



Agenda Work Session of the City Commission

City of Kalamazoo

Monday, December 18, 2017

6:15 PM

City Commission Chambers at City Hall - 241 W. South Street

- A. CALL TO ORDER/ROLL CALL
- B. COMMUNICATIONS
- C. DISCUSSION TOPICS/ACTION ITEMS
 - 1. First reading of an Ordinance to Permit the Temporary Continued Operation of Certain Medical Marihuana Facilities in the City. **(Action: Motion to offer the ordinance for first reading)**
- D. CITIZEN COMMENTS
- E. MISCELLANEOUS COMMENTS AND CONCERNS BY COMMISSIONERS
- F. ADJOURNMENT



Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Knott, and City Commissioners

FROM: Clyde J. Robinson, City Attorney

PREPARED BY: Laura J. Echtenaw, Legal Assistant

DATE: 12/14/2017

SUBJECT: Ordinance to Permit the Temporary Continued Operation of Certain Medical Marihuana Facilities in the City

RECOMMENDATION

It is requested and recommended that the City Commission adopt a ordinance permitting the continued operation of medical marihuana testing centers in the City pending the consideration of comprehensive medical marihuana ordinances.

BACKGROUND

Since 2014, The Spott Laboratory has existed at 901 Riverview Drive. The business engages in the testing of medical marihuana samples for registered medical marihuana patients and primary caregivers to registered patients. It is seeking to be permitted to continue operations pending City Commission consideration of a more comprehensive medical marihuana ordinance. With the adoption of the Medical Marihuana Facilities Licensing Act (MMFLA), the Michigan Department of Licensing and Regulatory Affairs (LARA) issued Emergency Rules on December 4, 2017, which in part, addressed the ability of existing medical marihuana facilities to continue to operate pending application and obtaining a State license under the MMFLA on or after December 15, 2017.

Under the MMFLA, municipalities must adopt an ordinance to "opt-in" under Section 205 so as to permit medical marihuana facilities to operate within their jurisdictions. Emergency Rule 19 provided a 10-day window for communities, which are contemplating opting-in, to adopt an ordinance permitting existing medical marihuana facilities to continue operations past December 15, 2017. Unfortunately, the limitations of this Rule made it literally impossible for the City of Kalamazoo to adopt an ordinance given the restrictions contained in the City Charter for the adoption of ordinances.

The City Charter precludes an ordinance from being introduced and adopted at the same meeting and requires adoption at a regularly-scheduled meeting. Thus, even had an ordinance been introduced at the December 4, 2017 regular meeting or the December 11, 2017 workshop, such could only have been adopted at the December 18, 2017 meeting which falls outside of the scope of the Emergency Rule. Following a conversation between this office and lead LARA administrators, it was determined that the Emergency Rule would not be applied in a manner so as to preclude a municipality from adopting an ordinance in accordance with its City Charter, and if given retroactive effect.

The proposed ordinance grants a "safety compliance center" in existence on December 4, 2017, the date the Emergency Rules were issued by LARA to continue to operate pending the consideration of a more

comprehensive medical marihuana ordinance by the City Commission prior to February 15, 2018. Additionally the ordinance will be given retroactive effect to December 14, 2017, so as to be deemed adopted prior to December 15, 2017 so as to comply with Emergency Rule 19. Further, again in conformance with Emergency Rule 19, the proposed ordinance, if adopted, would sunset on June 15, 2018.

COMMUNITY RESOURCES CONSULTED

Recently the City of Portage adopted a similar ordinance governing dispensaries and that ordinance was reviewed and used as a model for the proposed Kalamazoo ordinance. It should be noted that the language of the Portage City Charter provides more flexibility in the adoption of ordinances, permitting the Portage City Council to introduce, adopt, and give immediate effect to an ordinance considered at a special meeting.

ALTERNATIVES

If this ordinance is not adopted the existing marihuana testing lab would be required to shut down until such time as it is able to secure a state license to operate.

