Chapter 34

HEALTH AND SANITATION*

Article I. In General

Secs. 34-1—34-30. Reserved.

Article II. Smoking

Secs. 34-37—34-60. Reserved.

Article III. Water Supplies

Secs. 34-73—34-100. Reserved.

Article IV. Medical Marihuana

Secs. 34-117—34-200. Reserved.

***State law references—**Public health code, MCL 333.1101 et seq.; food law, MCL 289.1101 et seq.

Article V. Medical Marihuana Facilities Licensing Act

Article VI. Recreational Marihuana Establishments

ARTICLE I. IN GENERAL

Secs. 34-1—34-30. Reserved.

ARTICLE II. SMOKING*

Sec. 34-31. Definitions.

The following words, terms and phrases when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Employee means any person who is employed by the city in consideration for direct or indirect monetary wages or profit, and any person who volunteers his services for nonprofit.

Employer means the City of Muskegon.

Enclosed area means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid.

Place of employment means any enclosed area under the control of the city which employees normally frequent during the course of employment, including work areas, employee lounges, restrooms, conference rooms and classrooms, hallways and corridors, entryways and lobbies, stairs and stairwells, and closets and storerooms, and including all city vehicles.

Smoking means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, weed, plant or other combustible substance in any manner or in any form.

(Code 1975, § 12-162; Code 2002, § 34-31)

Sec. 34-32. Findings and purpose.

(a) The city commission does hereby find that:

(1) Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution;

(2) Reliable studies have shown that breathing secondhand smoke is a significant health hazard for several population groups, including elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease;

(3) Health hazards induced by breathing secondhand smoke include lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, broncho-constriction and broncho-spasm;

(4) Nonsmokers who suffer allergies, respiratory diseases and other ill effects of breathing secondhand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of such adverse reactions;

(5) Courts are increasingly awarding compensation for disability, workers' compensation, unemployment and entitlement to damages under traditional common law tort liabilities;

(6) Smoking is a potential cause of fires, and cigarette and cigar burns and ash stains on fixtures and furniture and cause unnecessary losses;

(7) The state has passed Part 126 of the Public Health Code (MCL 333.12601 et seq.), which states that an individual shall not smoke in a public place or at a public meeting, except in a designated smoking area.

(b) Accordingly, the city commission finds and declares that the purposes of this article are:

(1) To protect the public health and welfare by prohibiting smoking in enclosed areas of city facilities; and

(2) To strike a reasonable balance between the needs of persons who smoke and the need of nonsmokers to breathe smoke-free air; to recognize that where these needs conflict, that the need to breathe smoke-free air shall have priority.

(Code 1975, § 12-161; Code 2002, § 34-32)

*__State law reference—__ Michigan clean indoor air act, MCL 333.12601 et seq.

Sec. 34-33. Application of article to city facilities or vehicles.

All enclosed facilities or vehicles owned or leased by the city shall be subject to the provisions of this article, subject to the exceptions and limitations set forth in this article.
(Code 1975, § 12-163; Code 2002, § 34-33)

Sec. 34-34. Prohibition of smoking; exceptions and limitations.

(a) *Prohibition.* Smoking shall be strictly prohibited within all work areas and public spaces, including conference rooms, reception areas, restrooms, stairs and stairwells, hallways and corridors, lobbies and entryways, closets and storerooms, classrooms or other enclosed areas within facilities owned or leased by the city and within city vehicles.

(b) *Exceptions and limitations.* This article does not apply to facilities which are owned by the city but are leased in their entirety to another entity. The prohibition does apply to leased areas if less than the entire facility is leased.

(c) *Prohibition in Pere Marquette Park*. Smoking shall be strictly prohibited in the area of Pere Marquette Park bounded by the walkway leading from the bathhouse to the water's edge on the south, the walkway to the south breakwater on the north, the sidewalk adjacent to the roadway on the east and the water's edge on the west.
(Code 1975, § 12-164; Code 2002, § 34-34; Ord. No. 2231, 7-10-2007)

Sec. 34-35. Violations and penalties.

(a) It shall be unlawful for any person who manages, operates or otherwise controls the use of any premises owned by the city to fail to comply with any of the article's provisions.

(b) Any person who violates any provision of this article shall be responsible for a municipal civil infraction.
(Code 1975, § 12-166; Code 2002, § 34-35)

Sec. 34-36. Other applicable laws.

This article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.
(Code 1975, § 12-167; Code 2002, § 34-36)

Secs. 34-37—34-60. Reserved.

ARTICLE III. WATER SUPPLIES

Sec. 34-61. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Affected premises means a parcel of property any part of which is located within an appendix map made a part of this article, as originally enacted or as amended, which map shows the parcel to have contaminated groundwater under any part of the parcel or the parcel has been designated as a required buffer zone by the MDEQ.

Appendix map means a map derived from a plat or other map, or information relating to land in the city showing parcels which have contaminated groundwater under any part of the parcel or the parcel has been designated as a required buffer zone by the MDEQ. Such map has been modified by Ord. Nos. 2070, 2071 and 2315 and shall be further added or deleted by subsequent ordinance. The city, in its department of planning and community development, or such other department designated by the city manager (who shall notify the MDEQ of any change), will maintain and publish notice of a listing of the appendix maps by general location of the known geographical locations of affected premises, identifying same by property tax identification and tax assessment parcel numbers. The identification may be included in appendix maps. The listing and a copy of this article will be maintained in the same manner as a zoning ordinance at the city department. The list shall be reviewed and the article amended as necessary whenever the city is supplied with reliable information of such affected premises, provided advance notification to the MDEQ has been provided as required by section

34-63. Review and amendment of the article shall also occur whenever the city receives written notice from the MDEQ that it is considering approval of a remedial action plan or equivalent action which relies on this article as an institutional control to prevent groundwater use by adding the necessary affected premises to the article. Interested parties may petition the city to add new amendments by appendix maps, or to delete parcels by amendment, if its can be shown that such affected premises no longer poses a public health risk.

