

AN ORDINANCE
of the City Council of the City of Berkley, Michigan to Amend Article XV, Marihuana
Businesses, Section 30-806, License application evaluation, and Section 30-807, License
limit, in Chapter 30, Businesses, of the City of Berkley Code of Ordinances.

THE CITY OF BERKLEY ORDAINS:

SECTION 1: Sections 30.806 and 30-807 of Chapter 30 of the Berkley City Code is amended, as follows:

Sec. 30-806. License application evaluation.

- (a) The city will accept applications for a license(s) for a marihuana business over a 14 day period, as established by the city manager after the effective date of this article. At the end of the 14 day period, all properly submitted and complete applications shall be subject to examination and review by the city. The city may, in its discretion, elect to issue or not issue licenses for any of the marihuana business types or issue licenses in any combination thereof, but in no instance shall issue more licenses than are permitted pursuant to the terms of this article and state law.
- (b) The city shall review all submitted applications for completeness. If an application is found to be incomplete, it will not be further considered until made complete. The community development department shall send a letter to the applicant explaining the omitted information or defect in the application. The applicant shall have two weeks from the date of the letter to correct the defect or provide the required information to the city. If the correction or additional information is not provided within two weeks of the letter, the application will be deemed abandoned and will no longer be considered.
- (c) To evaluate applications, the city shall use a point-based system which shall be approved, and may be modified from time-to-time, by city council resolution, and shall take into account the following application evaluation criteria:
 - (1) The content and sufficiency of the information contained in the application.
 - (2) Whether the proposed plan has received approval from the public safety department, community development department, and all other appropriate departments.
 - (3) Whether the proposed facility will revitalize or redevelop property that has been vacant or unused for an extended period of time.
 - (4) Planned outreach on behalf of the proposed business, and whether the applicant or its stakeholders have made, or plan to make, significant physical improvements to the building housing the marihuana business, including plans to control traffic, noise, and odor effects on the surrounding area.
 - (5) Whether the applicant or any of its stakeholders have a record of acts detrimental to the public health, security, safety, morals, good order, or general welfare prior to the date

of the application; and whether the applicant or any of its stakeholders have ever been convicted of operating an illegal business enterprise of any kind.

- (6) Whether the applicant has reasonably and tangibly demonstrated it possesses adequate resources and experience to implement the submitted business plan.
 - (7) Whether the proposed location in the city in relation to its proximity to other locations for marihuana businesses represents a reasonable and harmonious dispersion of marihuana businesses.
 - (8) The proximity of the business to a school.
 - (9) Whether adequate off street parking is provided or available.
 - (10) Whether the size and nature of the use in relationship to previously approved and issued marihuana business licenses is reasonable.
 - (11) Whether the applicant has business experience previously in the city and demonstrates that the applicant has sufficient business experience to operate the proposed marihuana business.
 - (12) Whether the proposed plan incorporates sustainable infrastructure and energy efficient elements and fixtures.
 - (13) Whether the proposed plan incorporates infrastructure that adequately addresses stormwater drainage.
 - (14) Whether the proposed plan incorporates odor control systems to prevent odor dispersion to neighboring properties.
 - (15) Whether an applicant has applied for a co-location of equivalent licenses at one location.
 - (16) Other criteria as indicated important for consideration by any appropriate department of the city administration.
- (d) The city may engage professional expert consultant assistance in performing any of the duties and responsibilities under this article.
 - (e) The point-based merit system, shall incorporate the evaluation criteria outlined within this article, and may include additional criteria intended to select licensees that provide the best outcome for the community as determined by the city.
- (1) In the event of a tie among applicants through the merit system which would result in more approvals than available licenses, the tie will be resolved through a blind lottery drawing to determine which applicant will receive recommendation for approval.

