

**Subject:** Adult Use Marihuana Retailer - Yuma Way MI

**Reviewed By:** City Manager: Dana L. Muscott; Deputy City Manager: Tony Reyes;

**Prepared By:** Dana Muscott, City Manager

**PERTINENT FACTS:**

In July, 2019, City Commission approved an Ordinance regulating Adult Use Marihuana (Recreational) facilities to operate within the City limits of Bay City, in reaction to the passing of Prop 1 of 2018, regarding Recreational Marihuana in the State of Michigan.

On November 9, 2020, Yuma Way MI dba Cannabay submitted an application to operate a recreational retail center at 1321 N Sherman Street.

Sec. 30-705 of the Code of Ordinances goes on the say under the License required section:

No person shall establish or operate a marihuana commercial entity in the city without first having obtained from the city and the state a license for each such establishment to be operated. License certificates shall be kept current and publicly displayed within the establishment. Failure to maintain or display a current license certificate shall be a violation of this article. City licenses are required as follows:

(1) A nonrefundable application fee in the amount of \$5,000.00 per application must be paid to defray administrative and review costs associated with processing an application for a marihuana establishment. If more than one type of marihuana establishment is to be located at a specified location, each proposed establishment shall require a separate application.

(2) The nonrefundable application fee required under this section shall be due and payable upon submission of the application.

(3) The application fee requirement set forth in this article shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other federal, state, or city law or ordinance, including, by way of example, any applicable zoning or building permits.

(4) The issuance of any license pursuant to this article does not create an exception, defense, or immunity to any person in regard to any potential criminal liability the person may have for the production, distribution, or possession of marihuana under federal law.

(5) Licenses may be allowed to be stacked for multiple uses per premise, subject to the city's determination that such uses are compatible together at that location, are consistent on a shared basis with all the provisions of the MRTMA and each use is consistent with zoning and other provisions of the city Code of Ordinances, including but not limited to chapter 122. If those conditions are met, more than one different marihuana establishment maybe located on one parcel. Unless higher performance is required by applicable law, there must be a minimum of a one-hour fire separation wall between any marihuana establishment and any adjacent business.

Sec. 30-706. - General license application requirements. Á

(a) A person seeking a license pursuant to the MRTMA and the provisions of this articles hall submit an application to the City on forms provided by the city. At the time of application, each applicant

shall pay a nonrefundable application fee as provided in section 30-705 to defray the costs incurred by the city for background investigations and inspection of the proposed premises, as well as any other costs associated with the processing of the application. In addition, the applicant shall present a suitable form of identification.

(b)The application shall also provide the following information, under the penalty of perjury, on the city-issued form. Such information is required for the applicant, the proposed manager of the marihuana commercial entity, and all persons who are in the marihuana commercial entity that is the subject of the application:

(1)The name, address, date of birth, business address, business telephone number, driver's license, and, if applicable, federal tax identification number of the applicant;

(2)If the applicant is a business entity, information regarding the entity, including, without limitation, the name and address of the entity, its legal status, and proof of registration with, or a certificate of good standing from, the state, as applicable;

(3)The identity of every person having any ownership interest in the applicant with respect to which the license is sought.

(4) If the applicant is not the owner of the proposed licensed premises, a notarized statement from the owner of such property authorizing the use of the property for a marihuana establishment;

(5)A copy of all documents submitted by the applicant to LARA in connection with the application for a state operating license under the MRTMA to include documents submitted for prequalification.

(6)A copy of any deed reflecting the applicant's ownership of, or lease reflecting the right of the applicant to possess, or an option reflecting the applicant's right to purchase or lease, the proposed licensed premises;

(7)Three stamped or sealed 24-inch by 36-inch drawings of the proposed licensed premises showing, without limitation, building layout, all entryways and exits to the proposed licensed premises, loading zones and all areas in which marihuana will be stored, grown, manufactured or dispensed;

(8)In addition to providing a copy of the marihuana establishment plan a marihuana commercial entity shall provide the following:

a. For grower and processing establishments, a plan that specifies the methods to be used to prevent the growth of harmful mold and compliance with limitations on discharge into the wastewater system of the city;

b. A lighting plan showing the lighting outside of the marihuana establishment for security purposes and compliance with applicable city requirements;

c plan for disposal of any marihuana or marihuana-infused product that is not sold to a customer, in a manner that protects any portion thereof from being possessed or ingested by any person or animal.