Contamination means groundwater contamination in concentrations that exceed the residential drinking water criteria established by the MDEQ pursuant to part 201, natural resources and environmental protection act (MCL 324.20101) by operational memorandum or rule.

Human consumption means use in food or drink intended for human ingestion, use in food preparation or food service, use in the interior of a dwelling or dwelling unit served by such well or secondary water supply for any household purpose, and use in any building for personal washing or ingestion by humans. The term "human consumption" does not mean use of water for irrigation.

MDEQ means the Michigan Department of Environmental Quality, or its successor agency.

Secondary water supplies means only secondary water supplies from wells.
(Ord. No. 2039, § 1(24-46), 12-12-2000; Ord. No. 2054, § 1, 9-11-2001; Ord. No. 2239, § 34-61, 12-11-2007)

Sec. 34-62. Findings.

The city commission finds that the use of wells and secondary water supplies from wells for the delivery or use of water from or on certain premises for human consumption or irrigation, or the use of wells which influence the movement of contaminated groundwater, constitutes a potential public health risk. The identified public health risk affects premises that are located in the vicinity of sites that are the source or location of contaminated groundwater, or where there is a known and identified threat of contaminated groundwater from a release. The commission has determined to prohibit certain uses of water from wells and secondary water supplies from such properties in order to protect against and minimize the public health risk.
(Ord. No. 2039, § 1(24-46), 12-12-2000; Ord. No. 2239, § 34-62, 12-11-2007)

Sec. 34-63. Modification or repeal of article; notice to the state.

At least 30 days prior to any amendment or repeal in whole or in part of this article, the city shall notify the MDEQ of its intent to so act.
(Ord. No. 2039, § 1(24-52.1), 12-12-2000; Ord. No. 2239, § 34-63, 12-11-2007)

Sec. 34-64. Penalty; permit denial; remedies.

(a) *Municipal civil infraction.* Any person violating this article, including, but not limited to, the maintenance, use or installation of a water supply for human consumption or irrigation from a well or secondary water supply as prohibited by this article, shall be liable for a municipal civil infraction.

(b) *Building or improvement permit.* No permit for building or alteration or other required permit for a premises or improvement thereon shall be issued by the city for any premises found in violation of this article, or where it is proposed to install or use a well or secondary water supply in violation of this article.

(c) *Injunctive relief.* The city may further enforce this article by action seeking injunctive relief.
(Ord. No. 2039, § 1(24-52.2)—(24-52.4), 12-12-2000; Ord. No. 2239, § 34-64, 12-11-2007)

Sec. 34-65. Prohibition of use of secondary water supplies for human consumption or irrigation; exceptions.

(a) *Prohibition.* Unless specifically excepted by this article, after the effective date of the ordinance from which this article is derived, no new groundwater wells may be installed on any affected premises, and the use of any secondary

water supply or well from or on affected premises, or the use of water from such sources for human consumption or irrigation, is prohibited.

(b) *Exceptions.*

(1) *Water service unavailable; human consumption.* If city water service is unavailable to an affected premises, and a well is tested and the test results are approved by the MDEQ annually, and written proof thereof is delivered to the city annually, a well may be installed or used temporarily for water for human consumption until the city water service is available to the premises. No split or conveyance of any premises shall be effective to render city water service unavailable. In the event of a split or conveyance, no occupancy or building permit shall be issued without the use of city water or certification by the appropriate authorities that the new parcel is not an affected premises.

(2) *Noncontact cooling or process water using contaminated groundwater if approved.* Installation of wells or the use of water from an affected premises for noncontact cooling or processing for manufacturing or commercial activities, which use is approved by the MDEQ and all governmental agencies having jurisdiction, is permitted. Such approvals shall be made only after determination that the use will not result in unacceptable exposure, cross-contamination, or adverse hydrogeological effects on contaminated groundwater.

(3) *Public emergencies and construction dewatering.* Installation and use of wells for public emergencies or short-term construction dewatering purposes shall not be prohibited by this article, provided that appropriate handling and disposing of contaminated water from construction dewatering projects shall be required.

(4) *Environmental investigation/remediation.* Installation or the use of wells and other devices constructed or used solely for the purpose of evaluating groundwater quality or to remediate subsurface contamination associated with a release of regulated substances into the environment shall not be prohibited, provided the wells or devices are installed by a qualified environmental consultant or engineer and the construction and use of the wells or devices otherwise complies with all applicable local, state and federal laws and regulations and does not cause or result in a new release, exacerbation of existing contamination, or any other violation of local, state or federal laws or regulations.

(Ord. No. 2039, § 1(24-47), 12-12-2000; Ord. No. 2239, § 34-65, 12-11-2007)

Sec. 34-66. Sources of water supplied for human consumption.

Except as provided in section 34-65, water supply for human consumption on any affected premises in the city shall be delivered only from the city water system or by the use of bottled water delivered or purchased in containers under conditions approved by the MDEQ or other appropriate agency.