ATTACHMENTS:

Type	Description
□	Ordinances Marihuana Facilities Temporary Operations Ordinance

**CITY OF KALAMAZOO, MICHIGAN
ORDINANCE NO. _____**

**AN ORDINANCE TO ADD CHAPTER 20B “MEDICAL MARIHUANA FACILITIES”,
TO THE CITY OF KALAMAZOO CODE OF ORDINANCES**

THE CITY OF KALAMAZOO ORDAINS:

Section 1. The Kalamazoo City Code of Ordinances is amended by the addition of Chapter 20B, “Medical Marihuana Facilities” to read as follows:

“**Articles I –IV**, comprised of Sections 20B-1 through 20B-44 are reserved.

ARTICLE V Temporary Operation of Medical Marihuana Facilities

§ 20B-45. Purpose and Intent.

A. The purpose of this Article is to authorize the temporary operation of a certain type of medical marihuana facility in the City of Kalamazoo pursuant to the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq. (MMFLA) and the Emergency Rules promulgated by the Michigan Department of Licensing and Regulatory Affairs (LARA) on December 4, 2017 implementing the MMFLA.

B. Nothing in this Article is intended to grant, nor shall it be construed as granting, immunity from criminal prosecution for the growing, sale, consumption, use, distribution or possession of marihuana in any form or manner that is not in compliance with the Michigan Medical Marihuana Act, MCL 333.26, 421 et seq.; the Medical Marihuana Facilities Licensing Act, MCL 333.27, 101 et seq. and all other applicable statutes and rules promulgated by the State of Michigan.

C. Because federal law is not affected by State law or rules, nothing in this Article is intended to grant, nor shall any provision of this Article be construed as granting, immunity from criminal prosecution under federal law. This Article does not protect patients, users, caregivers or owners of property on which the medical use of marihuana is occurring from federal prosecution or from having their property seized by federal authorities under the Federal Controlled Substances Act, being Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970.

D. The City is in the process of developing, reviewing and thereafter considering the adoption of an authorizing ordinance pursuant to Section 205 of the MMFLA and a concomitant zoning ordinance allowing for the location, type and number of medical marihuana facilities permitted in the City of Kalamazoo. However, such an ordinance will not be adopted before December 15, 2017, which is the day the MMFLA has established for allowing applications to be filed with the State for a medical marihuana facilities operating

license and the date set by the Emergency Rules by which a municipality must adopt an ordinance to permit the continued temporary operation of existing unlicensed medical marihuana facilities operating in the City.

E. If an ordinance permitting the continued temporary operation of an existing but unlicensed medical marihuana facility is not adopted, such medical marihuana facility will be required to cease and desist its operation before making application to the State for a medical marihuana facilities license.

F. So as to permit the continued operation of medical marihuana facilities that may be currently operating, the Department of Licensing and Regulatory Affairs (LARA) has issued Emergency Rule 19, effective December 4, 2017 that sets forth certain requirements, which if satisfied will allow the temporary operation of an existing medical marihuana facility until such time as it applies for and obtains a State operating license.

G. The authorization granted by this Article permitting the continued temporary operation of medical marihuana facility is a revocable privilege and not a right conferred by the City. Nothing in this Article may be construed to grant a property right for an individual or business entity to engage, or obtain a license to engage, in medical marihuana as a commercial enterprise in the City.

§ 20B-46. Only Certain Medical Marihuana Facilities Allowed

To enable and insure the continued access to lab-tested medical marihuana to registered patients and their primary caregiver without disruption, the City Commission deems this ordinance necessary for the protection of the public health, safety and welfare. As such, this ordinance is solely limited to permitting the continued operation of operating safety compliance centers in existence and operating on December 4, 2017. As used in this Article, "safety compliance center" means a commercial entity that receives marihuana from registered patients and/or primary caregivers, tests it for contaminants and for tetrahydrocannabinol and other cannabinoids, and provides the test results.