d. A plan for ventilation of the marijuana establishment that describes the ventilation systems that will be used to prevent any odor of marijuana off the premises of the business. For marijuana establishments that grow marijuana plants, such plan shall also include all ventilation systems used to control the environment for the plants and describe how such systems operate with the systems preventing any odor leaving the premises. For marijuana businesses that produce marijuana-infused products, such plan shall also include all ventilation systems used to mitigate noxious gases or other fumes used or created as part of the production process.

e. A description of all toxic, flammable, or other materials regulated by a federal, state, or local authority that would have jurisdiction over the business if it was not a marijuana business, that will be used or kept at the marijuana business, the location of such materials, and how such materials will be stored.

f. For a grower, microbusiness and processing establishments, an applicant must submit electrical plans for load review to Bay City Electric Light & Power for a primary/secondary load study. Applicant must prepay all costs associated with overbuilds that are necessary to meet the applicant's required load before construction begins. Associated costs may include:

1. Overbuild of primary/secondary utility lines and their supporting structures.

2. KVA cost (transformer(s)).

3. All labor and equipment cost.

4. Bay City Electric Light & Power reserve the right to deny electric service to any applicant based on failure to meet load acceptance review or load requirements that are not conducive to the location.

(9) Prior to making a modification to a structure that would require a building permit or which would alter or change items required by this subsection, the licensee shall submit to the city detailed construction drawings showing at minimum, a full site plan, interior and exterior lighting requirements, the full mechanical heating and ventilation plan, a detailed security plan, before and after floor plans and specifications, non-rated and rated separation details and locations, accessible route from the public way to the accessible entrance, accessible route to the primary function and within the facility and accessible bathrooms. The licensee shall make application for a plan review and a building permit for the modifications to the premises, on forms provided by the city. Additional specifications may be required. A building or structure here after constructed or renovated for use as a medical marijuana facility shall not be used or occupied in whole or in part until a certificate of use and occupancy has been issued by the enforcing agency.

(10) Proof of insurance. A licensee shall at all times maintain in full force and effect for the duration of the license, worker's compensation insurance as required by state law, and general liability insurance with minimum limits of \$1,000,000.00 per occurrence and a \$2,000,000.00 aggregate limit issued from a company licensed to do business in Michigan. A licensee shall provide evidence to the city clerk of the ability to obtain a certificate of insurance for a valid and effective policy which discloses the limits of each policy, the name of the proposed insurer, the effective date and expiration date of each policy, the policy number, and the names of the additional insureds. When issued, the policy shall name the city and its officials and employees as additional insureds to the limits required by this section. A licensee or its insurance broker shall notify the city of any

cancellation or reduction in coverage within seven days of receipt of insurer's notification to that effect. The licensee, permittee, or lessee shall forthwith obtain and submit proof of substitute insurance to the city clerk within five business days in the event of expiration or cancellation of coverage.

(11) Whether an applicant has been indicted for, charged with, arrested for, or convicted of, pled guilty or nolo contendere to, forfeited bail concerning any criminal offense under the laws of any jurisdiction, either felony or controlled-substance-related misdemeanor, not including traffic violations, regardless of whether the offense has been reversed on appeal or otherwise, including the date, the name and location of the court, arresting agency, and prosecuting agency, the case caption, the docket number, the offense, the disposition, and the location and length of incarceration. Prior criminal history will be addressed/considered consistent with the provisions of the MRTMA, including but not limited to MCL 333.27958(1)(c).

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

(13) Whether an applicant has filed, or been served with, a complaint or other notice filed with any public body, regarding the delinquency in the payment of, or a dispute over the filings concerning the payment of, any tax required under federal, state, or local law, including the amount, type of tax, taxing agency, and time periods involved.

(14) A description of the type of marihuana establishment; and the anticipated or actual number of employees.

(15) An acknowledgment and consent that the city may conduct a background investigation, including a criminal history check, and that the city will be entitled to full and complete disclosure of all financial records of the marihuana commercial entity, including records of deposit, withdrawals, balances and loans; and

(16) Any additional information that the community development department or public safety department reasonably determines to be necessary in connection with the investigation and review of the application.