(Ord. No. 2039, § 1(24-48), 12-12-2000; Ord. No. 2239, § 34-66, 12-11-2007)

Sec. 34-67. Irrigation.

No well located on any affected premises, or secondary water supply from such a well, shall be used for irrigation.

(Ord. No. 2039, § 1(24-49), 12-12-2000; Ord. No. 2239, § 34-67, 12-11-2007)

Sec. 34-68. Notification to county.

The city shall notify the county health department of the locations of all affected premises as defined and covered by this article, by delivering a copy of this article, with attachments and all amendments, to the department.

(Ord. No. 2039, § 1(24-50), 12-12-2000; Ord. No. 2239, § 34-68, 12-11-2007)

Sec. 34-69. Wells or secondary water supply affecting contaminated groundwater.

No well may be used or installed at any place in the city if the use of such well will have the effect of causing the migration of groundwater contam-

inants or pollution or a groundwater plume containing same to previously unimpacted groundwater, or adversely impacting any groundwater treatment system, unless such well is part of an MDEQ or United States Environmental Protection Agency approved groundwater monitoring or remediation system.
(Ord. No. 2039, § 1(24-51), 12-12-2000; Ord. No. 2239, § 34-69, 12-11-2007)

Sec. 34-70. City inspections; enforcement.

Where it is determined that a well or secondary water supply from an affected premises is being used as a source for human consumption, irrigation, or affecting contaminated groundwater on an affected premises, the city shall notify by appropriate means the owners and occupants thereof to connect to the city water supply or supply water in conformity with this article and to disconnect and disable, in accordance with legal or technical standards, the well or secondary water supply.
(Ord. No. 2039, § 1(24-52), 12-12-2000; Ord. No. 2239, § 34-70, 12-11-2007)

Sec. 34-71. Affected premises.

The properties identified on the attached appendix map are determined to be affected premises with the meaning of, and regulated in accordance with, Ordinance 2039 or any successor ordinance prohibiting wells on such premises. Affected premises are described by the property tax identification/tax assessment parcel number and are included as an attachment to the appendix map, on file in the office of the city clerk.
(Ord. No. 2054, 9-11-2001; Ord. No. 2070, 4-9-2002; Ord. No. 2071, 4-9-2002; Ord. No. 2139, 9-28-2004; Ord. No. 2239, § 34-80, 12-11-2007; Ord. No. 2315, 12-10-2013)

Sec. 34-72. Notification to register of deeds.

A copy of this article, or any amendment thereto, which describes affected premises involving multiple properties, shall be filed with the county register of deeds.
(Ord. No. 2239, § 34-81, 12-11-2007)

Secs. 34-73—34-100. Reserved.

ARTICLE IV. MEDICAL MARIHUANA*

Sec. 34-101. Purpose and intent.

It is the intent of this article to give effect to the intent of Initiated Act 1 of 2008, MCL 333.26421 et seq., the act, as approved by the electors, and not to determine and establish an altered policy with regard to marihuana. The act authorizes a narrow exception to the general rule and state policy that the cultivation, distribution, and use of marihuana amount to criminal acts. It is the further intent of this article to protect the public health, safety, and general welfare of persons and property, and to issue licenses. It is the further intent of this article to comply with the act while concurrently attempting to protect the health, safety, and welfare of law enforcement officers and other persons in the community, and also to address and minimize reasonably anticipated secondary effects upon children, other members of the public, and upon significant areas of the community, that would be reasonably expected to occur in the absence of the provisions of this article. This article is designed to recognize the fundamental intent of the act to allow the creation and maintenance of a private and confidential patient-caregiver relationship to facilitate the statutory authorization for the limited cultivation, distribution, and use of marihuana for medical purposes; and to regulate around this fundamental intent in a manner that does not conflict with the act so as to address issues that would otherwise expose the community and its residents to significant adverse conditions, including the following: adverse and long-term influence on children; substantial serious criminal activity; danger to law enforcement and other members of the public; discouragement and impairment of effective law enforcement with regard to unlawful activity involving the cultivation, distribution, and use of marihuana; the creation of a purport-

*__Editor's note—__Ord. No. 2329, adopted Oct. 14, 2014, amended Art. IV in its entirety to read as herein set out. Former Art. IV, §§ 34-101—34-114, pertained to similar subject matter and derived from Ord. No. 2295, §§ 1(34-101—34-114), 3-22-2011. Marihuana is spelled with an "h" and not a "j" throughout the Michigan medical marihuana act and, as such, shall be spelled that way in this article.

__State law reference—__Michigan medical marihuana act, MCL 333.26421 et seq.

edly lawful commercial enterprise involving the cultivation, distribution and use of marihuana that is not reasonably susceptible of being distinguished from serious criminal enterprise; and, the uninspected installation of unlawful plumbing and electrical facilities that create dangerous health, safety, and fire conditions.

This article permits authorization for activity based on the act. Nothing in this article shall be construed as allowing persons to engage in conduct that endangers others or causes a public nuisance, or to allow use, cultivation, growth, possession or control of marihuana not in strict accordance with the express authorizations of the act and this article; and nothing in this article shall be construed to undermine or provide immunity from federal law as it may be enforced by the federal or state government relative to the cultivation, distribution, or use of marihuana. Thus, the authorization of activity, and the approval of a license under this article shall not have the effect of superseding or nullifying federal law applicable to the cultivation, use, and possession of marihuana, and all applicants and grantees of licenses are on notice that they may be subject to prosecution and civil penalty, including forfeiture of property.
(Ord. No. 2329, 10-14-2014)

Sec. 34-102. Definitions.