§ 20B-47. Conditions Required

A. A safety compliance center is allowed to temporarily continue operations in the City only in compliance with the following conditions:

(1) The facility is a safety compliance center and has been in operation within the City at its present location on a continuous basis for at least one year prior to and including, December 4, 2017.

(2) The owner or principal of the facility files a signed and notarized affidavit with the City Clerk verifying that the above conditions are satisfied. Upon the filing of the affidavit required by this section, the City Clerk or the designee of the City Clerk is authorized to sign the LARA-issued attestation form required by Emergency Rule 19.

(3) Should the City adopt an ordinance pursuant to Section 205 of the MMFLA authorizing safety compliance facilities to operate in the City, the owner or principal of a facility operating pursuant to this Article shall apply for a state operating license no later than February 15, 2018.

B. If by June 15, 2018, should the City not adopt an ordinance pursuant to Section 205 of the MMFLA authorizing safety compliance facilities to operate in the City; or the owner or principal of a facility operating pursuant to this Article having applied for a state operating license and such having been denied or not having been issued, the safety compliance center is operating without a license and shall cease operations.

C. Any temporary operation after June 15, 2018 is considered unlicensed activity. Unlicensed activity may result in a referral to the State Police or Kalamazoo Department of Public Safety for investigation and prosecution of unlicensed activity. This section shall survive any repeal or sunset of this Article

§ 20B-48. Compliance with Subsequent Ordinance

A medical marihuana facility temporarily operating under this Article is subject to all conditions and requirements contained under any subsequent ordinance addressing medical marihuana facilities which may be adopted by the City. Further, nothing in this Article shall be construed as a guarantee for any license, permit, zoning approval or any other approval required by a medical marihuana facility under a subsequently adopted City medical marihuana licensing or zoning ordinance.

§ 20B-49. Effective Date and Retroactive Effect of Article

A. Because the issuance of the Emergency Rules on December 4, 2017 did not permit the City to timely comply with the City Charter requirements addressing the adoption of ordinances so as to authorize temporary operation of existing safety compliance centers prior to December 15, 2017, this Article is deemed adopted on December 14, 2017, *nunc pro tunc* and given retroactive effect to that date.

B. This Article is intended to allow for the temporary operation of certain medical marihuana facilities pursuant to the requirements of Emergency Rule 19 issued by LARA on December 4, 2017 so as to permit a municipality to adopt an ordinance authorizing the continued temporary operation of unlicensed medical marihuana facilities while municipalities considered adopting an ordinance pursuant to Section 205 of the MMFLA after December 15, 2017. Should any section or part of this Article be found by any State board or agency to deprive an otherwise qualifying safety compliance center from being able to continue temporary operations under the Emergency Rule, the City may at its option, choose to amend this Article so as to correct such deficiency. Such an amendment shall be retroactive to the date of adoption of this Article, being December 14, 2017 so as to comply with the Emergency Rule

§ 20B-50. Sunset of Article

Except for § 20B-47 C., the provisions of this Article shall sunset and be of no further legal effect after June 15, 2018.”

Section 2. Repealer. All former ordinances or parts of ordinances conflicting or inconsistent with the provisions of this ordinance are repealed.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, said portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity and enforceability of the remaining portions of this ordinance.

Section 4. Effective Date. Pursuant to Section 13(a) of the City Charter, this ordinance shall take effect from and after 10 days from the date of its passage; however, the date of its adoption shall be deemed as of December 14, 2017, *nunc pro tunc*, with retroactive effect to that date.

CERTIFICATE

The foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Kalamazoo at a regular meeting held on _____, 2017. Public notice was given and the meeting was conducted in full compliance with the Open Meetings Act, (PA 267, 1976, M.C.L. § 15.261 et. seq). Minutes of the meeting will be available as required by the Act, and the ordinance was duly recorded, posted and authenticated by the Mayor and City Clerk as required by the Charter of said City.

Bobby J. Hopewell, Mayor

Scott A. Borling, City Clerk