(c) Consistent with the MRTMA, including but not limited to MCL 333.27959(7), and the Freedom of Information Act, MCL 15.231 et seq. the information provided to the city clerk pursuant to this section relative to licensure is exempt from disclosure.

(d) All marihuana commercial entities shall obtain all other required permits or licenses related to the operation of the marihuana commercial entity, including, without limitation, any development approvals or building permits required by any applicable code or ordinance.

(e) If a deficiency is identified in an application, the applicant shall have five business days to correct the deficiency after notification.

(f) Upon an applicant's completion of the above-provided form and furnishing of all required information and documentation, the city clerk shall accept the application and assign it an application number by establishment type.

(g) Upon receipt of a completed application, the city clerk shall circulate the application to the community development department, public safety department, assessing department, department of public works, planning and zoning department, and the electric department(as well as any other city department that the office of the city manager may determine is pertinent to review of such applications) to determine whether the application is in full compliance with all applicable laws, rules and regulations.

Sec. 30-708. - Issuance of provisional approval certificate.

(a) Complete applications for a marihuana establishment license determined to be in full compliance with the requirements of this article shall be issued a provisional marihuana establishment approval certificate in accordance with the procedures specified in this section.

(b) The city clerk, upon approval by the city commission, shall issue a provisional marihuana establishment approval certificate if the inspection, background checks, and all other information available to the city verify that the applicant as a grower, processor, safety compliance facility, retailer, microbusiness, or secure transporter has submitted a full and complete application, has made improvements to the business location consistent with the application, complies with applicable zoning and location requirements, and is prepared to operate the business as set forth in the application, all in compliance with this Code and any other applicable law, rule, or regulation.

(c) A provisional marihuana establishment approval certificate means only that the applicant as submitted a valid application for a marihuana establishment license, and is eligible to receive the appropriate marihuana establishment license from the board. The applicant shall not locate or operate a marihuana establishment in the city without obtaining a license approved by the board and issued by the state. A provisional certificate issued by the city will expire and be void after 12 months if state license approval is not diligently pursued to completion by the applicant within such time, or on the date that state license approval is denied to the applicant, whichever first occurs.

(d) The conditions of an approval of a marihuana business license shall include, at a minimum, operation of the business in compliance with all of the plans and information made part of the application.

Sec. 30-709. - Issuance of city marihuana establishment operating license.

(a) An applicant holding an unexpired provisional certificate issued pursuant to this article and for which the board has granted the appropriate marihuana establishment state operating license shall provide proof of same to the city clerk.

(b) Inspection. An inspection of the proposed marihuana establishment by the city shall be required prior to issuance of the city operating license. Such inspection shall occur after the premises are ready for operation, but prior to the stocking of the business with any marihuana, and prior to the

opening of the business to the public. The inspection is to verify that the business establishments are constructed and can be operated in accordance with the application submitted and the applicable requirements of the code and any other applicable law, rule, or regulation.

(c) After verification that the business establishments are constructed and can be operated in accordance with the application submitted and the applicable requirements of the code and any other applicable law, rule, or regulation, the city clerk shall issue a city operating license whose term shall run concurrent with the state operating license for the establishment.

(d) Maintaining a valid marihuana establishment license issued by the state is a condition for the issuance and maintenance of the city operating license issued under this article and the continued operation of any marihuana establishment.

**LEGAL ISSUES:**

After staff review, the following contingencies exist for the approval of such license:

Clerk - Need to provide proof of insurance with additional insured language.

**TIME SENSITIVITY:**

Routine

**BRIEFLY DESCRIBE THE NATURE OF THE TIME SENSITIVITY:**

**FINANCIAL CONSIDERATIONS:**

The applicant paid the \$5,000 application fee. There will be a renewal fee each year in the amount of \$5,000.

**RECOMMENDED ACTION:**

\*City Manager recommending a Provisional Adult Use Marihuana License to Yuma Way MI, LLC, dba Cannabay, to operate a Marihuana Retail facility at 1321 N Sherman Street, contingent upon final inspection.

RECOMMENDATION: Approve.

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**ATTACHMENTS:**

1. HPSCAN\_20210111193134763\_2021-01-11\_193531890