Act means Initiated Law of 2008, MCL 333.26421 et seq., and Michigan Administrative Rules, R 333.101 et seq.

Department means the State of Michigan Department of Community Health.

Dispensary means one or more primary caregivers growing, storing, delivering, transferring, and/or providing qualifying patients with medical marihuana out of a building or structure.

Distribution means the physical transfer of any amount of marihuana in any form by one person to any other person or persons, whether or not any consideration is paid or received.

Distributor means a primary caregiver who engages in any one or more acts of distribution.

Facility or *premises* means a commercial business having a separate or independent postal address, one private office having a separate or independent postal address, one single-family residence having a separate or independent postal address, one apartment unit having a separate or independent postal address, one condominium unit having a separate or independent postal address, or one freestanding industrial building having a separate or independent postal address.

Marihuana means the substance or material defined in section 7106 of the Public Health Code, 1976 PA 368, MCL 333.7106.

Medical marihuana home cultivation operation means the cultivation of marihuana by a registered patient within a single-family dwelling that is the registered patient's primary residence and which cultivation is in conformity with the restrictions and regulation contained in the act.

Primary caregiver or *caregiver* means a person as defined under MCL 333.26423(g) of the act, and who has been issued and possesses a registry identification card under the act.

Principal residence means the place where a person resides more than half of the calendar year.

Qualifying patient or *patient* means a person as defined under MCL 333.26423(h) of the act, who has been issued and possesses a registry identification card under the act.

Registry identification card means the document defined under MCL 333.26423(i) of the act.
(Ord. No. 2329, 10-14-2014)

Sec. 34-103. Licensure requirements.

(a) The cultivation of marihuana by a caregiver or any other person permitted under the act, and the provision of caregiver services relating to medical marihuana use, shall be permitted in accordance with the act. No cultivation, distribution, and other assistance to patients shall be lawful in this community at a location unless and until such location for such cultivation, distribution, and assistance shall have been licensed under this article.

(b) The license requirements set forth in this chapter shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other federal, state or local law.

(c) Each caregiver operating at a facility or dispensary shall obtain a separate license prior to operating.

(d) The following locations shall require licensure:

(1) A facility used for the cultivation of marihuana by caregivers or patients permitted under the act;

(2) A dispensary or facility used for distribution;

(3) Any facility used to provide any other assistance to patients by caregivers permitted under the act relating to medical marihuana;

(4) A location other than a patient's principal residence where a patient cultivates or uses marihuana exclusively for such patient's personal consumption;

(5) The principal residence of a patient where marihuana is cultivated exclusively for such patient's personal consumption.

(e) Operating as a primary caregiver is prohibited in a residence.

(f) Any portion of the structure where energy usage and heat exceeds typical residential use, such as a grow room, and the storage of any chemicals such as herbicides, pesticides, and fertilizers shall be subject to inspection and approval by the fire department to insure compliance with the city's adopted International Fire Code.

(g) The premises shall be open for inspection upon request by the city's appointed inspectors, building officials, fire department, and/or law enforcement officials for compliance with all applicable laws and rules, during normal business hours of 9:00 a.m. until 5:00 p.m. or as such other times as anyone is present on the premises.
(Ord. No. 2329, 10-14-2014)

Sec. 34-104. Application for license.

(a) An application for an annual license or renewal under this section shall be submitted to the city clerk. A license shall be issued or renewed upon payment of the required fee and submission of a completed application in compliance with the provisions of this article, and compliance with all provisions and requirements of this article.

(b) An application renewal shall be submitted annually. Application to renew a license under this article shall be filed at least 30 days prior to the date of expiration. Such renewal shall be accompanied by the annual fee.

(c) An application shall include the names of all caregivers operating in the same facility or on the same premises, with proof of registration, including current registry identification card, pursuant to the act.

(d) Pursuant to the act, primary caregivers shall not have any felony convictions within the past ten years and shall not have ever been convicted of a felony involving illegal drugs or a felony that is an assaultive crime as defined in section 9a of chapter X of the Code of Criminal Procedure, 1927 PA 175, MCL 770.9a. If a criminal background check reveals any such felony conviction, no license shall be issued and/or an existing license shall be revoked.

(e) The application shall include the marihuana facility history of the applicant; whether such person has had a business license revoked or suspended, the reason therefor, and the business activity or occupation subsequent to such action of suspension or revocation.

(f) No license shall be issued and/or an existing license may be revoked if applicant or business owes to the city any outstanding back taxes, fines, fees or liens.

(g) Applications shall include the address of the precise premises at which there shall be possession, cultivation, distribution or other assistance in the use of marihuana.

(h) If the premises are rented and not owned by the applicant, the landlord/owner of the premises must sign the application acknowledging that

they are aware of the legal growth, storage and/or distribution of medical marihuana on the premises.

(i) Specify the name and address of the place where all unused portions of marihuana plants cultivated in connection with the use of marihuana or caregiver activity at the premises shall be disposed.

(j) Describe the enclosed, locked facility in which any and all cultivation of marihuana is proposed to occur, or where marihuana is stored, with such description including: location in building, precise measurements in feet, of the floor dimensions and height; the security device for the facility; and in the case of facilities with more than one primary caregiver, the name of the single primary caregiver designated to solely oversee and have access to each separate enclosed, locked facility.

