent information, or who has intentionally omitted pertinent information on the application for a license.

D. Is an employee, advisor, or consultant of the agency involved in the implementation, administration, or enforcement of the Act or the Rules, including emergency rules, pursuant to section 7 of the Act, MCL 333.27957.

E. The applicant fails to provide and maintain adequate premises liability and casualty insurance for its proposed marihuana establishment.

F. Holds an elective office of a governmental unit of this state, another state, or the federal government; is a member of or employed by a regulatory body of a governmental unit in this state, another state, or the federal government; or is employed by a governmental unit of this state. This subdivision does not apply to an elected officer of or employee of a federally recognized Indian tribe or to an elected precinct delegate.

G. The applicant fails to meet other criteria established by state-issued rule.

(3) In determining whether to grant an AUME permit to an applicant, the City may also consider all of the following:

A. Whether the applicant or anyone who will have ownership in the marihuana establishment has a pattern of convictions involving dishonesty, theft, or fraud that indicate the proposed marihuana establishment is unlikely to be operated with honesty and integrity.

B. Whether the applicant has a history of noncompliance with any regulatory requirements, all legal judgments, lawsuits, legal proceedings, charges, or government investigations, whether initiated, pending, or concluded, against the applicant, that are related to business operations, including, but not limited to fraud, environmental, food safety, labor, employment, worker's compensation, discrimination, and tax laws and regulations, in this state or any other jurisdiction.

C. Whether the applicant meets the other standards in rules applicable to the state license category and standards, requirements in this chapter, as well as compliance with other applicable city ordinances.

(b) AUME Permit Forfeiture. In the event that a marihuana establishment does not commence operations within one year of issuance of a City AUME permit, the AUME permit shall be deemed forfeited; the business may not commence operations and the permit is not eligible for renewal.

(c) AUME Permit as Revocable Privilege. An AUME permit granted by this chapter is a revocable privilege granted by the City and is not a property right. Granting an AUME permit does not create or vest any right, title, or other property interest. Each AUME permit is exclusive to the permittee, and a permittee or any other person must apply for and receive the City's approval before a permit is transferred, sold, or purchased. An AUME permittee or any other person shall not lease, pledge, or borrow or loan money against an AUME permit. The attempted transfer, sale or other conveyance of an interest in a license without prior agency approval is grounds for

suspension or revocation of the AUME permit or for other sanction considered appropriate by the City.

(d) Nonrenewal, Suspension, or Revocation of AUME Permit.

(1) The City Clerk may, after notice and hearing, suspend, revoke or refuse to renew an AUME permit for any of the following reasons:

A. The applicant or permittee, 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 chapter or with any applicable state or local law, regulation or rule;

B. The applicant or permittee, or his or her agent, manager or employee, has failed to comply with any special terms or conditions of its permit and/or license pursuant to an order of the state or local permitting authority, including those terms and conditions that were established at the time of issuance of the license and those imposed as a result of any disciplinary proceedings held subsequent to the date of issuance of the permit;

C. The City, the County, or any other governmental entity with jurisdiction, has closed the marihuana establishment temporarily or permanently or has issued any sanction for failure to comply with the health and safety provisions of this chapter or other applicable state or local laws related to public health and safety;

D. The marihuana establishment is determined by the City to have become a public nuisance pursuant to Chapter 662 Public Nuisance Abatement of these City Ordinances or other applicable state nuisance law;

E. The marihuana establishment's state operating license has been suspended or revoked; or

F. The marihuana commercial entity has been operated in a manner that adversely affects the public health, safety or welfare.

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

(3) In addition to the basis for revocation and/or suspension in subsection (d)(1) above, the City Commission may revoke a permit for cause in accordance with Section 802.17.

(e) Any person whose permit is denied, revoked or suspended shall be entitled to a hearing in accordance with Section 802.16.

(Ord. 14-2019. Passed 10-15-19.)

835.12 REVOCATION NOT EXCLUSIVE PENALTY.

Nothing in this chapter shall be deemed to prohibit the City Administrator or designee from imposing other penalties authorized by the City of Battle Creek ordinances or other ordinance of the city, including filing a public nuisance action or any other legal action in a court of competent jurisdiction.

(Ord. 14-2019. Passed 10-15-19.)

835.99 PENALTY.

Except as otherwise provided in this chapter, a person who violates or fails to comply with any of the provisions of this chapter is responsible for a Class F Municipal civil infraction and shall be subject to the civil fines provided in Section 202.98 and any other relief that may be imposed by the court.

(Ord. 14-2019. Passed 10-15-19.)