- (2) Any application receiving less than 70 percent of possible points outlined within the point-based merit system shall be automatically denied license approval.
- (3) Applications and evaluation points yielded from a point-based merit system shall be considered for up to 180 days following the publication of merit point system scores. The effective applications and points shall be used to recommend license approval should prior recommendations be declined or fail to receive license. Applications within the process may receive a one time extension not to exceed three months, approved by the city manager with proper display of good cause shown.
- (f) Within 90 days of receiving the last completed application, the city manager shall recommend applications for site plan approval to the planning commission. The city manager may only recommend a number of applications for consideration equal to or less than the number of remaining licenses available for issuance. All other applicants shall be sent a written notice of rejection setting forth specific reasons why the city manager did not recommend their application for city council approval.
- (g) Upon receiving site plan approval from the planning commission, applicants shall move forward for final license approval from the city council as recommended by the city manager.
- (h) Upon submittal of the city manager's recommended applications to the city council, the city shall publish and provide public notice of the city council meeting when the city council will consider the license applications. Notice shall be given not less than 14 days prior to the city council meeting. All written feedback shall be presented to the city council.
- (i) The public notice shall be published in a newspaper of general circulation and posted at City Hall. The notice shall be sent by mail or personal delivery to the owners and occupants of property within 300 feet of the proposed marihuana business site. The public notice must include at minimum the following:
 - (1) Proposed location of the marihuana business; and
 - (2) Name of the applicant(s) or organization; and
 - (3) Intended marihuana business use; and
 - (4) Information pertaining to methods of accepting public feedback; and
 - (5) Location, date, and time of the meeting in which city council will consider license approval.
- (j) All marihuana business licenses shall be effective for one year following its original issuance date. Annual renewal of the license shall follow the process as outlined within this article. The improvements made pursuant to site plan approval by the planning commission shall be commenced after license approval by the city council and be completed within one year after the license is approved by the city council. If an applicant submits a written request to the city manager, showing that its medical marihuana provisioning center facility

application or adult use retail facility application with the state remains pending and that the applicant has diligently pursued approval of the state license and all other required permits, approvals and licenses without delay or inaction on applicant's part, and good cause for the extension exists, the city will grant an extension of time of 180 days. If an applicant submits a written request for an additional extension to the city manager prior to the expiration of the 180 day extension of time showing that its medical marihuana provisioning center facility application or adult use retail facility application with the state remains pending and that the applicant has diligently pursued approval of the state license and all other required permits, approvals and licenses without delay or inaction on applicant's part, and good cause for the extension exists, the city will grant a final extension of time of 45 days to the applicant.

Sec. 30-807. License limit.

- (a) The city council finds and determines that it is in the public interest and serves a public purpose to limit the maximum number of licenses that the city may issue to five marihuana business locations, with the acceptable uses as follows:
 - (1) Adult use marihuana retail establishments;
 - (2) Medical marihuana provisioning center establishments;
- (b) The city council finds and determines that it is in the public interest and serves a public purpose to prohibit the following marihuana business uses from receiving a license from the city:
 - (1) Adult use and medical marihuana secured transporter establishments; and
 - (2) Designated consumption establishments; and
 - (3) Marihuana event organizer; and
 - (4) Temporary marihuana events; and
 - (5) Adult use and medical marihuana growing facility establishments; and
 - (6) Adult use and medical marihuana processing establishments, and
 - (7) Adult use and medical marihuana safety compliance facilities; and
 - (8) Adult use marihuana microbusiness establishments.
- (c) Should a license for a marihuana business become available due to expiration, revocation, or non-renewal, the license will be deemed void and of no further effect and the license limit set forth in Sec. 30-807(a) above will be reduced by the license expiration, revocation, or non-renewal. No replacement license will be issued unless city council determines to increase the authorized license limit by ordinance. **SECTION 3: Severability Clause**

Should any word, phrase, sentence, paragraph, or section of this Ordinance be held invalid or unconstitutional, the remaining provisions of this ordinance shall remain in full force and effect.

SECTION 4: Penalty

All violations of this ordinance shall be municipal civil infractions and upon determination of responsibility therefore shall be punishable by a civil fine of not more than \$500, and/or such other sanctions and remedies as prescribed in Article IX of Chapter 82 of the Code of Ordinances.

SECTION 5: Effective Date

This Ordinance shall become effective 30 days following the date of adoption.

SECTION 6: Publication

The City Council directs the City Clerk to publish a summary of this ordinance in compliance with Public Act 182 of 1991, as amended, and Section 6.5 of the Berkley City Charter.

Introduced on the First Reading at the Regular City Council Meeting on _____.

Adopted on the Second Reading at the Regular City Council Meeting on _____.

Bridget Dean, Mayor

Attest:

Victoria E. Mitchell, City Clerk