(k) Describe all locations in the premises where a caregiver or other person authorized under the act shall render assistance to a qualifying patient.

(l) Specify the number of patients to be assisted by each caregiver, including the number of patients for whom marihuana is proposed to be cultivated, and the number of patients to be otherwise assisted on the premises, and the maximum number of plants to be grown or cultivated at any one time.

(m) For safety and other code inspection purposes, it shall describe and provide detailed specifications of all lights, equipment, and all other electrical, plumbing, and other means proposed to be used to facilitate the cultivation of marihuana plants.

(n) The initial application fee and renewal fees shall be established by special resolution of the city commission; thereafter they shall be established by annual budget resolution of the city commission.

(o) In the case of corporations, partnerships, nonprofit organizations, or other business types, the applicant shall be the highest level official or employee of the entity such as, board president, chief executive officer, executive director, or comparable position.

(p) If the applicant is a corporation, a copy of the articles of incorporation and current corporation records disclosing the identity and residential addresses of all directors, officers, and shareholders shall be included. Include the address of the corporation itself, if different from the address of the marihuana dispensary or growing/manufacturing facility and the name and address of the resident agent for the corporation.

(q) If the applicant is a partnership, the names and residence address of each of the partners and the partnership itself, if different from the address of the marihuana dispensary or growing/manufacturing facility, and the name and address of the resident agent.
(Ord. No. 2329, 10-14-2014)

Sec. 34-105. Number of marihuana plants.

(a) In a patient's principal residence, there shall be not more than 12 marihuana plants per licensed patient being cultivated at any one time.

(b) At a facility at which a caregiver cultivates marihuana for use by patients, there shall not be more than 12 marihuana plants being cultivated at any one time per patient, and in no event more than 72 marihuana plants being cultivated at any one time per caregiver (which assumes cultivation for five patients, plus an additional 12 plants if the caregiver is also a patient that has not designated a caregiver to assist in providing medical marihuana).
(Ord. No. 2329, 10-14-2014)

Sec. 34-106. Locations.

(a) Dispensaries used by a primary caregiver are permitted in the following zoning districts: B-2, B-3, B-4, B-5, MC, I-1 and I-2.

(b) No dispensary may be located within 1,000 feet of a preschool, elementary school, middle school or high school. Measurements for purposes of this section shall be made from property boundary to property boundary.
(Ord. No. 2329, 10-14-2014)

Sec. 34-107. No signs or advertising.

(a) The distribution of marihuana is generally unlawful, and the act does not authorize any activity such as a "dispensary." Reading the act as a whole, the activities of caregivers are interpreted as being limited to private and confidential endeavors. Moreover, the location and identity of a caregiver may be readily known to his or her patients. Accordingly, there shall be no signage identifying a facility, dispensary or any place where a caregiver is operating.

(b) Unless conducted as part of a related licensed professional medical or pharmaceutical practice, caregiver activity shall not be advertised as a "clinic," "hospital," "dispensary," or other name customarily ascribed to a multi-patient professional practice.
(Ord. No. 2329, 10-14-2014)

Sec. 34-108. Primary caregiver operations.

The following additional standards shall apply to all primary caregiver operations:

(1) Shall not be operated from a business which sells alcoholic beverages.

(2) The establishment shall be designed, operated, and maintained at all times consistent with responsible business practices and so that no excessive demands shall be placed upon public safety services, nor any excessive risk of harm to the public health, safety, or sanitation, interference with vehicular or pedestrian traffic or parking, or the continuance or maintenance of any unlawful conduct, public nuisance, or disorderly conduct either within the establishment or on or about the adjacent businesses and public streets, alleys, parks, parking facilities, or other areas open to the public. The establishment shall make reasonable effort to report to authorities any unlawful conduct that is observed from the premises.

(3) No drive-through facilities shall be permitted.

(4) All transfers and deliveries of medical marihuana to qualifying patients must occur within the structure out of public view.

(5) The consumption of medical marihuana on the premises is prohibited.
(Ord. No. 2329, 10-14-2014)

Sec. 34-109. Medical marihuana home cultivation operation.

In addition to the requirements of home occupations outlined in the city's zoning ordinance, patients who chose to cultivate their own medical marihuana at home shall be subject to the following requirements:

(1) All use of marihuana on the premises shall comply with the act at all times.

(2) All medical marihuana shall be contained within an enclosed, locked facility inside a primary or accessory building.

(3) All necessary building, electrical, plumbing and mechanical permits shall be obtained for any portion of the building in which electrical wiring, lighting, storage and/or watering devices that support the cultivation, growing or harvesting of marihuana are located.

(4) The city clerk shall coordinate electrical, fire, mechanical, plumbing inspectors (and any other inspector(s) deemed necessary under the circumstances) with regard to site of such cultivation for the purpose of determining whether all lights, plumbing, equipment, and all other means used to facilitate the cultivation of marihuana plants is in accordance with all applicable codes.

(5) If a room with windows is utilized as a growing location, any lighting methods that exceed usual residential levels between the hours of 11:00 p.m. and 7:00 a.m. shall employ shielding methods, without alteration to the exterior of the residence, to prevent ambient light spillage

that may create a distraction for adjacent residential properties or vehicles on adjacent right-of-ways.

(Ord. No. 2329, 10-14-2014)

Sec. 34-110. Use of land in accordance with approved application.

(a) If approved, all use of property shall be in accordance with an approved license application, including all information and specifications submitted by the applicant in reliance on which the application shall be deemed to have been approved.

(b) Any facility that exists on the effective date of this article shall cease operations and may make application for and receive approval to continue to operate.

(Ord. No. 2329, 10-14-2014)

Sec. 34-111. No vested rights.

A property owner shall not have vested rights or nonconforming use rights that would serve as a basis for failing to comply with this article or any amendment of this article.

(Ord. No. 2329, 10-14-2014)

Sec. 34-112. Effect of license; suspension; penalties; daily violation.

(a) A license is valid only for the location identified on the license and cannot be transferred to another location within the city without a new application.

(b) A license does not prohibit prosecution by the federal government of its laws or prosecution by state authorities for violations of the act or other violations not protected by the act.

(c) Compliance with city ordinances and state statutes is a condition of maintenance of a license and a license may be suspended for cause pursuant to the provisions of this chapter.

(d) Suspension of a license is not an exclusive remedy and nothing contained herein is intended to limit the city's ability to prosecute code violations that may have been the cause of the suspension or any other code violations not protected by the act.

(e) Each day that a person shall conduct a primary caregiver operation or medical marihuana home cultivation operation without a license or allow, operate, or assist in said operation shall constitute a separate offense.

(f) A violation of any section of this article is a civil infraction.

(Ord. No. 2329, 10-14-2014)

Sec. 34-113. Nonrenewal revocation.

The city clerk may choose to not renew or to revoke a license based on any of the following:

(1) A failure to meet the conditions or maintain compliance with the standards established by this article in reference to applications for a new license or the renewal of an existing license;

(2) One or more violations of any city ordinance, state or federal law or regulation, on the premises;

(3) Maintenance of a nuisance on the premises;

(4) A demonstrated history of excessive calls for public safety;

(5) Nonpayment of real and/or personal property taxes, fines, fees or liens owed to the city; or

(6) Failure to comply with any city-adopted building or fire codes.

(Ord. No. 2329, 10-14-2014)

Sec. 34-114. Appeals process.

If an applicant or licensee chooses to appeal denial of a license or revocation of a license, the applicant or licensee can enter in a written appeal to the city clerk's office using a city generated form including the appellants signature, the requirement or decision from which the appeal is made, and shall state the specific grounds on which the appeal is based. Appeals shall be filed within 30 days of the decision in question. City commission shall consider the appeal within 30 days of the receipt of the appeal.

(Ord. No. 2329, 10-14-2014)

Sec. 34-115. Severability.

If any clause, sentence, section, paragraph, or part of this article, or the application thereof to any person, firm, corporation, legal entity, or circumstances, shall be for any reason adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not effect, impair, or invalidate the remainder of this article and the application of such provision to other persons, firms, corporation, legal entities, or circumstances by such shall be confined in its operation to the clause, sentence, section, paragraph, or part of this article thereof directly involved in the case or controversy in which such judgment shall have been rendered and to the person, firm, corporation, legal entity, or circumstances then and there involved. It is hereby declared to the legislative intent of this body that the article would have been adopted had such invalid or unconstitutional provisions have not been included in this article.
(Ord. No. 2329, 10-14-2014)

Sec. 34-116. Prohibition against "provisioning centers" and "safety compliance facilities."

It is unlawful for any individual or commercial entity to acquire, possess, manufacture, deliver, transfer or transport, sell, supply, or provide marihuana—whether medical or otherwise—to any individual or group of individuals, whether or not such person(s) has/have not become registered as qualifying patient(s) or registered primary caregiver(s) pursuant to the Michigan Medical Marihuana Act, MCL 333.26421 et seq. (the "act"), unless explicitly permitted by the act or explicitly permitted by this article. "Provisioning centers" and "safety compliance facility" contemplated by the House Bill 4271 of 2014, are prohibited.
(Ord. No. 2329, 10-14-2014)

Secs. 34-117—34-200. Reserved.

ARTICLE V. MEDICAL MARIHUANA FACILITIES LICENSING ACT

Sec. 34-201. Purpose and intent.

It is the intent of this article to give effect to the intent of the Medical Marihuana Facilities Licensing Act, PA 281 of 2016, MCL 333.27101, et seq., (the MMFLA), and not to determine and establish an altered policy with regard to medical marihuana. It is the intent of Muskegon City Code sections 34-101 through 34-116 to give effect to the intent of the Michigan Medical Marihuana Act, Initiated Act 1 of 2008, MCL 333.26421, et seq., (the MMMA) as approved by the electors. The purpose of this article is to serve and protect the health, safety and welfare of the general public and establish a set of rules and regulations which are fair and equitable for those interested in establishing a marihuana facility pursuant to the MMFLA.
(Ord. No. 2383, § 1, 5-8-2018)

Sec. 34-202. Definitions.

Applicant means a person who applies for a license under this section. If an entity applies for a license, the term includes an officer, director, managerial employee or has a direct or indirect ownership interest in the applicant.

Grower means an MMFLA licensee that is a commercial entity located in this state that cultivates, dries, trims, cures or packages marihuana for sale to a processor or provisioning center.

Marihuana facility means a location at which a license holder is licensed to operate under the MMFLA.

Marihuana-infused product means a topical formulation, tincture, beverage, edible substance, or similar product containing any usable marihuana that is intended for human consumption in a manner other than smoke inhalation.

MMFLA means the Medical Marihuana Facilities Licensing Act, PA 281 of 2016, MCL 333.27101 et seq.

MMMA means the Michigan Medical Marihuana Act, Initiated Act 1 of 2008, MCL 333.26421 et seq.

MMMA caregiver facility means any building(s) or structure(s) located on non-residential property that is utilized by one or more than one primary caregiver engaged in the medical use of marihuana pursuant to the MMMA.

Permit means a permit issued by the city under this section.

Primary caregiver or caregiver means a person as defined by the MMMA.

Processor means an MMFLA licensee that is a commercial entity located in this state that purchases marihuana from a grower and that extracts resin from the marihuana or creates a marihuana-infused product for sale and transfer in package form to a provisioning center.

Provisioning center means an MMFLA licensee that is a commercial entity located in this state that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualify patients, directly or through the patients' registered primary caregivers. Provisioning center includes any commercial property where marihuana is sold at retail to registered qualifying patients or registered primary caregivers. A noncommercial location used by a primary caregiver to assist a qualifying patient connected to the caregiver through the department's marihuana registration process in accordance with the MMMA is not a provisioning center for purposes of the MMFLA or this section.

Qualifying patient or patient means a person defined by the MMMA.

Registry identification card means the document as defined by the MMMA.

Safety compliance facility means an MMFLA licensee that is a commercial entity that receives marihuana from a marihuana facility or registered primary caregiver, tests it for contaminants and for tetrahydrocannabinol and other cannabinoids, returns the test results, and may return the marihuana to the marihuana facility.

Secure transporter means an MMFLA licensee that is a commercial entity located in this state that transports marihuana, with or without storage, between marihuana facilities for a fee.

State operating license means a license that is issued under the MMFLA that allows the licensee to operate as a marihuana facility.

All other terms used in this section have the same definitions ascribed to them in the MMFLA or MMMA.
(Ord. No. 2383, § 1, 5-8-2018)

Sec. 34-203. MMFLA opt-in provision.

Pursuant to section 205(1) of the MMFLA, the city will authorize permits for the following types of marihuana facilities: Growers; processors; provisioning centers; safety compliance facilities; and secure transporters.
(Ord. No. 2383, § 1, 5-8-2018)

Sec. 34-204. Permit required for MMFLA activity.

(a) Any person or entity that wishes to operate as a marihuana facility in the city shall obtain a permit and must obtain a state operating license prior to opening or operating.

(b) The application and inspection fee for the permit required by this section shall be as set from time to time by the city by resolution.

(c) In addition to an annual reapplication and inspection fee, the city may assess an annual fee of no more to $5,000.00 to help defray the administrative and enforcement costs associated with the operation of the marihuana facilities operating in the city.

(d) No permit issued under this section shall be transferable.

(e) All permits issued under this section shall be renewed annually and subject to annual inspection and renewal fees as set from time to time by the city by resolution.

(f) The city may limit the number of permits issued under this section, and may revise this limit from time to time.

(g) A person or entity that receives a Permit under this section shall display its permit and, when issued, its state medical marihuana facility license in plain view clearly visible to city officials and state medical marihuana licensing board authorized agents.

(h) No person or entity that opened or operated a facility doing business or purporting to do business as a marihuana facility prior to the adoption of this article shall be considered a lawful use.
(Ord. No. 2383, § 1, 5-8-2018)

Sec. 34-205. MMFLA location requirements.

(a) Growers, processors, provisioning centers, safety compliance facilities, and secure transporters are permitted in those zones and subject to requirements provided for in the city's zoning ordinance.

(b) The marihuana facility shall meet all applicable written and duly promulgated standards of the city and, prior to opening, applicants shall demonstrate to the city that the location meets the rules and regulations promulgated by the state medical marihuana facilities licensing board.
(Ord. No. 2383, § 1, 5-8-2018)

Sec. 34-206. Application procedure.

(a) All applicants for permits required by this section shall file an application with the clerk. This application shall be signed by the applicant if an individual, or by all partners if a partnership, by a managing member if a limited liability company, or by the president of a corporation.

(b) The applicant may be requested to provide any information required by the MMFLA and any other information deemed by the city to be required for the consideration of a permit.

(c) The permit shall be approved if the applicant meets all city requirements unless a due diligence investigation discloses tangible evidence that the conduct of the applicant's business would pose a substantial threat to the public health, safety, or general welfare.
(Ord. No. 2383, § 1, 5-8-2018)

Sec. 34-207. Permit revocation and review.

A permit granted under this section may be revoked or not renewed for any of the following reasons:

(1) Any fraud or misrepresentations contained in the permit application;

(2) Any knowing violation of this article;

(3) Loss of the applicant's state medical marihuana facility license;

(4) Failure of the applicant to obtain a state medical marihuana facility license within a reasonable time after obtaining a permit under this section;

(5) Conducting business in an unlawful manner or in such a way as to constitute a menace to the health, safety, or general welfare of the public;

(6) The violation of any of the conditions of issuance or continuation of a certificate of registration;

(7) Fraud, misrepresentation or any false statement made in the operation of the business;

(8) Failure to pay personal property taxes, or timely file documentation or returns required for such taxes;

(9) Failure to pay city income taxes, failure to withhold city income tax from employees, failure to remit to the city withheld city income taxes, or timely file documentation or returns required for such taxes;

(10) Failure to pay any outstanding amounts owed the city (such as fees for inspections or property services, water or sewer bills, municipal civil infraction fines applicable to the business or its premises, current special assessment, installments, etc.);

(11) Failure to pay registration fees imposed pursuant to this chapter and resolution of the city commission;

(12) Failure or inability of an applicant to meet and satisfy any of the requirements and provisions of this chapter; or

(13) Failure to allow inspection of the business premises or hazardous material storage records at a reasonable time.
(Ord. No. 2383, § 1, 5-8-2018)

Secs. 34-208—34-300. Reserved.

ARTICLE VI. RECREATIONAL MARIHUANA ESTABLISHMENTS

Sec. 34-301. Purpose and intent.

It is the intent of this article to opt-in to the Michigan Regulation and Taxation of Marihuana Act, being Initiated Law 1 or 2018 (MCL 333.27951 through 333.27967).
(Ord. No. 2421, § 1, 10-8-2019)

Sec. 34-302. Definitions.

Words used in this article shall have the meaning as defined in the Michigan Regulation and Taxation of Marihuana Act, being Initiated Law 1 or 2018 (MCL 333.27951 through 333.27967), as may be amended.
(Ord. No. 2421, § 1, 10-8-2019)

Sec. 34-303. Recreational marihuana opt-in provision.

Pursuant to section 6 of the Michigan Regulation and Taxation of Marihuana Act, being Initiated Law 1 or 2018 (MCL 333.27951 through 333.27967), the city will authorize permits for marihuana establishments.
(Ord. No. 2421, § 1, 10-8-2019)

Sec. 34-304. Permit required for recreational marihuana activity.

(1) Any person or entity that wishes to operate as a marihuana establishment pursuant to the Michigan Regulation and Taxation of Marihuana Act, being Initiated Law 1 or 2018 (MCL 333.27951 through 333.27967) in the city shall obtain a permit from the city and must obtain a state operating license prior to opening or operating.

(2) The application and inspection fee for the permit required by this section shall be set from time to time by the city by resolution.

(3) In addition to an annual reapplication and inspection fee, the city may assess an annual fee of no more than $5,000.00 to help defray the administrative and enforcement costs associated with the operation of the marihuana establishments operating in the city.

(4) No permit issued under this section shall be transferable.

(5) All permits issued under this section shall be renewed annually and subject to annual inspection and renewal fees as set from time to time by the city by resolution.

(6) The city may limit the number of permits issued under this section, and may revise this limit from time to time.

(7) A person or entity that receives a permit under this section shall display its permit and, when issued, its state license in plain view clearly visible to city officials and state authorized agents.

(8) No person or entity that opened or operated a facility doing business or purporting to do business as a marihuana establishment prior to the adoption of this article shall be considered a lawful use.
(Ord. No. 2421, § 1, 10-8-2019)

Sec. 34-305. Recreational marihuana location requirements.

(1) Marihuana establishments are permitted in those zones and subject to requirements provided for in the city's zoning ordinance.

(2) The marihuana establishments shall meet all applicable written and duly promulgated standards of the city and, prior to opening, applicants shall demonstrate to the city that the location meets the rules and regulations promulgated by the state, if any.
(Ord. No. 2421, § 1, 10-8-2019)

Sec. 34-306. Application procedure.

(1) All applicants for permits required by this section shall file an application with the clerk. This application shall be signed by the applicant if an individual, or by all partners if a partnership, by a managing member if a limited liability company, or by the president of a corporation.

(2) The applicant may be requested to provide any information required by the Michigan Regulation and Taxation of Marihuana Act, being Initiated Law 1 or 2018 (MCL 333.27951 through 333.27967).

(3) The permit shall be approved if the applicant meets all city requirements unless a due diligence investigation discloses tangible evidence that the conduct of the applicant's business would pose a substantial threat to the public health, safety, or general welfare.
(Ord. No. 2421, § 1, 10-8-2019)

Sec. 34-307. Permit revocation and review.

(1) A permit granted under this section may be revoked or not renewed for any of the following reasons:

(a) Any fraud or misrepresentations contained in the permit application;

(b) Any knowing violation of this article;

(c) Loss of the applicant's state medical marihuana facility license;

(d) Failure of the applicant to obtain a state medical marihuana facility license within a reasonable time after obtaining a permit under this section;

(e) Conducting business in an unlawful manner or in such a way as to constitute a menace to the health, safety, or general welfare of the public;

(f) The violation of any of the conditions of issuance or continuation of a certificate of registration;

(g) Fraud, misrepresentation or any false statement made in the operation of the business;

(h) Failure to pay personal property taxes, or timely file documentation or returns required for such taxes;

(i) Failure to pay city income taxes, failure to withhold city income tax from employees, failure to remit to the city withheld city income taxes, or timely file documentation or returns required for such taxes;

(j) Failure to pay any outstanding amounts owed the city (such as fees for inspections or property services, water or sewer bills, municipal civil infraction fines applicable to the business or its premises, current special assessment, installments, etc.);

(k) Failure to pay registration fees imposed pursuant to this chapter and resolution of the city commission;

(l) Failure or inability of an applicant to meet and satisfy any of the requirements and provisions of this chapter;

(m) Failure to allow inspection of the business premises at a reasonable time; or

(n) Failure to allow inspection of hazardous material storage records at a reasonable time.

(Ord. No. 2421, § 1, 10-8-2019)